California Native Plant Society
2707 K Street, Suite 1
Sacramento, CA 95816

STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the matter of:	)	
Application for Certification	)	Docket 08-AFC-5
For the Imperial Valley Solar Project	)	
(Formerly SES Solar Two)	)	
Imperial Valley Solar, LLC	)	

INTERVENOR CALIFORNIA NATIVE PLANT SOCIETY

Opening Testimony of Intervenor

March 31, 2010

Tom Beltran, Greg Suba
California Native Plant Society
2707 K Street, Suite 1
Sacramento, CA 95816
Phone: 916-447-2677 x206

cnpssd@nyms.net
gsuba@cnps.org

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We did not prepare a Pre-Hearing Conference Statement. This document has been prepared for the April 19, 2010 Evidentiary Hearing.

1. The topic areas that are complete and ready to proceed to evidentiary hearing:
All topic areas could proceed to evidentiary hearings, except soil and water resources, biological resources, air quality, and alternatives.

2. The topic areas that are not complete and not yet ready to proceed to evidentiary hearing, and the reasons therefore:
Soil and water resources, biological resources, air quality, and alternatives are not complete and not ready to proceed. Water Supply – a water supply has not been identified. Soil and Water Resources – the plan is to construct some of the project in desert washes. CEC staff has indicated that it cannot be determined if the project complies with the Clean Water Act. Alternatives – an alternative analysis has not been submitted to the Army Corps of Engineering, therefore alternatives cannot be completed. Biological Resources – CEC concluded that the rare plant surveys were not adequate to determine the presence or absence of rare plant species. CEC has required additional surveys be done. Those reports have not been completed; therefore the impacts of this project on rare plants cannot be determined. Air Quality – it is unclear that the effects of damage to soil stabilizers have been taken into account.

3. Topic Areas That Remain Disputed and Require Adjudication:
These are the disputed topics: soil and water resources, including water supply, alternatives, biological resources, and air quality.

4. Witnesses, Topic Areas, Testimony:

Witnesses (60 minutes)

Tom Beltran – I am a business executive with almost 30 years experience in international manufacturing, research and development, and distribution. I have extensive experience in compliance with domestic and international environmental and health/safety regulations and laws. I have actively participated in community planning groups for the last five years in Borrego Springs, CA, including the review of CEQA required EIRs. Membership application to the planning group is pending with the San Diego of Department of Planning and Land Use (DPLU). I am a volunteer counter for the Anza Borrego Desert State Park annual sheep count, Peninsular Big Horn Sheep. I have five years' restoration experience in Colorado Desert habitat, removing non-native plant species, seed collection, propagation, growing, soil preparation, planting, monitoring, and maintaining restored native habitat. I am a current member of the San Diego County Multiple Species Conservation Plan (MSCP) – East, steering committee; I am a current member of the executive board of the California Native Plant Society, San Diego Chapter. I am also the chapter Secretary.

Greg Suba – California Native Plant Society, Conservation Program Director.

Testimony:
Without completed reports, we have no testimony.

Topics:

Although we have no testimony, we would like to make general comments on the following topics.

Poor plant surveys, the CEC staff remarked that they were inadequate. Spring and fall surveys are a condition of project certification but they are not yet complete.

Project certification would violate CEQA without adequate plant surveys, which would provide the factual basis for determining the project impacts. Impacts must be known before mitigation plans are developed. The CEC staff suggestion that the project be certified prior to the completion of the fall plant surveys and that it is unlikely that any rare species be present is unacceptable. That is what the plant surveys are for. Any project approval prior to the factual results of adequate surveys and the determination of impacts based on fact would be a clear violation of CEQA.

Lack of CNDDB data due to lack of survey activity in the region. The applicant used the CNDDB to draw up a list of rare species but did not include all regions in the Colorado Basin, such as Borrego Springs or areas north of Salton Sea.

Focused surveys should come from the entire Colorado Basin area, excluding terrain types not found on the project site, such as steep, rocky slopes. We know that a rare plant species list derived from the entire Colorado Basin would yield a rare species list four or five times larger than the one used for the 2007 and 2008 surveys. Anything less would be unacceptable.

Avoiding construction in sensitive species is not acceptable mitigation. A critcal component of the Colorado Desert ecosystem is the cryptobiotic crust, a very delicate layer of photosynthetic biological material at the soil surface. It is composed of lichen, moss, algae, and bacteria that photo-synthesize essential nutrients for which many desert flora are dependant. In addition, this layer enhances water infiltration and prevents wind and water erosion. Soil stabilization is critically important in arid, sparsely vegetated, and windblown regions such as the Colorado Desert. Flash floods are also a common occuence. Cryptobiotic components are easily damaged. Partial recovery from human trampling in one to three years and extensive recovery after five years have been observed. However, this project will require periodic maintenance activities, such as mirror washing which will occur more frequently than would allow for even partial recovery. Therefore, cryptobiotic function on this project site will never recover it's critical functions during the project life, if ever. Damage to cryptobiotic functions offsite are probable due to diminished onsite damage to soil stability. Shifting onsite soil will likely damage offsite cryptobiotic functions when shifting soils cover the photosynthetic cryptobiotic crust, destroying its vital functions of nutrient synthesis, water infiltration, and soil stabilization. Thus all onsite and some offsite plant communities will be negatively impacted.

Although there are spring and fall surveys planned for 2010, CEC staff has concluded that the 2007 and 2008 surveys are inadequate to determine CEQA required impacts. Even if 2010 surveys are adequate to determine impacts, we do not believe that they alone will be sufficient to determine presence or absence of all rare species at the project site. After all, the CNDDB is a composite of observations over many years, not just one wet one.

Application for Certification for the)
Imperial Valley Solar Project)
(formerly known as SES Solar Two Project))
Imperial Valley Solar, LLC) Docket No. 08-AFC-5
)

Exhibit List

Applicant's Exhibits – Exhibits 1 to 299

Exhibit 1 - Application for Certification, Volume 1 and II, docketed on 46819

Exhibit 2 - Applicant's Comments on Staff Assessment/DEIS, docketed on 55935

Energy Commission Staff's Exhibits – Exhibits 300-399

Exhibit 300 – Staff Assessment and DEIS for the Solar Two Project, docketed on 55355

Intervener CNPS Exhibits – Exhibits 400-499

Exhibit 400 – *Anthropogenic Degradation of the Southern California Desert Ecosystem and Prospects for Natural Recovery and Restoration*, Jeffrey E. Lovich and David Bainbridge, Environmental Management Vol. 24, No. 3, pp. 309-326; 1999, not docketed

Exhibit 401 – *Citizen Guide to The California Environmental Quality Act*, J. William Yeates, Esq.; January 2000, not docketed

Exhibit 402 – *A Citizen's Guide to the NEPA: Having your voice heard*, Council on Environmental Quality, Executive Office of the President; December 2007, not docketed

Exhibit 403 – *2009 California Environmental Quality Act (CEQA) Statute and Guidelines*, California Resources Agency, not docketed

Exhibit 404 – Resume of Carolyn Martus, California Native Plant Society, Botanist

Exhibit 405 – Letter from Carolyn Martus, dated March 30, 2010, addressing the inadequate botanical surveys for SES Solar 2 (project)

DECLARATION OF SERVICE

I, Tom Beltran, declare that on April 1, 2010, I served and filed copies of the attached, Opening Testimony, and ______, dated, ______, 2010. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: **[http://www.energy.ca.gov/sitingcases/solartwo/index.html]**.

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(*Check all that Apply*)

FOR SERVICE TO ALL OTHER PARTIES:

X sent electronically to all email addresses on the Proof of Service list;

____ by personal delivery;

____ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

X sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (***preferred method***);

OR Additional electronic copy enclosed on CDROM

____ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 08-AFC-5
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

[signature]

*indicates change

Anthropogenic Degradation of the Southern California Desert Ecosystem and Prospects for Natural Recovery and Restoration

JEFFREY E. LOVICH
US Geological Survey
Western Ecological Research Center
Department of Biology, University of California
Riverside, California 92521-0427 USA

DAVID BAINBRIDGE
United States International University
Environmental Studies Program
10455 Pomerado Road
San Diego, California 92131-1799 USA

ABSTRACT / Large areas of the southern California desert ecosystem have been negatively affected by off-highway vehicle use, overgrazing by domestic livestock, agriculture, urbanization, construction of roads and utility corridors, air pollution, military training exercises, and other activities. Secondary contributions to degradation include the proliferation of exotic plant species and a higher frequency of anthropogenic fire. Effects of these impacts include alteration or destruction of macro- and micro-vegetation elements, establishment of annual plant communities dominated by exotic species, destruction of soil stabilizers, soil compaction, and increased erosion. Published estimates of recovery time are based on return to predisturbance levels of biomass, cover, density, community structure, or soil characteristics. Natural recovery rates depend on the nature and severity of the impact but are generally very slow. Recovery to predisturbance plant cover and biomass may take 50–300 years, while complete ecosystem recovery may require over 3000 years. Restorative intervention can be used to enhance the success and rate of recovery, but the costs are high and the probability for long-term success is low to moderate. Given the sensitivity of desert habitats to disturbance and the slow rate of natural recovery, the best management option is to limit the extent and intensity of impacts as much as possible.

We've mined it, dammed it, irrigated it, developed it, and subjected it to nuclear assault, yet the desert, somehow both fragile and tough, manages to endure, a rugged old touchstone for us to measure ourselves against.

Malcolm Jones, Jr., 1996

The landscape and native vegetation of the southern California deserts have been significantly altered during the last century by a variety of factors including: livestock grazing (Bentley 1898, Humphrey 1958), introduction of exotic species (Mooney and others 1986, Rejmánek and Randall 1994), off-road vehicle use (see reviews in Webb and Wilshire 1983), urbanization and its attendant effects (Reible and others 1982, Walsh and Hoffer 1991), and military activities (Lathrop 1983a, Prose and others 1987). Extreme temperatures, intense sun, high winds, limited moisture and the low fertility of desert soils make natural recovery of the desert very slow after disturbance (Bainbridge and Virginia 1990). Conditions suitable for plant establishment occur only infrequently and irregularly, and it may take hundreds of years for full recovery to take place without active intervention. Many of the actions of desert development and utilization have profound effects on ecosystem stability, diversity, and productivity (Rundel and Gibson 1996).

The literature on human impacts to the biotic and physical components of the Mojave Desert is large and diffuse. In this paper we review the major human-induced impacts on the California desert, and the prospects for natural recovery and restoration, by characterizing the effects of past actions on the Mojave Desert ecosystem and other arid lands. In addition, we briefly suggest practical strategies and methods for planning and implementing desert restoration projects and improving recovery of these areas by soil management, transplanting, direct seeding, and other techniques.

KEY WORDS: Mojave Desert; Colorado Desert; California; Human impacts; Recovery; Restoration

Area of Study

Our review focuses on the Mojave and Colorado Deserts of southern California, an area of approximately 10 million ha. The Mojave Desert occupies portions of Inyo, Kern, Los Angeles, Riverside, and San Bernardino counties in California. The geographical and ecological boundaries of the Mojave Desert are discussed in detail by Vasek and Barbour (1977) and Hickman (1993). The modern plant community of the Mojave has been characterized as "desert scrub" (Turner 1982, Hickman 1993), even though it is composed of several recognizable community types including: creosote bush scrub, saltbush scrub, shadscale scrub, blackbush scrub, and Joshua tree woodland (Vasek and Barbour 1977). Perennial plant diversity is low compared to the Colorado Desert: areas dominated by *Larrea tridentata* and *Ambrosia dumosa* occupy about 70% of the Mojave (Lathrop and Rowlands 1983). More than 250 species of annual plants are found in the Mojave, including 80–90 species that are endemic (Turner 1982). In Death Valley and the Salton Sink, annuals account for 42% and 47% of the local flora, respectively (Johnson and others 1978). Overall plant diversity is low below 1000 m, but increases to levels approaching more temperate habitats at higher elevations (Cody 1986).

The Colorado Desert is that part of the Sonoran Desert found mostly in Imperial and Riverside counties, California (Burk 1977). The Colorado Desert is generally separated from the Mojave Desert to the north by the Little San Bernardino, Cottonwood, and Eagle Mountains. The boundary between the two desert ecosystems is poorly defined to the east of these mountain ranges (Vasek and Barbour 1977). A bimodal rainfall pattern composed of winter frontal systems and summer convectional storms distinguishes the Colorado Desert from the western Mojave Desert (Burk 1977), where most precipitation comes from winter rains. In addition, the region is generally lower, flatter, hotter in the summer and warmer in the winter, and hosts a slightly different flora than the Mojave Desert (Hickman 1993). Dominant vegetation in the Colorado Desert is "Sonoran creosote–bush scrub" (Hickman 1993). Plant communities recognized by Burk (1977) include creosote bush scrub, cactus scrub, wash woodland, palm oasis, saltbush scrub, and alkali scrub. There is broad overlap of plant species between the Mojave and Colorado Deserts, but there are a significant number of freeze-sensitive arboreal species that are found only in the Colorado Desert.

Both deserts are characterized by dominant perennial plant species that are long-lived (Bowers and others 1995), some exceptionally so (Vasek 1980). Density and cover of long-lived species increases with age of the site surface (Webb and others 1987, 1988, Bowers and others 1997).

While our focus is specifically directed to the problems of desert lands in California (most of our experience is in the Colorado Desert), we believe our review will prove useful for desert management in other parts of the Southwest, northern Mexico, and in other drylands around the world.

Factors Contributing to Habitat Degradation

The following sections summarize major anthropogenic degradation factors in the southern California desert ecosystem other than agricultural development and urbanization. An understanding of the nature and the effect of disturbances is useful in estimating recovery times or determining what course of action may be required to restore a habitat. Table 1 summarizes the estimated time intervals required for affected plant communities to fully or partially recover from human-induced disturbances.

Impacts on the desert can be loosely divided into historic and current impacts. There is rarely a complete distinction between the two but, in general, the historic impacts include such things as overgrazing, aqueduct building, and the operation of the Desert Training Center in World War II. Grazing still continues, but the major impacts from grazing occurred in the mid to late 1800s. A very rough estimate of the magnitude and extent of these different activities is shown in Table 2. The following factors are not presented in order of importance.

Livestock and Grazing

Cattle and sheep have grazed almost continuously through large areas of the region from the mid-1800s to the present, although the numbers have dropped off in recent years. The establishment of ranching fostered the development of a major industry in the western United States that prospered until droughts, harsh winters, and overgrazing caused a series of dramatic herd declines in the late 1800s. Populations of sheep (60,000) and cattle (67,000) peaked in Imperial County in 1920. In 1968 there were 25,000 cattle and 138,000 sheep grazing on Bureau of Land Management (BLM) and National Monument desert lands in California, predominantly in the Mojave (Ruch 1968). In 1979, 1.8 million ha of public lands administered by the BLM in the California desert were grazed by 75,000 sheep and 14,000 cattle (Bureau of Land Management 1980). Excellent histories of grazing in the desert southwest are provided by Humphrey (1958, 1987).

No published studies have yet fully documented the impact of grazing by livestock in the California desert or estimated the time required for heavily grazed areas to recover to pregrazing levels of plant diversity, density, and cover (Oldemeyer 1994). The rarity of undisturbed reference sites and long-term studies makes it difficult to quantify the effects of grazing, but it is possible to

Table 1. Estimated natural recovery times in years for California desert plant communities subjected to various anthropogenic impacts

Impact	Location	$T_{recovery}$	Reference
Tank tracks (military)	eastern Mojave	65,[a] 76[b]	Lathrop (1983a)
Tent areas (military)	eastern Mojave	45,[a] 58[b]	Lathrop (1983a)
Dirt roadways (military)	eastern Mojave	112,[a] 212[b]	Lathrop (1983a)
Tent sites (military)	eastern Mojave	8–112[c]	Prose and Metzger (1985)
Tent roads (military)	eastern Mojave	57–440[c]	Prose and Metzger (1985)
Parking lots (military)	eastern Mojave	35–440[c]	Prose and Metzger (1985)
Main roads (military)	eastern Mojave	100–infinity[c]	Prose and Metzger (1985)
Military	eastern Mojave	1500–3000[d]	Prose and Metzger (1985)
Townsites	northern Mojave	80–110,[e] 20–50,[b] 1000+[f]	Webb and Newman (1982)
Pipeline	southern Mojave	centuries[g]	Vasek et al. (1975a)
Powerline	southern Mojave	33[h]	Vasek et al. (1975b)
Fire	western Colorado Desert	5[b,i]	O'Leary and Minnich (1981)
Off-road vehicle use	western Mojave	probably centuries	Webb et al. (1983)
Pipeline (berm and trench)	Mojave Desert	100[j]	Lathrop and Archbold (1980b)
Pipeline (road edge)	Mojave Desert	98[j]	Lathrop and Archbold (1980b)
Powerline pylons and road edges	Mojave Desert	100[j]	Lathrop and Archbold (1980b)
Under powerline wires	Mojave Desert	20[j]	Lathrop and Archbold (1980b)

[a]Recovery time to control density.

[b]Recovery time to control cover.

[c]Estimated recovery time for *Larrea tridentata* to reach control densities.

[d]Estimated recovery time (''if at all'') for recovery to original vegetative structure assuming establishment of control densities.

[e]Compaction recovery time.

[f]Total estimated recovery time.

[g]30–40 years assuming linear rates of succession; 3000 years until formation of large creosote clonal rings.

[h]Incomplete recovery time in areas of high impact.

[i]Time for appearance of perennial seedlings. See Brown and Minnich (1986) in section on fire.

[j]Biomass recovery assuming that successional vegetative growth is approximated by a straight line. Recovery of long-lived species is estimated to take at least three times longer than indicated.

Table 2. Adverse impacts on California desert, their relative intensity and historical occurrence

Impact	Intensity	Current/historic
Grazing	moderate	primarily historic
Removal of native people	moderate	historic
Invasive plants	moderate/severe	historic/current
Highways	severe	current
Urbanization	severe	current
Off-road vehicles	severe	current
Agriculture	severe	both
Military operations	severe	both
Mining	locally severe	both
Linear corridors	locally severe	current

describe the nature of these impacts and their probable extent. Consequently, conclusions about the effects of grazing on arid ecosystems have been contradictory and controversial (Anonymous 1991, Borman and Johnson 1990, Coe 1990, Field 1990, General Accounting Office 1992, Gillis 1991, Poling 1991). Some argue that grazing is beneficial to rangelands, suggesting that the act of grazing stimulates new plant growth (Savory 1988). Other putative positive benefits include the dispersal of seeds, production of fertilizer in the form of excrement, and churning of soil generated by moving hooves (but see Balph and Malecheck 1985). Others point to negative impacts of grazing including: soil compaction and increased erosion, trampling of plants, and overcropping. Grazing effects on arid ecosystems are reviewed in detail by Archer and Smeins (1991).

The effects of overgrazing are far less controversial. As early as the late 1800s there was recognition of dramatic range deterioration in the United States as a result of overstocking of cattle (Bentley 1898). In his report, Bentley concluded that ''The ranges have been almost ruined, and if not renewed will soon be past all hope of permanent improvement.'' In spite of early recognition of a problem, solutions have still not been satisfactorily implemented (General Accounting Office 1992).

The impacts of grazing, whether positive or negative, may be extensive. In a recent biological assessment in the western Mojave Desert of California, 100% of a 234-square-km area was impacted to some extent by sheep grazing (Tierra Madre Consultants 1991). In a detailed analysis of the effects of sheep grazing on 2.6 square km of desert tortoise habitat, Nicholson and Humphreys (1981) observed soil disturbances in 80% of the area used by sheep. Thirty-three percent of the plot was heavily used by sheep.

Livestock grazing, by its very nature, causes a decrease in plant cover and biomass, at least initially. Decreases in cover have been shown to be associated with a decrease in the diversity and abundance of lizards and other wildlife species in arid ecosystems (Busack and Bury 1974, Germano and Hungerford 1981, Germano and others 1983, Germano and Lawhead 1986). In the Mojave Desert Nicholson and Humphreys (1981) observed large decreases in plant cover in areas grazed by sheep. Similar results were reported by Webb and Stielstra (1979) in the Mojave. In addition, they observed a 60% reduction in above-ground biomass on plots grazed by sheep. Other studies, in American deserts outside of the Mojave Desert, have not detected appreciable differences between grazed and ungrazed plots (Heske and Campbell 1991, Rice and Westoby 1978), but most sites had been grazed before the studies were initiated. An important point to make is that the response of plants to grazing varies according to species, season, plant phenology (Genin and Badan-Dangon 1991), local conditions (drought, edaphic factors, etc.), and past historical use.

Direct effects of grazing on desert animals such as the desert tortoise (*Gopherus agassizii*) are not well documented. Grazing sheep can damage tortoise burrows. Nicholson and Humphreys (1981) reported that of 164 tortoise burrows on a 2.6-square-km study site, 10% were damaged and 4% were destroyed. Most burrows were well protected since they were generally located under shrub cover. Damage was considered to be insignificant since tortoises were often observed digging new burrows in late spring regardless of the availability of existing burrows. Others have gone so far as to suggest that cattle dung actually serves as an important food supply for desert tortoises (Bostick 1990), although this has never been rigorously substantiated (Hal Avery personal communication).

Webb and Stielstra (1979) observed that soils in the Mojave Desert exhibited greater surface strength in areas where sheep bedded and grazed relative to control areas. The greatest compaction occurred in the upper 10 cm but compaction was also observed at lower depths. At the surface, soils are trampled by grazing, often obliterating cryptobiotic soil crusts leading to increased erosional potential. Erosion is of special concern for desert soils because the nutrient capital is often concentrated in the surface soil. Gross disorganization of community structure is possible with the loss of only a few centimeters of soil (Charley and Cowling 1968).

Even limited grazing can cause significant shifts in vegetation and damage to soil crusts. Kleiner and Harper (1977) found that seven plant species that were common in the ungrazed area were absent or insignificant in a comparable grazed section of Canyonlands National Park. They attributed this in part to changes in cryptobiotic soil crust, which decreased from 38% cover in the ungrazed area to 5% in the lightly grazed area. Grazing also increases the spatial and temporal heterogeneity of water, nitrogen, and other soil resources, fostering increased desertification of productive arid lands (Schlesinger and others 1990).

As stated above, the rate of natural recovery of habitats exposed to grazing depends on the intensity of past grazing and local conditions. In a blackbrush (*Coleogyne ramosissima*) association in Utah and Arizona, shrub cover is greater in areas that have never been grazed than in grazed areas. In the same area, plots protected from grazing for ten years showed no difference from heavily grazed areas indicating slow rates of recovery (Jeffries and Klopatek 1987). Exclusion of grazing for 14–19 years did not allow recovery of native perennial grasses in southeastern Arizona (Roundy and Jordan 1988). In the deserts of Kuwait land degradation does not necessarily stop following protection from grazing (Omar 1991). Drought, erosion, and sand encroachment continue to degrade land in the absence of grazing. Human activities and grazing may hasten degradation, but in concert with drought the three can be devastating.

In a recent review of the effects of grazing on public land in the hot deserts (Chihuahuan, Mojave, and Sonoran) of the American Southwest, the General Accounting Office (1992) concluded that a high environmental cost has been exacted on these fragile ecosystems and that land degradation due to grazing is continuing. The report concluded by noting that the high environmental risks, budgetary costs, low economic benefits, and management problems associated with livestock grazing on hot desert public lands merits Congressional consideration. Recommended options included raising grazing fees or appropriating additional funds to offset costs of administration and monitoring, and discontinuing livestock grazing altogether in hot desert areas.

Different plant communities respond to grazing in a variety of ways related to a complexity of factors. Results for the Mojave Desert suggest that livestock grazing can have locally significant effects on the plants (Figure 1) and ultimately on desert wildlife. Efforts to restore

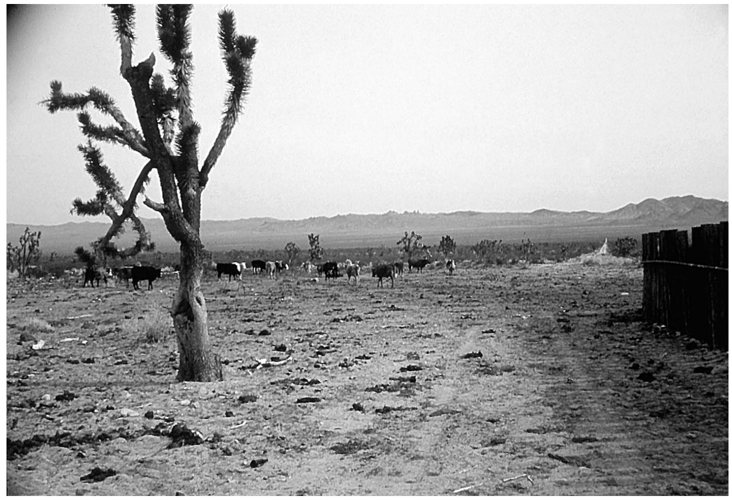

Figure 1. Cattle grazing can have locally significant effects on vegetation and soils, as shown in this photo of a cattle watering area and corral in what is now the Mojave National Preserve, California. Note the almost total destruction of perennial plants in the immediate area. The visual effect is greatly diminished as distance from the watering area increases. Photo by Jeff Lovich.

degraded rangeland in the Mojave should start by considering the effects of grazing and the potential impacts of soil compaction, erosion, and plant community alteration.

Linear Corridors

Roads, railways, powerlines, and pipelines, some of the most conspicuous elements of the modern Mojave Desert landscape, are all characterized by long and relatively narrow corridors of disturbance. The fact that most linear corridors are narrow does not necessarily imply that their impacts are minimal. According to Brum and others (1983), over 8000 km of overhead power transmission lines were present in the California desert in 1980, impacting more than 28,000 ha of land. An additional 50,000 ha of land will be impacted by the year 2000 if the projected threefold increase in power demand is accurate. Information summarized in the California Desert Conservation Area Plan (Bureau of Land Management 1980) suggests that an additional 2000 km of energy production and utility corridors are needed to meet the needs of southern California to the year 2000.

The immediate effect of linear corridor construction on soil conditions and plant cover is one of nearly complete destruction (Vasek and others 1975a). In some cases recovery is retarded due to operation and maintenance of corridors (Artz 1989). Other negative secondary effects of corridors include mortality of animals along roadways (Rosen and Lowe 1994, Boarman and Sazaki 1996), habitat fragmentation and restriction of movements and gene flow, increased access to remote areas for illegal collection and vandalism of plants and animals (Nicholson 1978, Garland and Bradley 1984, Boarman and Sazaki 1996, Jennings 1991), and increased erosion (Wilshire and Prose 1987). The steel towers associated with many electrical energy transmission corridors provide nest sites and hunting perches for ravens (*Corvus corax*), a native predator that has increased dramatically in recent years due to human subsidy. The towers may allow ravens to hunt more effectively for the federally threatened desert tortoise (*Gopherus agassizii*) and other desert wildlife (Boarman 1993). Corridors can also serve as a source of exotic invasive plants brought in on construction equipment (Zink and others 1995). Invasive plants prosper in the disturbed conditions and contribute to an increased likelihood of fire. The construction of pipelines for gas, oil, and water and much more destructive than overhead lines because extensive trenching is usually required. This traditionally has led to severe soil impacts (leaving subsoil on the surface), disturbing stabilized crusts and rock surfaces, and concentrating runoff and erosion. More recent pipelines have incorporated some environmental protection and some rehabilitation but the low value of the desert land, the high cost of revegetation, and the lack of money for enforcement and supervision has often led to neglect and minimal treatment.

The impacts of linear structures can extend far beyond the boundaries of the immediate disturbance. Schlesinger and others (1989) studied the effects of diversion structures (earthen dikes) along the Colorado River Aqueduct on plants and soil. The structures were constructed to prevent runoff due to precipitation from washing sediments into open portions of the canal. Large areas downslope of the diversion structures received only incident precipitation, with essentially no runoff from the extensive drainages in the uplands above the diversion structures. As a result, large areas of desert habitat on the downslope side of the diversion structures had a lower biomass of perennial and annual plants in comparison to adjacent areas with no diversion structures.

Garland and Bradley (1984) observed that some species of rodents in the Mojave of Nevada are more abundant near highways, while others are not. However, reduced abundance may have been an artifact of natural habitat heterogeneity since no mortality was observed during the 11-month study. Another effect of roads is edge enhancement in which perennial shrubs along roadsides are denser, larger, more vigorous, and support greater numbers of foliage arthropods than those away from roadsides (Vasek and others 1975b, Lightfoot and Whitford 1991). Johnson and others (1975) noted that primary productivity, as measured by standing crop, at study sites in the Mojave Desert of California increased about 17 times on the basis of vegetated area alone and 6 times when the area of the bare road surface was included as part of the productive unit. Unpaved roads showed increases of 6 and 3 times, respectively, in each category. Increased water availability from pavement runoff and increased retention of moisture under the pavement are probably responsible for the observed increase in plant vigor, although removal of competing plants that formerly occupied the roadway may confer an advantage to plants along the berm (Vasek and others 1975a). The increase in vigor attracts herbivorous insects (Lightfoot and Whitford 1991).

The effects and recovery of linear corridor construction in deserts have been studied by several researchers. The process of natural recovery, following powerline construction in the Sonoran Desert starts immediately with invasion by pioneering annual species, but perennial species may not return for over five years. The density and diversity of annual species may increase in comparison with undisturbed sites, perhaps due to the removal of large woody species (Hessing and Johnson 1982). An effect that is apparently linked to changes in plant abundance and composition is a reduction in the density, but not the community composition, of arthropods following establishment of access roads for powerline construction (Johnson and others 1983).

In the Mojave Desert, plant cover also increases following powerline construction. The rate of increase and composition of colonizing species varies considerably, confounding the ability to predict succession relative to adjacent undisturbed areas. Ground cover of short-lived perennial species increases in areas of severe disturbance, under the central wires, and along the edge of maintenance roads. After 33 years there was a noticeable, but not complete, recovery of predisturbance vegetation (Vasek and others 1975b). Natural revegetation (0–41% ground cover) by long-lived perennials has been observed 12 years after construction of a pipeline by trenching, piling, and refilling (Vasek and others 1975a). Disturbed and control areas appear to have similar cover, biomass, and densities of vegetation following partial recovery, but similarities disappear when the proportions of long-lived and dominant species are compared (Lathrop and Archbold 1980a,b). Species with these characteristics are not well represented on disturbed sites.

Management strategies for minimizing the effects of linear corridor construction include: placement of power poles closer to existing access roads, modifying construction techniques for buried pipelines, less frequent road grading, and limiting the width of motorcycle race corridors along powerlines (Artz 1989). Lathrop and Archbold (1980b) proposed several recommendations for routing corridors to minimize environmental impacts including: (1) routing them through gently sloping areas to minimize erosion, (2) routing them through areas occupied by colonizing species such as cheesebush (*Hymenoclea salsola*), (3) avoiding areas dominated by high nitrogen fixation communities such as cat's claw acacia (*Acacia greggii*), and (4) avoidance of undue soil compaction with implementation of soil loosening efforts to aid natural revegetation. Revegetation of linear corridors was evaluated by Kay (1979, 1988), Graves and others (1978), and Brum and others (1983).

The slow recovery of the desert to linear corridor impacts is perhaps best demonstrated by the visibility of many of the old Native American trade routes. Long-term use by foot traffic alone was sufficient to compact the soil and recovery after several hundred years has not been enough to hide these trails (personal observation).

Mining

Mining has been an important activity in the California desert since the late 1880s. Mining communities such as Kokoweef, Hart Mountain, Boron, Johannesburg, and many others have had mostly localized impacts on the desert. The most obvious forms of degradation are pits, ore dumps, and tailings, but the once-great demand for fuel and timber, grazing, and road building associated with mines was unquestionably more important in the past. Fugitive dust and toxic tailings are a more recent concern from some of these mining areas.

The Bureau of Land Management (1980) estimated that 12,545 ha in the California Desert Conservation

Area had been affected by major mining operations. If the many small prospects and adits are included, the area affected by mining would certainly be larger. The brine evaporation and dry lake mine operations are extensive and lead to substantial wind erosion (Wilshire 1983). Another problem is animal mortality at poorly managed cyanide extraction gold mines in the Mojave Desert (Clark and Hothem 1991, Henny and others 1994).

Military Training Operations

Large areas of the California desert have been impacted by temporary and ongoing military activities. Major training exercises included activities by General Patton in the early 1940s, the Desert Strike operation in 1964, and Bold Eagle in 1976. Between 1942 and 1944 more than a million soldiers passed through these training facilities, which covered more than 46,800 square km (Bureau of Land Management, 1990). The camps were effectively small cities, up to 2800 ha in size (e.g., Camp Granite) (Prose and Metzger 1985). Continuing impacts are generated by active military bases including the National Training Center (at Fort Irwin, the Marine Corps Air Ground Combat Center at Twentynine Palms, China Lake Naval Air Weapons Station, and the Chocolate Mountain Aerial Gunnery Range (Lathrop 1983a). Military operations cause intensive damage in many areas but also provide protection of thousands of hectares from other sources of disturbance by prohibiting public access. At Fort Irwin alone, the area in need of remediation is estimated to exceed 50,000 ha.

The recovery of large areas of the eastern Mojave Desert subjected to military training exercises almost 36 years earlier was studied by Lathrop (1983b). Impacted areas included tent sites, roads, and tank tracks. All impacted areas exhibited significant reductions in plant density and cover relative to control areas. Reductions of cover and density were greatest in tank tracks and least in tent areas. Recovery to predisturbance levels of cover and density varied according to disturbance type. Tent areas showed the greatest recovery, and roadways showed the least, reflecting the intensity of disturbance. Recovery in tank tracks was intermediate. Diversity of dominant perennials also varied between disturbed and nondisturbed areas but results were clouded by low species richness at the study sites and small sample sizes of the subdominants. However, diversity in disturbed transects at the Camp Ibis study site was low relative to control sites. Species similarity decreased between control and disturbed transects with increased disturbance and use intensity.

Similar observations and conclusions were reached by Prose and Metzger (1985) and Prose and others (1987) at abandoned military camps in the eastern Mojave. Long-lived species such as *Larrea tridentata* were dominant in all control areas but percentage cover and density were reduced in impacted areas. Dominant plants in disturbed areas included pioneer species such as *Ambrosia dumosa* and *Hymenoclea salsola.* Percentage cover values for pioneer species in disturbed areas were equal to or greater than control values.

Differences in vegetative structure between control and impacted plots were due to soil compaction, changes in soil texture, removal of the top layer of soil, and alteration of drainage channel density (Prose and others 1987). Penetrometer measurements show that a single pass by a "medium" tank can increase average soil resistance values by 50% relative to adjacent untracked soil in the upper 20 cm, but values of up to 73% were recorded. Dirt roadways could not be penetrated with a penetrometer below 5–10 cm due to extreme compaction. Physical modifications to the soil beneath tank tracks extended vertically to a depth of 25 cm and outward from the track edge to 50 cm (Prose 1985).

Recovery times to predisturbance levels of density and cover were estimated by Lathrop (1983b) assuming linear rates (Table 1). Recovery to predisturbance species composition would require much longer, if it were to occur at all. Areas receiving the greatest amount of soil compaction, such as roadways, require the longest recovery times. Tank tracks and tent areas recover in a shorter amount of time. Overall, recovery in plant density is slow relative to increases in cover. In other words, the number of individuals changes little following recovery from disturbance, but surviving individuals cover larger areas. A major conclusion from Lathrop's study was that recovery to some original level of community composition and stability may not occur in the foreseeable future. However, recovery of comparable disturbed areas has been excellent on restoration test plots at the Marine Corps Air Ground Combat Center near Twentynine Palms, California (Zink personal communication).

Off-Road Vehicles

Off-road vehicle (OHV) use is one of the major recreational activities in the deserts of California. The Motorcycle Industry Council estimated that 4.7 million motorcycles were used by 11.7 million people in 1978 for off-highway recreation in the United States, a figure that does not include dune buggies and four-wheel drive vehicles (Kockelman 1983).

The impacts of OHVs have been well documented (Webb and Wilshire 1983) and include destruction of soil stabilizers (see section on biotic components of soil), soil compaction, reduced rates of water infiltration, increased wind and water erosion, noise, decreased abundance of lizard populations (Busack and Bury 1974), and destruction of vegetation (Vollmer and others 1976). Compaction of a desert soil reduces the root growth of desert plants and makes it much harder for seedlings to survive (Bainbridge and Virginia 1990, Bainbridge and others 1995a). An excellent review of the effects of OHVs in the Mojave and other deserts is contained in Webb and Wilshire (1983) and the reader is referred to that document for information beyond that presented herein.

Soil compaction is a common effect of any compressive action on most soils. Compaction results from a variety of factors other than OHV use, including trampling by grazers, human trampling (Liddle 1991, 1997), and even raindrops (see review in Webb 1982). In the case of OHVs, compaction occurs at shallow depths related to the geometry of the contact surface between the tire and the soil interface. In one study the greatest increase in soil density occurred at a depth of 30–60 cm after being compacted by a motorcycle (Webb 1983). Soil density increases as a function of the number of vehicle passes, while soil infiltration rate decreases. Soils that are most susceptible to compaction are loamy sands and coarse gravelly soils with variable particle sizes. Wet soils are more susceptible to compaction than dry soil. Soils that are least affected include sands and clays.

Another by-product of heavy OHV use is increased wind and water erosion. The degree of erosion experienced in an area exposed to OHV use is affected by two main factors. First, increased water erosion is partially attributable to decreased infiltration rates due to compaction. Second, OHVs destroy surface stabilizers (see section on biotic components of soil), making soils more susceptible to erosion (Hinkley and others 1983). The enormity of the problem in the Mojave Desert is underscored by the fact that satellite photos revealed six dust plumes covering over 1700 square km of the western Mojave on 1 January 1973 that were attributed to surface destabilization primarily by OHVs (Nakata and others 1976, Gill 1996).

As shown in numerous photographs in Webb and Wilshire (1983), the effects of erosion can have indirect effects, since debris flows (Nakata 1983) can bury plants at some distance from the impacted area. Areas that are least susceptible to water and wind erosion following OHV use are dunes, playas, and areas with abundant coarse surface material (Gillette and Adams 1983, Hinckley and others 1983). Restoration of OHV areas affected by erosion requires actions to not only stop continuing erosion (Harding 1990, Heede 1983, Middleton 1990), but also action to restore past damage.

Desert soils vary in their susceptibility to OHV damage. Susceptibility is generally high in all areas except barren sand dunes (but see Bury and Luckenbach 1983), and the clay flats of playas. Soil damage caused by OHVs is environmentally significant due to the fact that desert soils may take 10,000 years to develop (Dregne 1983). From this estimate, Dregne concluded that it was futile to speak of disturbed soil recovery in time frames related to human occupancy.

Another major effect of OHV use is the destruction of plants. Lathrop (1983a) examined aerial photographs of nine disturbed and undisturbed areas in the Mojave Desert to assess the effects of OHV usage. Perennial plant density and cover were dramatically reduced in OHV areas. The percentage of cover and/or density in OHV-impacted areas relative to control areas was less than 15% in three of the sites examined. Destruction of plants resulted not only from crushing stems and foliage, the extensive root systems that fill the intershrub spaces, and germinating seeds, but also from the superstructure of the vehicle. The latter factor is important since it is responsible for plant destruction in an area wider than the track width of the vehicle. The wheel tracks of a full-size off-road vehicle operating in an undisturbed area can damage almost 0.5 ha of land with every 6.44 km traveled. Support vehicles, including very large and heavy motor homes, are very destructive, and camping areas are especially hard hit.

An easily detected but poorly understood effect of OHVs is noise. Noise from certain types of OHVs can reach 110 decibels, which is near the threshold of human pain. Brattstrom and Bondello (1983) demonstrated that OHV use in the Mojave Desert caused noise levels that caused hearing loss in animals such as kangaroo rats, desert iguanas, and fringe-toed lizards; interfered with the ability of kangaroo rats to detect predators such as rattlesnakes; and caused unnatural emergence of spadefoot toads that were estivating until the arrival of rain for breeding, a situation that could result in death. The authors noted that although OHVs are not the loudest source of human-generated sound in the Mojave, they occur more frequently than any other high-intensity sound source. In their report, Brattstrom and Bondello recommended that OHV areas be located away from the ranges of "all undisturbed desert habitats, critical habitats, and all ranges of threatened, endangered, or otherwise protected desert species."

The impact of OHV use on desert tortoises in the Mojave Desert of California was examined by Bury and Luckenbach (1986) in an unpublished report. Significantly more tortoises and active burrows were found on a 25-ha control plot than on a similar plot exposed to OHV use. In addition, subadult and adult tortoises on the control plot exhibited larger body mass than those on the OHV plot.

Impacts related to OHV use present a serious challenge to desert restoration projects for three reasons: (1) the potentially severe impact of OHV use in desert ecosystems, (2) the widespread nature of the OHV impacts in the California desert, and (3) the fact that OHV areas are often located in or near environmentally sensitive habitats. Areas targeted for restoration should be closed to OHV use prior to initiating procedures to ameliorate past damages.

Invasive Plants

Invasive exotic plants have had a significant impact on the natural communities of California (Mooney and others 1986, Rejmánek and Randall 1994), including the southern California desert ecosystem. Invasion has been facilitated by habitat disturbances that allow exotic species to colonize habitats once dominated by native species (Hunter and others 1987). Once established, exotic plants may diminish the abundance of native species due to competitive interactions or by disruption of natural processes such as fire frequency and intensity.

Some of the more important exotic plants in the southern California desert are saltcedar (*Tamarix ramosissima*), also known as tamarisk (Lovich and de Gouvenain 1998), Russian thistle (*Salsola iberica*) (Young 1991), filaree (*Erodium cicutarium*), and several grass species including split grass (*Schismus* spp.) and bromes (*Bromus* spp.) (Brown and Minnich 1986, Hunter 1991). Immense areas of desert are colonized by these species. Although other exotic plants are present in the Mojave Desert, these are important because of their ubiquity.

Exotic plants present two major problems to the integrity of the desert ecosystem. First exotic annuals increase the fuel load and frequency of fire in a community that is poorly adapted to fire. Second, some exotic plants exhibit allelopathic effects that negatively affect native species, especially annuals. Negative interactions have been demonstrated between Russian thistle and other species in the laboratory (Allen 1982a, Lodhi 1979). In addition, competition of Russian thistle with native perennial grasses increases under drought conditions (Allen 1982b), furthering establishment of the exotic. Fortunately, Russian thistle competes poorly with established vegetation and rarely supplants well-established native populations. Unfortunately, once the soil is disturbed and native plants are eliminated, Russian thistle gains a strong foothold (Young 1991). General reviews of the threats posed by exotic species invasions in native ecosystems are summarized by Cheater (1992) and D'Antonio and Dudley (1993).

Air Pollution

One of southern California's most famous exports is smog. While most noticeable in the inland valleys of the state, smog is often transported via atmospheric processes into the Mojave Desert (Pryor and Hoffer 1991). Anthropogenic pollutants include ozone, sulfur dioxide, and various particulates. Atmospheric tracer experiments have shown that pollutants released in the San Fernando Valley impact the southern Mojave Desert towns of Adelanto and Palmdale, while those released in the southern San Joaquin Valley impact the northern Mojave Desert towns of Mojave and China Lake (Reible and others 1982). Experimental tracers used in atmospheric transport studies are diluted by factors of only 2–3 during passage between source and receptor areas. Impacts are maximized during evening and nighttime hours, independent of the time of release in the San Joaquin Valley, because of the diurnal mountain–valley wind cycle. Ozone levels in the Mojave Desert can exceed 100 parts per billion (ppb) or more when offshore wind transports atmospheric pollutants from the Los Angeles Basin (Thompson and others 1984a). By comparison, ozone levels in remote areas range from 20 to 40 ppb.

The most obvious effect of smog in the Mojave Desert has been visibility degradation in an area historically distinguished by extraordinary visibility (Walsh and Hoffer 1991). Median visibility is 48–88 km in large urban areas and 104–128 km in nonurban locations. Visibility has decreased 10%–30% from the middle of the 1950s to the early 1970s at many recording stations (Trijonis 1979).

Much of the visibility loss is related to particulates, including nitrogen-rich compounds. Dryfall of these compounds from air pollution can be a major source of supplemental N for plants. This favors many exotic plant species over native annuals and perennials. Wedin and Tilman (1996) found that half the native plant species in a Minnesota grassland were lost from the community at supplemental N levels mimicking dryfall deposition rates.

A less obvious effect is damage to plants. Stolte (1991) observed injurious effects to desert plants exposed to ozone and sulfur dioxide in laboratory experiments. Annual plant species of the genera *Camissonia* and *Cryptantha* exhibit high sensitivity to both gases. The grass *Oryzopsis hymenoides* exhibits high sensitivity to sulfur dioxide, as do some types of cryptogamic soils. Responses of cryptogamic soils include increased electrolyte leakage, chlorophyll degradation, and reduced nitrogen fixation (Belnap 1991).

Studies of plants from the Mojave and Colorado Deserts show that perennial species vary in their re-

Figure 2. The effects of fire in the desert are obvious in this photo taken near Palm Springs, California, about five years after the blaze. Note the almost complete elimination of perennial shrubs in the burned area to the left. Perennial plant species in the Mojave and Colorado Deserts are long-lived and very sensitive to fire, traits that collectively contribute to the long recovery times typical of many desert plant communities after fire. Photo by Jeff Lovich.

sponse to SO_2 and NO_2. *Larrea tridentata* is sensitive to fumigation by these pollutants under experimental conditions, displaying extensive leaf injury and reduced growth or dry weight. *Encelia farinosa* and *Ambrosia dumosa* show intermediate responses, while *Atriplex canescens* appears to be resistant (Thompson and others 1980). Sensitivity also varies among native annual plants, with *Camisonia claviformis*, *C. hirtella*, and *Cryptantha nevadensis* exhibiting leaf injury at low concentrations of SO_2 and O_3 (Thompson and others 1984b).

Fisher (1978) suggested that high rates of mortality in desert holly (*Atriplex hymenelytra*) in the northern Mojave Desert (Death Valley) were related to elevated ozone levels. During the summer months he recorded ozone levels that were twice the national standard of 0.08 ppm. Photosynthesis and water use was significantly reduced in greenhouse experiments where seedlings were exposed to 0.15–0.18 ppm ozone for 3 h. Ozone-induced reduction in water-use efficiency was postulated to be the cause of declining *Atriplex* populations in Death Valley.

Additional summaries of the impacts of air pollution in the Mojave and Colorado Deserts are provided by Mangis and others (1991), Thompson (1995), and VanCuren (1995).

Anthropogenic Fire

Fire was not an important factor in shaping the prehistoric structure and dynamics of plant communities in the California desert. The infrequency of fire in the prehuman landscape of the desert was due to limited biomass, large intershrub spacing, low combustibility of some native plants, sparse groundcover to support and propagate combustion, and the absence of human-mediated fire suppression activities (Humphrey 1974, O'Leary and Minnich 1981, Minnich 1983, Brown and Minnich 1986). Such is not the case in other desert and semidesert areas of the American Southwest, including parts of the Sonoran and Chihuahuan deserts, where fire was an important prehistoric agent in maintaining grassland seral stages (Humphrey 1958, 1963, 1987, Reynolds and Bohning 1956).

The proliferation of exotic annual plant species such as *Bromus, Schismus,* and *Salsola* has dramatically increased the fuel load and frequency of fires in many ecosystems around the world (D'Antonio and Vitousek 1992), including parts of the California desert (O'Leary and Minnich 1981, Brown and Minnich 1986), in recent years. The frequency of fires in the Colorado Desert of California is further enhanced by the proximity of previously burned areas (Chou and others 1990). Native perennial shrubs are poorly adapted to relatively low-intensity fires as evidenced by low rates of recovery (Figure 2). In the upper Coachella Valley on the east scarp of the San Jacinto Mountains near Palm Springs, California, burned creosote bush scrub is replaced by open stands of *Encelia farinosa,* native ephemerals, and exotic species such as *Schismus* and *Bromus* (Brown and Minnich 1986).

Postfire vegetational recovery along a chaparral–desert ecotone including parts of Anza-Borrego Desert State Park in San Diego County, California was examined by Tratz and Vogl (1977). They observed high recovery (as measured by speed of resprouting) in chaparral shrubs and desert-wash plants, but low recovery in cacti. Herbivorous mammals present before the burn were also present afterwards, since rapid recovery of shrubs provided adequate food supplies for wildlife, even in the first months after the fire. If California desert perennial plant communities are not well adapted to fires, animals that coevolved in the ecosystem should not be expected to respond favorably to fire either.

According to fire personnel at the California Desert District (CDD) Office of the Bureau of Land Management (BLM), the CDD (including the Mojave and Colorado Deserts) had a ten-year average of 175 fires per year prior to 1992 (range 100–475) that affect an average of 10,927 ha annually (range 607–34,400 ha). The CDD estimates include a very small amount of BLM land outside the desert.

Impacts on Biotic Components of Soil: The Invisible Component of Biodiversity

Although emphasis is often placed on the physical and chemical properties of various soils, they contain important biotic components as well including: soil surface stabilizers such as algae and lichens, nematodes and other metazoans, various bacteria, and mycorrhizae. Odum (1994) referred to these organisms as the invisible component of biodiversity. While not as conspicuous as macrofloral elements, biotic components of soil are important symbionts that are easily destroyed by certain human activities.

Undisturbed desert areas are characterized by the presence of soil stabilizers, including lichen, fungal, bacterial, and algal crusts; desert pavement; mechanical crusts; and chemical crusts. The biotic components of these stabilizers are collectively referred to as cryptobiotic soil. Mineral-derived crusts form under a variety of physical and chemical conditions that may actually be facilitated by biotic components (Elvidge and Iverson 1983, Taylor-George and others 1983). Soil stabilizers are important agents in preventing erosion but are easily disturbed since they occur at the surface. Stabilization mechanisms include binding soil particles with thallial filaments in the case of biotic stabilizers, armoring the surface, and increasing surface roughness. Crusts also provide germination sites for vascular plants (but see Wood and others 1982), and conserve water (see review in Cole 1990). The susceptibility of crusts to damage varies according to the composition of the underlying soil. In soils subjected to large shear stresses, a single pass by a vehicle is capable of destroying well-developed crust. When the forces are mainly compressive, crusts can survive a single pass in a slightly modified form; however, OHV use is capable of quickly eliminating crusts in an impact area (Wilshire 1983).

Considerable research has been conducted on the impacts of grazing and other agents of trampling on cryptobiotic soil crusts. These crusts are very important not only because of the soil-stabilization functions mentioned above, but because they facilitate the accumulation of organic material and soil nutrients, particularly nitrogen in the upper layers of soil (Kleiner and Harper 1977, Johansen 1993), and enhance soil moisture retention (Belnap and Gardner 1993). Research in desert and semidesert areas in Utah and Arizona has consistently shown that cryptobiotic soil is heavily impacted by grazing, even light winter grazing (Kleiner and Harper 1977, Anderson and others 1982, Brotherson and others 1983). Impacts include the destruction of surface pinnacles associated with development of cryptogamic soils (Anderson and others 1982) and the virtual obliteration of biotic elements (Cole 1990). Lichens and mosses are most sensitive to disturbance, with algal components being more resilient (Brotherson and others 1983).

Cole (1990) conducted an interesting experiment at Grand Canyon National Park to examine the effect of trampling by hikers wearing lug-soled boots. Only 15 passes were required to destroy crusts. Visual evidence of biotic components was reduced to near zero after 50 passes. The results of Cole's experiment clearly illustrate the fragility of crusts to trampling.

Cryptobiotic soil recovery may require long time intervals without intervention. Following exclusion of grazing in a Utah semidesert study site, cryptobiotic cover increased from 4%–15% in 14–18 years, but only 1% per year for the next 20 years (Anderson and others 1982). Cole (1990) observed partial recovery from human trampling in one to three years and extensive recovery after five years. However, surface irregularities associated with well-developed cryptogamic cover remained low even after five years, suggesting that recovery was incomplete. Belnap (1993) noted that over 250 years may be required for full recovery on the Colorado Plateau. Recovery was improved but was still very slow when scalped experimental plots were inoculated with crusts from surrounding areas. In the northern Mojave Desert, lichen crusts may not reoccupy heavily disturbed areas even after 63 years (Wilshire 1983). Details of the formation and recovery of chemical and mechanical crusts are discussed in detail by Wilshire (1983). The nitrogen-fixation capabilities of damaged soil may take over 50 years to recover (Belnap 1995).

Important symbiotic relationships have developed between certain species of vascular plants and vesicular–arbuscular mycorrhizal (VAM) fungi and rhizobia. The small-diameter hyphae of symbiotic fungi serve as energy efficient root hairs, enabling the host plant to better absorb nutrients, particularly phosphorus (Bloss 1985) and water (Bethlenfalvay and others 1984). Rhizobia are bacteria capable of fixing atmospheric nitrogen for use by plants. The importance of VAM fungi in desert plant communities is underscored by the fact that in a recent survey of 38 plant species (19 families) in Anza-Borrego Desert State Park in the Colorado Desert of California all were colonized by VAM species (Bethlenfalvay and others 1984). Plants naturally associated with VAM that are also found in the western Mojave Desert include *Hymenoclea*, *Ambrosia*, *Opuntia*, and *Larrea*. Bloss (1985) reported numerous plant associations in the Sonoran Desert of Arizona as well.

Previous studies have demonstrated the importance of maintaining and enhancing soil microbes in restoration projects (St. John 1984, Bainbridge 1990). Establishing plants in disturbed areas with marginal soils may be difficult or impossible without the presence of a vigorous population of microbial symbionts. These symbionts are adversely affected by soil compaction. Studies have shown 1–2 m of hyphae per gram of soil in Mojave and Sonoran soils, yet virtually none in disturbed areas (Zink personal communication). Restoration is complicated by the fact that fertilizers can inhibit mycorrhizae growth.

Can the Desert Be Restored?

Plant growth and establishment are naturally slow under the extreme conditions of the desert, and disturbance makes these conditions even more severe (Bainbridge 1990). Disturbance typically reduces both the infiltration of water into the soil and the moisture-holding capacity of the soil (Bainbridge and Virginia 1990). This increases the value of rapid deep root growth, which is made more difficult by increases in soil strength from compaction and reduced soil moisture. These synergistic effects make plant establishment much more difficult after disturbance. Revegetation and restoration work can help mitigate many of these impacts and speed recovery, but the severe conditions and unpredictable rainfall still make restoration of these sites very challenging.

A brief history of revegetation studies in the deserts of California was provided by Kay and Graves (1983). Studies in the Mojave Desert are few and relatively recent. One of the earliest studies evaluated the success of revegetation efforts along the second Los Angeles Aqueduct (Kay 1979, 1988). Construction involved stripping the vegetation from an area 200 km long $\times$ 60 m between 1968 and 1970. The seeds of seven species of native plants were distributed at six 2- to 15-ha sites on the aqueduct. The seeds of all but one species, *Atriplex polycarpa*, were from local stock. Surface preparation involved ripping the soil to 25 cm on 60-cm centers to relieve compaction. A rangeland drill was used to set the seeds at a depth of about 1 cm. Success varied among plant species. *Ambrosia dumosa* exhibited good establishment on three of six sites, but only one site had numbers approaching that of adjacent undisturbed areas. *Larrea tridentata* exhibited similar results. The other species, including *Atriplex polycarpa*, *Ephedra nevadensis*, *Hymenoclea salsola*, and *Lepidospartum squamatum*, were totally unsuccessful. *Atriplex canescens* suffered as a result of heavy grazing. The most abundant shrub along the aqueduct, *Chrysothamnus nauseosus*, established itself naturally, although it was uncommon in adjacent undisturbed areas. Kay (1988) concluded that natural revegetation is good in many years and poor in others, while artificial seeding did not consistently hasten or improve plant recovery.

In another experiment along the aqueduct, Graves and others (1978) tested the effects of a single irrigation and the success of direct seeding versus transplanting. The two methods of establishment exhibited widely variable success rates from site to site and according to species, but were not enhanced by irrigation. Substrate characteristics may influence the success of irrigation as measured by the appearance of native winter annuals (Johnson and others 1978).

The overall success of the revegetation attempt along the aqueduct was low. The vast majority of the aqueduct was still a highly visible scar in the early 1980s (Kay and Graves 1983), but recovery was inhibited by grazing and OHV use. Conclusions from the study were that more attention should be focused on establishment of visually dominant species such as *Larrea tridentata*, seeding should take place as soon after disturbance as possible, areas should be protected from grazing and OHV use, and local seed stock should be utilized for all species.

Highway revegetation studies were also reviewed by Kay and Graves (1983). Survival of container-grown shrubs planted in October 1973 and February 1974 at a site in Mojave, California, was 90% in May 1974. The roots of the transplants were exposed after a heavy rain in December 1974, and all plants were dead by October 1975. *Atriplex* spp., *Chrysothamnus* spp., and *Ephedra* spp. exhibited the greatest survival. Success was limited by rabbit overgrazing and competition from Russian thistle (*Salsola*). Container plantings were more successful when planted in the late winter or early spring. Application of fertilizer encouraged both the invasion of native woody shrubs and the nonnative annual grass *Schismus arabicus*.

Others have experienced similar success in revegetation. Brum and others (1983) observed low, long-term seedling establishment for a variety of species under several irrigation treatments along a powerline transmission corridor. The overall germination–establishment rate for seedling and postseeding irrigation success was 0.3%, and 26% for transplanted seedlings. *Larrea* exhibited poor germination under field conditions and responded poorly to all revegetation attempts.

More successful revegetation has been achieved at the Nevada Test Site in the northern Mojave Desert (Romney and others 1990). Greater than 80% survival of transplanted native shrubs and grasses was achieved when plants were protected from jackrabbits and irrigation was provided periodically.

Restoration efforts in the Colorado Desert of California were reviewed by Bainbridge and Virginia (1990). Although the plant communities differ somewhat between the Colorado and Mojave Deserts, both ecosystems pose similar challenges to restoration attempts: high temperatures, intense sunlight, limited moisture availability, high levels of herbivory by rodents and rabbits, and low soil fertility. Much of the success in revegetation experiments in the Colorado Desert is due to efforts to protect plants from herbivores and the use of buried water reservoirs for irrigation. Direct seeding attempts have generally been unsuccessful relative to transplants. *Larrea tridentata*, in particular, responded well to transplanting, especially if pruned prior to planting to increase the root-to-shoot ratio.

Assessing the nature and magnitude of human-induced disturbances makes restoration planning more efficient by enabling limited resources to be directed at critical problems. Ongoing studies (Bainbridge and others 1995a,b) of the effectiveness of desert restoration techniques are steadily advancing our ability to rehabilitate degraded arid lands in the southwestern United States, and the reader is referred to these references for details beyond the brief overview given in this section.

Plant recovery usually requires container-planting activities as well as site improvement. The most common method of direct seeding is simple hand seeding, which allows species to be matched to specific site conditions, appropriate planting depths, and results in a more natural appearance than machine planting. However, limited rainfall and removal of seeds by rodents and harvester ants may severely limit seedling establishment during typical years.

Transplanting is increasingly being used to provide nurse and seed plants for the disturbed areas (Bainbridge and others 1995b). The dominant shrubs and trees of the Colorado Desert are relatively easy to grow in a nursery or maintained landscape setting, and they are well adapted to transplanting with after-care. They are more challenging to establish in the field in a low- or no-maintenance situation, although once established, growth rates can be high. Reestablishment of annuals has been more difficult. New containers and soil mixes have improved plant survival. Deep pipe and buried pot irrigation and hand watering have also been effective. Tree shelters to limit herbivory and wind damage are also important.

A full appreciation of the ecological setting and adaptation of desert plants can make establishment less costly and more successful, but it is still expensive. The cost of restoring road edge areas in Joshua Tree National Park is fairly well established (after almost 10 years of work) and runs up to $15,000 per ha to establish large potted perennials in areas that are easily accessed. The cost of duplicating this type of work at remote sites would be much higher. Research conducted by colleagues at San Diego State University has emphasized lower-cost, less-intensive restoration, but the costs (excluding research) are still on the order of $12,000–25,000/ha. Even these high project costs provide no guarantee of success.

Conclusions

Desert areas disturbed by human activities may take centuries to recover without active intervention. Undisturbed desert soils are often in a relatively stable equilibrium developed over hundreds or thousands of years. Removal of vegetation and disturbance of soil crusts or soil structure can destroy this equilibrium, leading to wind and water erosion that are very difficult or impossible to control without very high investments in material and labor.

One of the key lessons of our research in the Mojave and Sonoran deserts is the critical importance of minimizing the intensity, frequency, and area of disturbance. Past research summarized in this paper has identified the wide range of effects from human disturbance and the difficulty and the high cost of mitigating damage. While recovery rates can be increased with modest expenditures, a major restoration program to improve recovery for just the OHV-damaged areas in the California desert region could exceed one billion dollars. Available funding will permit only a limited restoration for selected sites, even with continuing generous contributions of volunteer labor. Fences, signs, and enforcement to prevent further damage may often be a better investment than intensive restoration.

Recent research in the Mojave Desert demonstrates the benefits that protection can impart, even to previously disturbed areas. Brooks (1995) conducted a comparison between the Desert Tortoise Research Natural Area (DTNA) and unprotected land immediately adjacent. The DTNA was fenced to prohibit both OHV use and sheep grazing between 1978 and 1979. By the time of his study in 1990–1992, Brooks demonstrated that aboveground live annual biomass was generally greater inside than outside the fenced area, with the exception that the exotic annual grass *Schismus barbatus* produced more biomass outside the fenced area. Percent cover of perennial shrubs, seed biomass, and rodent density and diversity were also greater inside the fenced area.

To be successful, revegetation and restoration require careful attention to ecological relationships, both above and below ground, herbivory, soil characteristics, microclimate, and patterns of moisture availability (Bainbridge 1990, Bainbridge and others 1995a). Undoing the damage done to the soil system by disturbance is a critical step toward recovery and restoration. In general, strategies that recreate or mimic natural conditions are most likely to speed recovery of the entire ecosystem.

Research conducted in the Mojave and Colorado desert ecosystem has important applications for the American Southwest and throughout the world's arid zones. These areas have deteriorated rapidly under pressure from overgrazing, poor farming, and removal of trees and shrubs for fuelwood. The lessons learned in the desert ecosystem of southern California may help people living in these areas to protect or restore the productivity of their lands, and improve their lives.

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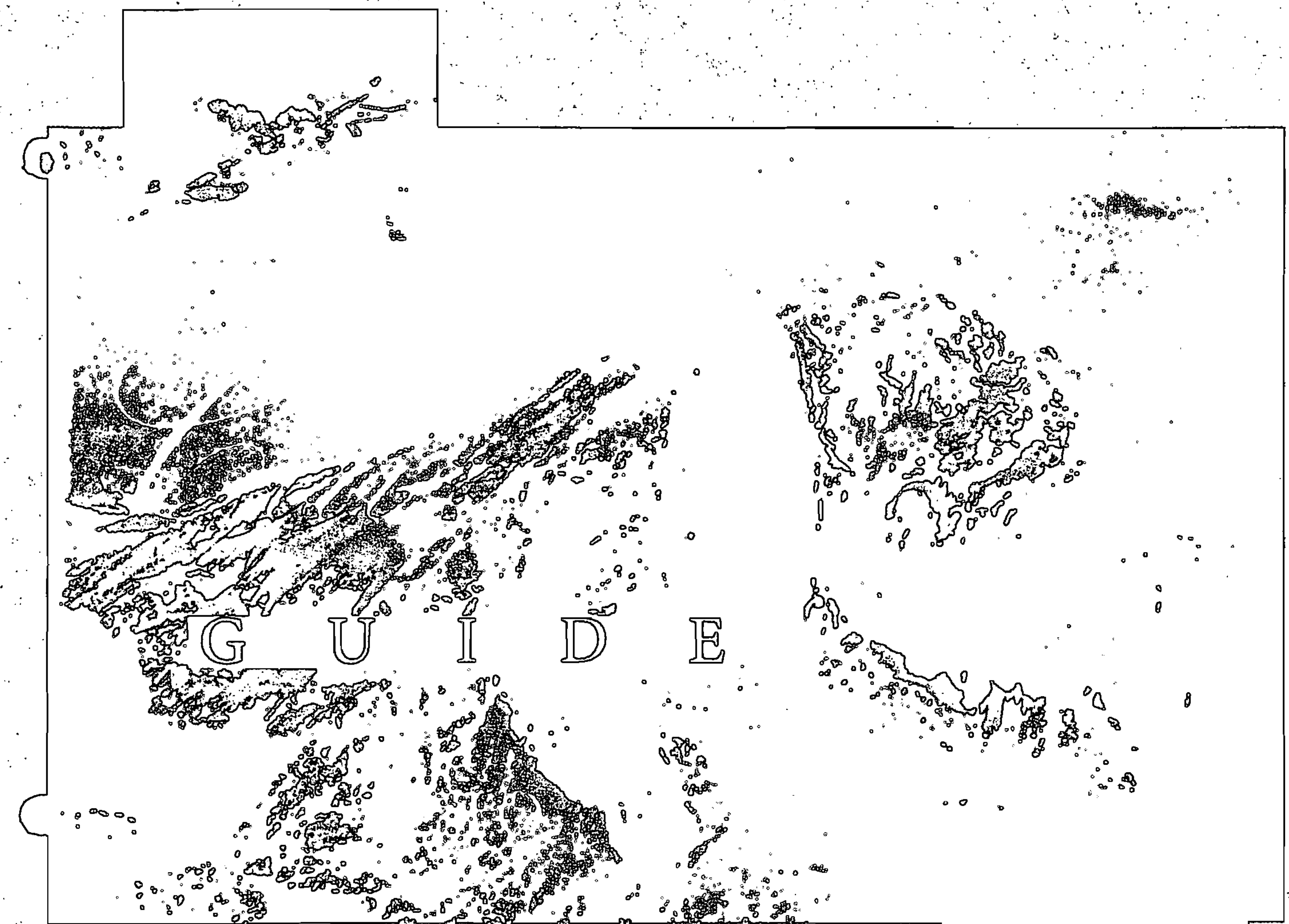
Revised

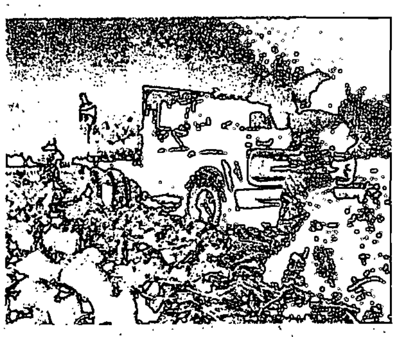
J. William Yeates, Esq.

Planning and Conservation League Foundation

January 2000



The California Environmental Quality Act



J. William Yeates, Esq.

Planning and Conservation League Foundation

January 2000

About the Planning and Conservation League Foundation

The Planning and Conservation League Foundation is a nonprofit organization founded in 1972. Its mission is to educate and involve California citizens in environmental policy-making. The PCL Foundation publishes handbooks for citizen action, assists decision-makers in drafting effective policies, and produces action-oriented reports about California environmental policy. The PCL Foundation works closely with the Planning and Conservation League to implement California's policies and laws.

About the Author

J. William Yeates is an attorney specializing in environmental law. He is a Director of the Planning and Conservation League.

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Citizen's GUIDE

TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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CITIZEN'S GUIDE TO CEQA

A. INTRODUCTION

The California Environmental Quality Act ("CEQA"), commencing with section 21000 of the Public Resources Code, provides citizens a great opportunity to influence public decision-making.

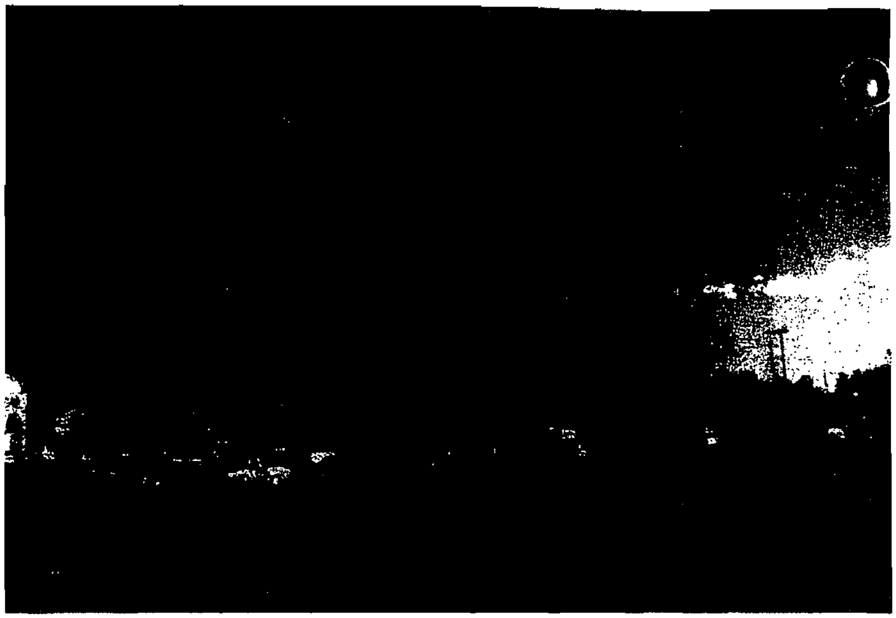
1) Purpose of the Guide

This updated and revised *Citizen's Guide to the California Environmental Quality Act* is intended to be a layperson's guide to California's premier environmental protection law. CEQA provides citizens with an effective way to participate in governmental decisions that will affect a community's or region's quality of life. When CEQA is used correctly, it lets citizens have a real and powerful impact on public agency decision-making. This *Guide* explains how to take advantage of CEQA's mandatory public review and comment process.

The *Guide* offers a brief overview of the law and is not intended to provide the reader with an in-depth review of CEQA's procedures or the extensive body of case law decisions that have developed since the passage of CEQA in 1970. Rather, the *Guide* is intended to provide the reader with a better understanding of CEQA's purpose and how and when citizens have a right to comment on the environmental consequences of a proposed project. The bibliography at the end of the *Guide* lists excellent publications that go into greater detail. However, the PCL Foundation hopes this guide will arm citizens with enough knowledge and information about CEQA so they can effectively participate in the decision-making process. Having effectively participated in CEQA's mandated environmental review, they may be better able to influence the political process — where ultimately the decision to approve, deny, or improve a project will be made.

This revised and updated *Citizen's Guide* has been prepared by PCL Director J. William Yeates. Mr. Yeates specializes in environmental law and policy, and particularly in CEQA litigation and compliance, and has authored and co-authored articles and texts on CEQA. He has also participated on many legal panels reviewing recent interpretations of CEQA's provisions by the California courts and recent changes made to CEQA by the state legislature. Due to Mr. Yeates' extensive experience working with and representing citizen groups in environmental litigation, this *Citizen's Guide* is particularly directed at making CEQA's public review process relevant to the citizen-activist.

Mr. Yeates would like to acknowledge and thank PCL staff and volunteers who took the time to review this *Guide*. The author would also like to acknowledge his former partners at the law firm of REMY, THOMAS, AND MOOSE, who painstakingly prepare the *Guide to the California Environmental Quality Act* (CEQA), one of the most through and best sources of up-to-date information on CEQA. In particular, the author would like to acknowledge the editorial support of Gary Patton, PCL's former General Counsel. Mr. Patton's organizational ideas, based on his many years as a citizen activist and local political office holder, helped to ensure the *Guide's* focus on public participation. PCL's Executive Director wisely suggested the Glossary, which is appended to the *Guide*. Finally, the author is indebted to Carol Fulton Yeates, who edited the *Guide* with a careful eye toward clarity, so the lay reader is not awash in legal ambiguity.



2) Public's Role in CEQA Process

CEQA's procedural requirements encourage citizen participation in the environmental review process. Furthermore, citizens' rights to participate in CEQA's various environmental review proceedings have been consistently protected by the California courts. For example, the California Supreme Court has repeatedly stated that CEQA's procedures must be "scrupulously followed," because CEQA's environmental review process "protects not only the environment but also informed self-government." [*Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of the University of California ("Laurel Heights I")* 47 Cal.3d 376, 392.] In another important decision, California's high court acknowledged that "citizens can make important contributions to environmental protection." Thus, the Court declared that California citizens hold a "privileged position" in the CEQA process. [*Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929, 936.]

CEQA requires every public agency in California to have procedures which provide full public participation, so that the public agency can receive and evaluate public reaction to the environmental consequences of the agency's action. For three decades CEQA has opened public agency decision-making to public scrutiny, and California's courts have consistently required public agencies to carefully follow CEQA's procedures.

B. CEQA'S SUBSTANTIVE POLICIES

CEQA requires public agency decision-makers to record, evaluate, and reflect upon the environmental consequences of their actions. In the opening sections of CEQA, the Legislature has set forth specific policies that led to the enactment of this law. [*See* Pub. Resources Code, §§ 21000, 21001, 21002, & 21003.] The Legislature's policies clearly reflect the public's interest in and concern for the long-term protection of California's unique, diverse, and varied landscape and natural resources.

For example, the Legislature forcefully declared that it is the state's policy to:

> 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." [Pub. Resources Code, § 21001, subd. (a).]

Although CEQA was unquestionably enacted in order to provide long-term protection for California's environment, the Legislature has sought to balance CEQA's pro-environment policies by declaring it is also the policy of the state to:

> Ensure the long-term protection of the environment, consistent with the provision of a decent home and suitable living environment for every Californian ....

> 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. [Pub. Resources Code, § 21001, subd. (a).]

Although the California Supreme Court resolved in its landmark case, *Friends of Mammoth v. Board of Supervisors,* (1972) 8 Cal.3d 247, that CEQA must be interpreted so "as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language," the citizen-activist must understand and appreciate the balance the Legislature has attempted to strike within CEQA's policies, even though philosophically and intellectually it may be hard to reconcile the inherent conflict between environmental protection and economic development. More recently the California Supreme Court and appellate court decisions have recognized this inherent balancing act within CEQA.

> [CEQA] as we interpret it and apply it simply requires [] those decisions [that affect the environment] be informed, and therefore balanced. [*Citizens of Goleta Valley v. Board of Supervisors* ("Goleta II") (1990) 52 Cal.3d 553, 576.]

The California courts have consistently and repeatedly pointed out that " 'CEQA does not, indeed cannot, guarantee that [governmental] decisions will always be those which favor environmental considerations.' " [*A Local & Regional Monitor v. City of Los Angeles* ("ALARM II") (1993) 16 Cal.App.4th 630, 639, *quoting Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 283.]

But don't lose heart! CEQA is not a paper tiger. CEQA is not merely a procedural statute, whose substance can be ignored. In its most recent review of CEQA, the California Supreme Court acknowledged that "CEQA is a comprehensive scheme designed to provide long-term protection to the environment." [*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 112.] CEQA ***requires*** a public agency to implement feasible mitigation measures or feasible alternatives to reduce or avoid the significant environmental consequences of its action ***before*** the agency approves or carries out a project. [Pub. Resources Code, § 21002.] No public agency can comply with CEQA's substantive requirements by merely considering (but ignoring) the significant environmental impacts of a proposed project.

> "CEQA compels government first to identify the environmental effects of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives." [*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233.]

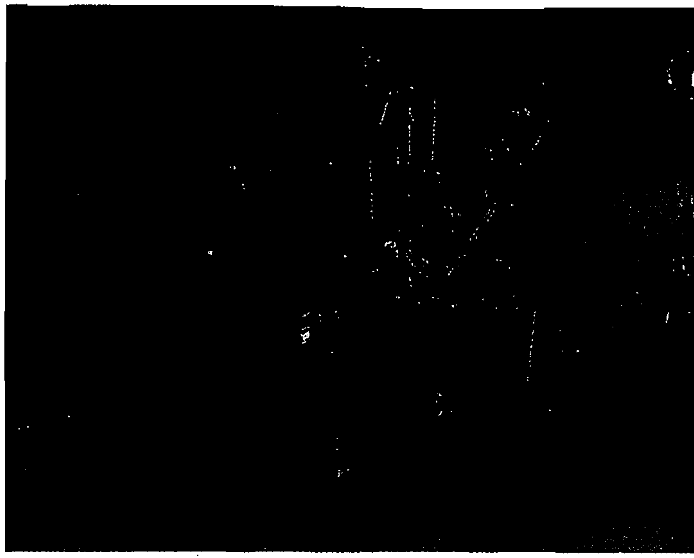
To carry out CEQA's substantive mitigation requirement, the Legislature requires every public agency to make mandatory findings of fact for each identified significant adverse effect *before* approving a project for which an environmental impact report ("EIR") has been prepared. [Pub. Resources Code, § 21081; *Mountain Lion Foundation, supra,* 16 Cal.4th at 134.] (The term "*supra*" is used to indicate that the full citation for the authority has been set forth earlier in the text.)

C. PROJECTS SUBJECT TO CEQA

CEQA applies to "discretionary projects proposed to be carried out or approved by public agencies." [Pub. Resources Code, § 21080, subd. (a).] CEQA defines "project" as 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 the use by one or more public agencies." [Pub. Resources Code, § 21065.]

Section 15357 of the CEQA Guidelines defines a "discretionary project" as "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."

For example, the issuance of a use permit, coastal permit, or tentative subdivision map for a proposed project are all discretionary decisions subject to CEQA. However, after a use permit has been issued the subsequent issuance of a building permit consistent with local regulations is a "ministerial" action *not* subject to CEQA. [*But see Miller v. City of Hermosa Beach* (1993) 13 Cal.App.4th 1118, 1139-1142, *court of appeal ruled a building permit for an authorized hotel project required CEQA compliance due to discretion remaining with agency to add conditions.*] Where a project involves both ministerial and discretionary action, it is subject to CEQA. [*Mountain Lion Foundation, supra,* 16 Cal.4th at 119, *"the Legislature intended CEQA to apply to discretionary projects, even when the agency's discretion to fully comply with CEQA is constrained by the substantive laws governing its actions."*]

1) CEQA Applies to Project Approvals

Generally, CEQA applies when a permit application for a discretionary project has been filed with a public agency or the public agency commits itself to undertake a discretionary action (i.e., general plan amendment, adoption of regulation or ordinance). However, CEQA only applies to ***public agency*** decisions to *approve* or actions to *carry out* a discretionary project. [Pub. Resources Code, § 21080, subd. (b)(5).] Furthermore, if the decision is not one made by a ***state or local public agency,*** CEQA does not apply. [CEQA Guidelines, § 15379.] The CEQA Guidelines define "approval" to mean "the decision by a public agency which commits the agency to a definite course of action in regard to a project." [CEQA Guidelines, § 15352, subd. (a).] If a public agency's action does not lead to the ***approval*** of a project, because the decision does not commit the agency to a definite course of action, then the public agency's action also is not subject to CEQA. [*See Stand Tall on Principles v. Shasta Union High School District* (1991) 235 Cal.App.3d 772, 781, 783.] The Resources Agency recently amended the CEQA Guidelines to make it clear that rejection or disapproval of a project is exempt from CEQA. [CEQA Guidelines, § 15061, subd. (b)(4).]

2) CEQA Does Not Apply When No Significant Environmental Impact Will Occur

When a public agency can absolutely determine that there is no possibility that a discretionary project may produce a significant adverse effect on the environment, then the agency does not have to comply with any provision of CEQA. [CEQA Guidelines, § 15061; *see Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 112-113.]

3) Statutorily Exempt Projects

The Legislature has exempted a number of specific projects and activities from CEQA. The exemptions, unfortunately, are not always set forth within CEQA, but are located in other California statutes outside of CEQA. Fortunately most of these statutory exemptions are listed in the CEQA Guidelines as amended in 1998. (*See* CEQA Guidelines, §§ 15260-15285.]

If a project is statutorily exempted, generally no further review is required. The following is a partial list of statutory exemptions:

- submittal of an initiative to a popular vote [CEQA Guidelines, § 15378, subd. (b)(3)];
- actions to prevent or mitigate an emergency [Pub. Resources Code, § 21080, subd. (b)(4).];
- establishing, modifying, or approving rates, tolls, fares, or other charges to meet operating expenses [Pub. Resources Code, § 21080, subd. (b)(8).];
- projects that increase passenger or commuter rail services on rail or highway rights-of-way already in use [Pub. Resources Code, § 21080, subd. (b)(10).];

- projects consistent with general plans, community plans, or zoning decisions for which an EIR has already been prepared and no new significant adverse environmental impacts "peculiar" to the project or site have been identified [Pub. Resources Code, § 21083.3.];
- projects that construct, convert, "or use residential housing for agricultural employees" [Pub. Resources Code, § 21080.10, subd. (c).]; and,
- projects that construct, convert, or use "residential housing of not more than 45 units in an urbanized area that is affordable to lower income households." [Pub. Resources Code, § 21080.14.]

4) Categorically Exempt Projects

The Legislature has also authorized the Secretary of the Resources Agency to list "classes of projects which have been determined not to have a significant effect on the environment." [Pub. Resources Code, § 21084, subd. (a).] As a result, the Resources Secretary has created 31 classes of "categorical exemptions." In 1998 the Secretary added two classes of categorical exemptions for the following activities: (1) minor cleanup actions taken to prevent, mitigate or eliminate the release of hazardous waste or substance; and, (2) repair, restoration, reconstruction of historical structures consistent with Secretary of Interior Standards. (CEQA Guidelines, §§ 15330-15331.) The categorical exemptions are set forth in sections 15300 through 15329 of the CEQA Guidelines. Some of the more notable classes of categorical exemptions include:

- "the operation, repair, maintenance, or minor alteration of existing public or private structures" [CEQA Guidelines, § 15301];
- "replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced" [CEQA Guidelines, § 15302];
- annexation of areas containing existing structures or facilities developed to the density allowed by current zoning [CEQA Guidelines, § 15319];
- "the normal operations of existing facilities for public gatherings" [CEQA Guidelines, § 15323];
- "actions taken by regulatory agencies . . . to assure the maintenance, restoration, or enhancement of a natural resource" [CEQA Guidelines, § 15307];
- acquisition of lands for wildlife conservation purposes [CEQA Guidelines, § 15313]; and,
- transfers of ownership interest in land for open space. [CEQA Guidelines, § 15325.]

Although a particular project may fall within one of the 31 classes of categorical exemptions, the public agency must still determine the following before it concludes a project is categorically exempt from CEQA:

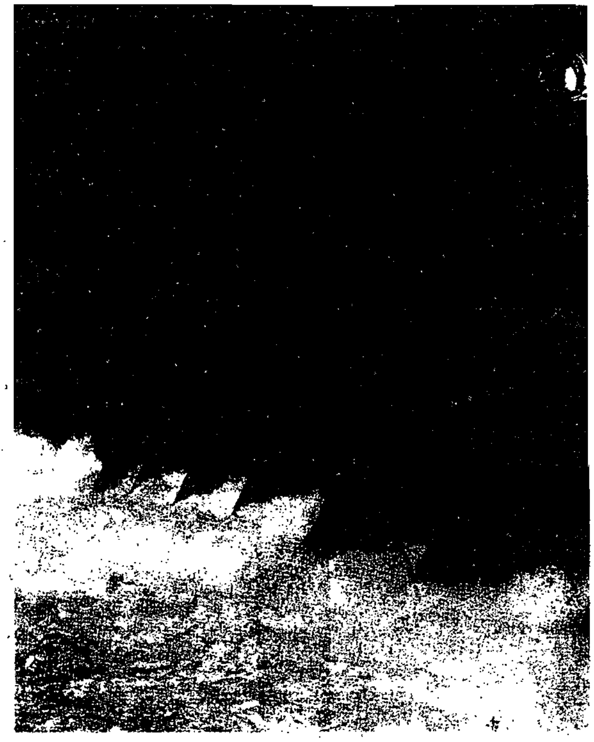
1) the project site is not environmentally sensitive;
2) the project and subsequent projects of the same type in the same location will have no cumulative impacts;
3) there are no "unusual circumstances" creating the reasonable possibility of significant effects;
4) the project will not result in damage to scenic resources within an officially designated scenic highway;
5) the project is not located on a designated site affected by hazardous wastes or clean-up problems; or,
6) the project will not cause a substantial adverse change in the significance of an historic resource.

If the otherwise categorically exempt project is subject to any one of these exceptions, the agency must comply with CEQA. [CEQA Guidelines, § 15300.2, subds. (a), (b).]

D. CEQA's ENVIRONMENTAL REVIEW PROCESS

1) Lead Agency, Responsible Agency, and Trustee Agency under CEQA

The public agencies approving or carrying out projects that are subject to CEQA's requirements are classified as "lead agencies" and "responsible agencies." Because CEQA requires environmental review as early as possible, lead agencies and responsible agencies are required to consult with one another early in the project planning process in order to identify the potentially significant adverse environmental impacts of a proposed project. In addition, these agencies must consult with the state's "trustee" agencies. This allows trustee agencies to forecast and comment on a proposed project's potentially significant adverse impacts on those resources of special concern and interest to the trustee agency.



Not all public agencies are treated equally in the CEQA process, so it is important to understand the roles these agencies play in approving a project or in mitigating a project's identified significant adverse environmental impacts.

(a) Lead & Responsible Agencies

The "lead agency" is the public agency with the principal responsibility for approving or carrying out a project. [CEQA Guidelines, § 15367.] For example, an amendment to a county's general plan may be proposed by the county planning department. In this situation the county is the public agency both carrying out and approving the project (*i.e.*, general plan amendment) as "lead agency" under CEQA. In another instance a private party may propose a general plan amendment that must get county approval to proceed. Since the county is the public agency that must approve the amendment to its general plan, it is the lead agency under CEQA.

Many private and public projects require several public agency approvals. Rather than have a series of "lead" public agencies duplicating each other's work, CEQA recognizes these other agencies with approval power over a project as "responsible agencies." Although a responsible agency may have a great deal of control or influence over the design and operation of a proposed project, generally the responsible agency is required to rely on the lead agency's environmental review. [CEQA Guidelines, § 15050; *but see* CEQA Guidelines, §§ 15052, 15096, subd. (e); 15162, subd. (c).]

If a public agency is proposing a project, it becomes the "lead agency" under CEQA. [CEQA Guidelines, § 15051, subd. (a).] If there are two or more public agencies with permit authority over a proposed private project, the public agency with general governmental powers (i.e., city or county) will be the lead agency. For example, a solid waste landfill may need a use permit from the county where it is located, a waste discharge permit from the regional water quality control board, and an air permit from the local air district. The county will be the designated lead agency and the regional water board and air district will be responsible agencies under CEQA.

Continuing to use the proposed landfill project as an example, the county as lead agency will be responsible for completing the initial analysis of the potential significant adverse impacts of the proposed project. This initial review may be nothing more than checking the boxes on the environmental check list form taken directly from the CEQA Guidelines (Appendix I) or a form prepared and adapted by the lead agency from the Guidelines example for this purpose. This initial analysis is known as the initial study. [*See* CEQA Guidelines, § 15063 & Appendix I.] Generally, the initial study will determine whether the lead agency is going to prepare a negative declaration or an environmental impact report (EIR) for the proposed project. Again, in most instances the lead agency's determination whether to adopt a negative declaration or prepare an EIR is binding on the responsible agencies. [CEQA Guidelines, § 15050; *but see* CEQA Guidelines, §§ 15052, 15096, subd. (e); 15162, subd. (c).]

In the proposed landfill project example, the responsible agencies (the regional water board and local air district) must rely on the lead agency's (county) environmental document in acting on the waste discharge permit (regional water board) and air permit (air district).

As noted above, in order to ensure the lead agency's negative declaration or EIR adequately addresses the responsible agency's concerns, the lead agency must consult with and solicit comments from the responsible agencies. [*See* Pub. Resources Code, §§21080.3, 21080.4, 21104, 21153; CEQA Guidelines, §§ 15073, 15082, 15086, 15096.]

(b) Trustee Agency

Some public agencies may not have any permit jurisdiction over a proposed project, but because of their status as agencies who hold certain unique public resources in "trust" for the people of California, the lead agency must also consult with these public agencies. [*See* CEQA Guidelines, § 15086.] These public agencies are "trustee agencies." The CEQA Guidelines recognize the California Department of Fish and Game, the State Department of Parks and Recreation, the State Lands Commission, and the University of California as trustee agencies. [CEQA Guidelines, § 15386.] (**Note:** Although the United State Fish and Wildlife Service and the National Marine Fisheries Service are federal trustee agencies within the United States Departments of Interior and Commerce respectively, a lead agency is not required to consult with these trustee agencies because they are Federal agencies and thus not covered by CEQA.) [*See Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1389.]

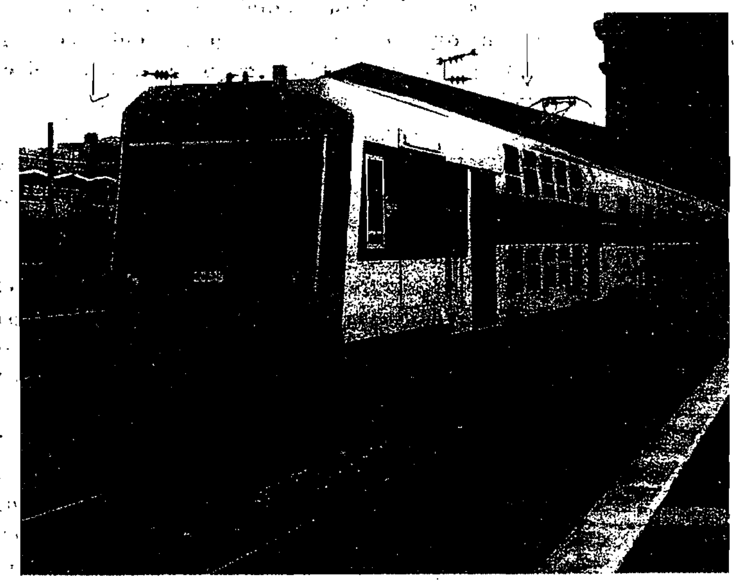
If the proposed landfill project we are using as an example may affect a wetland, habitat for a listed threatened or endangered species, or a river or stream, the county must consult with the California Department of Fish and Game ("CDFG") to obtain CDFG's recommendation whether a negative declaration or an EIR should be prepared. [CEQA Guidelines, § 15063, subd. (g).] If the lead agency decides to adopt a negative declaration, it must send notice together with a copy of its proposed negative declaration to every trustee agency concerned with the project. [*See* CEQA Guidelines, § 15073, subd. (b); *see also Gentry, supra,* 36 Cal.App.4th at 1387.]

2) CEQA's 3-Step Evaluation Process

The General rule is that a lead public agency must prepare an environmental impact report ("EIR") whenever a discretionary project "may have a significant and adverse physical effect on the environment." [*Mountain Lion Foundation, supra,* 16 Cal.4th 105, 113.] CEQA's 3-step evaluation requires the lead agency to determine: (1) whether the discretionary project or action is exempt from CEQA; (2) whether the project may have a significant and adverse physical effect on the environment; and (3) whether, based on the second step, a negative declaration, mitigated negative declaration, or an EIR shall be prepared.

(a) Initial Study

If a project is not exempt from CEQA, the lead agency generally conducts an initial study, which is a preliminary analysis of the environmental effects of the proposed project or action. [CEQA Guidelines, § 15365.] Once the lead agency determines that it must prepare an initial study, it must consult with all responsible and trustee agencies and solicit their recommendations as to whether an EIR, negative declaration, or mitigated negative declaration is proper. [CEQA Guidelines, § 15063, subd. (g).] Appendix G to the CEQA Guidelines contains a sample "environmental checklist form" that combined with the applicant's environmental information form (Appendix H) satisfies the requirements of an initial study. [CEQA Guidelines, § 15063, subd. (f).] The initial study provides the factual basis for concluding that a negative declaration or a mitigated negative declaration will satisfy CEQA's requirements. [CEQA Guidelines, § 15063, subd. (c)(5).]



(b) Determining Significant Effect

"Significant effect on the environment" is defined by the CEQA Guidelines as "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 and aesthetic significance." [CEQA Guidelines, § 15382.] The focus of this analysis must be on significant adverse ***physical*** changes in the environment. [See CEQA Guidelines, §§15064, 15382.] There is no ironclad definition of what constitutes a significant adverse effect on the physical environment. A one-story house that disrupts a pristine view along California's coast may have a greater impact than a three-story dwelling in a more suburban setting. Approval of a subdivision project in a rural agricultural community may have more significance than a similar subdivision proposed within a city.

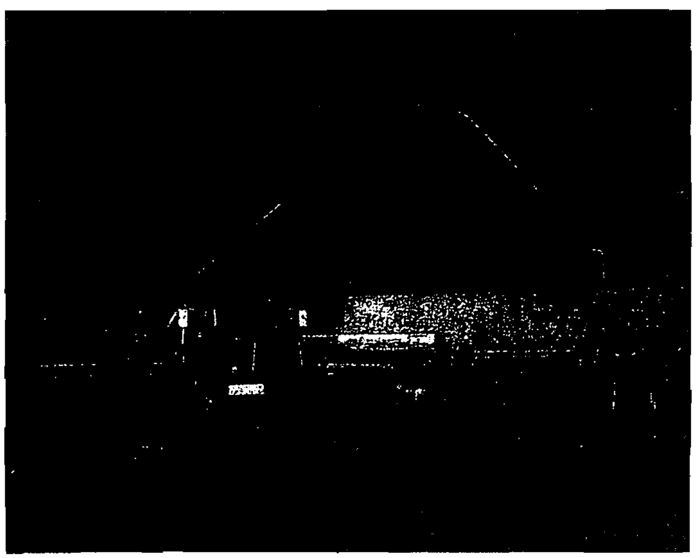
In determining whether a project's impacts may significantly effect the environment there must be a "baseline" set of environmental conditions to use as comparison to the anticipated project impacts. The CEQA Guidelines state the baseline conditions for a project will normally be the environmental setting for the project as of the time the notice of preparation ("NOP") of an initial EIR is issued. [CEQA Guidelines, § 15125.]

CEQA requires "[a]ll public agencies [to] adopt by ordinance, resolution, rule, or regulation" what are frequently referred to as "thresholds of significance." [Pub. Resources Code, § 21082.] The Governor's Office of Planning and Research described "thresholds of significance" as "that level at which the Lead Agency finds the effects of the project to be significant." In 1998 the Resources Agency added section 15064.7 to the CEQA Guidelines to "encourage" public agencies "to develop and publish thresholds of significance." These thresholds of significance must be adopted through a public review process, so citizens must be aware of these thresholds of significance if they have already been adopted in your local jurisdiction or participate in the development of these thresholds, since these thresholds may determine whether a project's impact is significant or not.

3) **Negative Declaration and Mitigated Negative Declaration**

(a) CEQA's "Fair Argument" Standard

CEQA requires a lead agency to prepare an EIR whenever substantial evidence in light of the entire record supports a "fair argument" that a proposed project *may* have a significant adverse impact on the environment. Even when other substantial evidence in the record supports the opposite conclusion, CEQA's "fair argument" standard requires the lead agency to prepare an EIR prior to approving or carrying out a proposed project. [Pub. Resources Code, § 21080, subds. (c) & (d); CEQA Guidelines, §§ 15064, subd. (a)(1); 15070, subd. (a); *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151.] If there is any doubt about a project's significant environmental consequences, the "benefit of the doubt" is given to full environmental review. [*See* CEQA Guidelines, §§ 15064, "Determining the Significance of the Environmental Effects Caused by a Project," 15064.5, "Determining the Significance of Impacts on Historical and Unique Archeological Resources," 15065, "Mandatory Findings of Significance."]



(b) Substantial Evidence Defined

In 1993 the Legislature defined "substantial evidence" within the fair argument context as follows:

"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." [Pub. Resources Code, § 21080, subd. (c).]

In other words, the "fears" and "desires" of project opponents are not substantial evidence. [*Perley v. County of Calaveras* (1982) 137 Cal.App.3d 424-436-437] Speculation, uncorroborated opinion, hearsay, concerns, and rumors are not substantial evidence. [*Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337, 1351-1352.] However, citizens are not required to provide "overwhelming or overpowering evidence" or to submit "quantitative environmental studies" to support a "fair argument" that a project may have a significant effect on the environment. [*Stanislaus Audubon, supra,* 33 Cal.App. 3d at 152.] The California courts have held that public testimony about noise or traffic impacts or topics that a citizen may be personally familiar with (i.e., significant view along scenic highway) are substantial evidence of a project's potential significant impact. [*See Gentry, supra,* 36 Cal.App.4th at 1380; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 882-883.]

Whenever submitting or presenting testimony on a project's potential significant adverse environmental impacts, citizens should provide as much factual background as is readily available. For example, concern about a proposed project's impact on a busy intersection can move from mere fear or speculation to substantial evidence if residents within the area provide written or oral testimony, based upon their personal observations or experiences, about current significant adverse traffic problems at the affected intersection.

(c) Low threshold to encourage environmental review

CEQA's "fair argument" standard establishes a low threshold for requiring the preparation of an EIR in order to fulfill CEQA's substantive environmental mitigation policies and objectives. As the California Supreme Court has stated, an EIR is necessary to resolve "uncertainty created by conflicting assertions" and to "substitute some degree of factual certainty for tentative opinion and speculation." [*No Oil, Inc. v. City of Los Angeles* (1975) 13 Cal.3d 68, 85.]

(d) Negative Declaration

A negative declaration can be prepared and adopted by the lead agency after it determines (after completing an initial study) that a proposed project "would not have a significant effect on the environment." [Pub. Resources Code, § 21080, subd. (c).] The lead agency must determine "there is *no* substantial evidence in light of the whole record before the lead agency" that a significant adverse environmental impact *may* occur. [Pub. Resources Code, § 21080, subd. (c)(1), emphasis added.] Due to CEQA's very low threshold for requiring the preparation of an EIR, if there is *any* substantial evidence in the record that demonstrates the proposed project *may* have a significant effect on the environment, the lead agency is not authorized to prepare and adopt a negative declaration. [Pub. Resources Code, § 21080, subd. (d); *see Stanislaus Audubon, supra,* 33 Cal.App.4th at 150-151.]

(e) Mitigated Negative Declaration

Although the initial study has identified that the project may cause one or more significant adverse effects on the environment, the lead agency may still be allowed to avoid the preparation of an EIR for the proposed project if the project proponent agrees to modify the project to reduce or eliminate any significant or potentially significant adverse effects identified by the lead agency's initial study. [Pub. Resources Code, § 21080, subd. (c)(2).] The modifications are specifically incorporated into what has become known as a "mitigated negative declaration." In 1993 the California Legislature acknowledged this long-standing practice by specifically adding the term to CEQA to read as follows:

> 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.

[Pub. Resources Code, § 21064.5.] Prior to project approval the public must be given an opportunity to review the proposed mitigated negative declaration, which describes the proposed project as modified, not as originally proposed. [Pub. Resources Code, § 21080, subd. (c)(2); *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1605, fn.4.]

A mitigated negative declaration, like a negative declaration, is still governed by CEQA's fair argument standard. Most project proponents and many public agencies try to avoid the preparation of an EIR whenever possible. A mitigated negative declaration avoids the need to consider alternatives to the project and cumulative impacts and prepare responses to comments. For the project applicant a mitigated negative declaration is less costly and takes less time to process. Nevertheless, if there is substantial evidence in the record that the proposed project, even as modified, may have a significant effect on the environment, the lead agency must either further modify the project to eliminate or reduce the potential significant environmental effect or prepare an EIR for the proposed project prior to approving or carrying out the project. [CEQA Guidelines, § 15070, subd. (b)(2).]

(f) Deferral of Mitigation

Mitigated negative declarations cannot be used when they rely upon the presumed success of future mitigation measures that have not been formulated at time of project approval. [*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-314.] Any proposed mitigation measure to reduce or avoid a significant adverse impact that a project may have on the environment must be made available for public review at the time the negative declaration is circulated for public review and comment prior to project approval. A mitigation measure cannot be left to be formulated in the future. [*Gentry, supra,* 36 Cal.App.4th at 1397; *but see Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-1029, *mitigation plan upheld where "the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval."*] For example, in *Gentry,* the Court of Appeal determined that a city's mitigation measure requiring the permit applicant to comply with a non-existent biological report improperly deferred mitigation. [36 Cal.App.4th at 1396.] Whenever no mitigation measures are considered in the negative declaration and a mitigation plan is left to the preparation of the applicant *after* project approval, mitigation of a significant adverse environmental impact has been illegally deferred. [*Sacramento Old City Association, supra,* 229 Cal.App.3d at 1028.]

(g) Public Review of Negative Declaration or Mitigated Negative Declaration

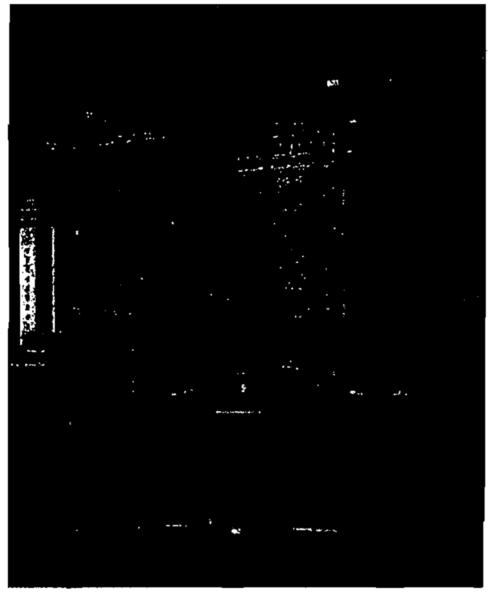
A lead agency must provide the public with notice of its intention to adopt a negative declaration or a mitigated negative declaration. The public notice must also be posted within 24 hours of its arrival in the county clerk's office of the county where the proposed project will be located. [Pub. Resources Code, §§ 21092, 21092.3.] A lead agency's failure to provide the required public notice nullifies the subsequent adoption of the negative declaration and approval of the project. [*Plaggmier v. City of San Jose* (1990) 101 Cal.App.3d 842, 854.]

The notice of intent to adopt either a negative declaration or mitigated negative declaration must include: the public comment period; 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; and the address where copies of the proposed negative declaration and all referenced documents are available for review. [Pub. Resources Code, § 21092, subd. (b)(1).] The required public notice must be given to all organizations and individuals who have requested notice and must be given by at least one of the following ways:

1) Publication at least once in a newspaper of general circulation within the jurisdiction affected by the project.
2) Posting notice on and off site in the immediate area where the project is to be located.
3) Mailing directly to owners and occupants of property contiguous to the project.

[Pub. Resources Code, § 21092, subd. (b)(3); *CEQA Guidelines,* § 15072, subd. (a).]

Note: Citizens can be assured of personally receiving the notice required by section 21092 of the Public Resources Code (and all other notices required by CEQA) by



filing "a written request for notices with either the clerk of the governing board [(*i.e.*, county board of supervisors, city council)] or, if there is no governing body, the director of the agency [(*i.e.*, director of CDFG)]." [Pub. Resources Code, § 21092.2.] The public agency may charge a fee. However, payment of a minimal fee avoids the expense and worry of monitoring the county clerk's office or the Governor's Office of Planning and Research ("OPR") for public notices, or, worse, missing a critical public notice altogether.

The public comment period for a negative declaration or mitigated negative declaration must be at least 20 days and at least 30 days for any negative declarations or mitigated negative declarations submitted to the State Clearinghouse for review by state responsible or trustee agencies. [Pub. Resources Code, § 21091, subd. (b).] If requested, the State Clearinghouse has the discretion to reduce the 30-day public review period, but the public review period cannot be reduced below 20 days. [CEQA Guidelines, § 15073, subd. (d).]

The Court of Appeal determined that a lead agency's failure to give the Department of Fish and Game, a trustee agency, adequate notice by failing to provide the Department with a copy of its proposed negative declaration was prejudicial abuse of discretion. The lead agency's adoption of the mitigated negative declaration was set aside. [*Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 491-493.]

It is during this public comment period that citizens must provide any substantial evidence they may have that will demonstrate the proposed project may have a significant adverse effect on the environment. (See Exhaustion of Administrative Remedies, *infra.*) Failure to comment on the mitigated negative declaration within the public review period provided may preclude any subsequent legal challenge to a public agency's adoption of the document. [Pub. Resources Code, § 21177, subd. (a).]

4) Environmental Impact Report (EIR)

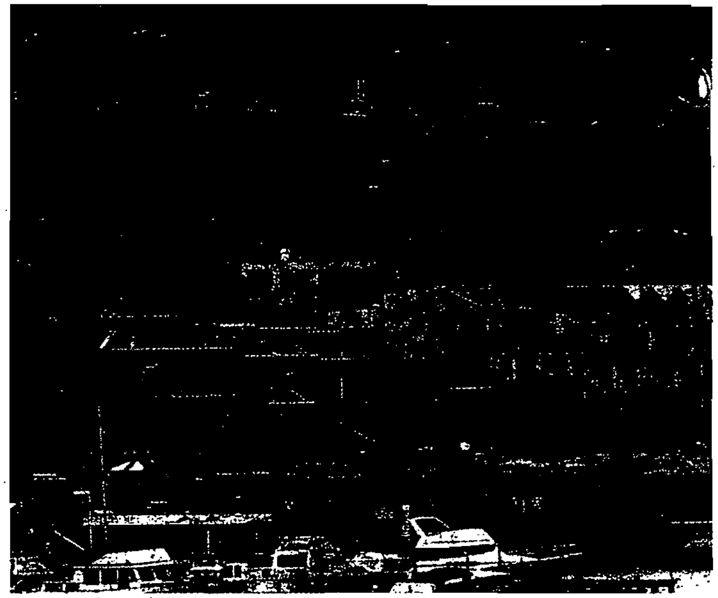
An EIR is the detailed document required by CEQA that must describe and analyze a proposed project's significant adverse environmental impacts and "ways to mitigate or avoid the effects." [CEQA Guidelines, § 15362.] In most instances the lead agency decides to prepare an EIR after completing an initial study as part of the initial permit application review process. An EIR must be prepared when the lead agency determines that a proposed project may have a significant adverse impact on the environment. [*Stanislaus Audubon Society, supra,* 33 Cal.App.4th at 150-151.] The lead agency then prepares and files the notice of preparation (NOP), described below, which is distributed to all responsible and trustee agencies.

(a) Notice of Preparation

If the lead agency decides to prepare an EIR on a proposed project, it must prepare a notice of preparation (NOP). [CEQA Guidelines, § 15082, subd. (a); *see* Appendix I (NOP Form).] The NOP must be sent to all responsible and trustee agencies. The NOP must include a description of the project, the project's probable or potential significant adverse environmental impacts (usually the lead agency includes its initial study), and the project's location. [CEQA Guidelines, § 15082, subd. (a)(1)(A-C).]

Although some agencies provide only cursory or pre-printed "boiler plate" responses to lead agency notices, reviewing the comments of these responsible agency(ies) and trustee agency(ies) to a notice to adopt a negative declaration or NOP will provide citizens with a "heads up" about the probable or identified significant adverse environmental impacts of a proposed project. Furthermore, if a lead agency fails to consult with and send the appropriate notices to every responsible and trustee agency, it cannot proceed to approve or carry out the proposed project. [*See Gentry, supra,* 36 Cal.App.4th at 1387-1388.]

There are a few other unique situations where lead agency consultation with various public agencies beyond the responsible and trustee agencies is required. For further information please review Public Resources Code sections 21092.4, 21104, 21151.8, and 21151.9. [*See also* Ed. Code, § 39003, subds. (b)-(c); Wat. Code, § 10913, subds. (a)-(f); and, Fish and G. Code, §§ 2090-2092.]



(b) Scoping

CEQA and the CEQA Guidelines encourage early consultation to determine the "scope" (focus and content) of the EIR prior to completion of the draft EIR. The lead agency normally determines the proper scope by consulting with the responsible agencies and trustee agencies. [Pub. Resources Code, § 21080.4, subds. (a) & (b); CEQA Guidelines, §§ 15082, 15083.] Scoping meetings or consultations among the lead agency and responsible and trustee agencies help the lead agency identify any significant adverse environmental impacts of the proposed project and the alternatives and mitigation measures that should be analyzed in depth in the EIR. Again, the agencies' comments during the scoping meetings or consultations (which are usually appended to the Draft EIR) give the public an early warning about the proposed project's potential significant adverse environmental effects. A lead agency that fails to analyze the environmental consequences of a proposed project raised during the scoping process has failed to comply with CEQA. [*See Sierra Club v. State Board of Forestry,* supra, 7 Cal.4th at 1230- 1231, 1236-1237.]

Some public agencies have public "scoping" meetings that invite public comment on the focus and content of the DEIR. [*See* CEQA Guidelines, § 15083.] This is especially true if the lead agency assumes the proposed project is of great interest to or controversial in the surrounding community. These meetings offer the public an early opportunity to comment on the content of the DEIR, as well as an opportunity to suggest or describe mitigation measures or alternatives that will reduce or avoid the identified significant environmental effects of the proposed project. Although the lead agency has the right to determine the scope and content of the DEIR, citizen comments on the scope of environmental review are likely to be reflected in the document in some manner.

(c) Preparation of the Draft EIR (DEIR)

The California courts have consistently and repeatedly pointed out that "the EIR is the heart of CEQA." [*Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of the University of California ("Laurel Heights II")* (1993) 6 Cal.4th 1112, 1123.] "EIRs should be prepared as early in the planning process as possible to enable environmental considerations to influence project, program, or design." [*Laurel Heights I, supra,* 47 Cal.3d at 395; *see* CEQA Guidelines, § 15004, subd. (b).]

The draft EIR (DEIR) may be prepared by the lead agency, by a consultant under contract to the lead agency, or by accepting a proposed draft prepared by the project applicant. [Pub. Resources Code, § 21082.1, subd. (a); CEQA Guidelines, § 15084, subd. (d).] The lead agency must "independently review and analyze" the DEIR and when it certifies the final EIR (FEIR) it must make a finding that the document "reflects the independent judgment" of the agency. [Pub. Resources Code, § 21082.1, subd. (c)(1)-(3).] Since the preparation of an EIR is paid for by the permit applicant, whether it is prepared by the agency itself or by an EIR consultant hired by the lead agency, the requirements of independent analysis and independent judgment are intended to protect against the applicant preparing a self-serving or biased environmental analysis. [*See Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446, 1452-1456; *Gentry, supra,* 36 Cal.App.4th 1359, 1367-1370; *compare People v. County of Kern* (1976) 62 Cal.App.3d 761, 775; *Sundstrom, supra,* 202 Cal.App.3d at 307.]

(i) Project, Program, and Master EIRs

In order to eliminate redundant environmental review, and to allow public agencies to undertake CEQA's mandatory environmental review more efficiently, CEQA and the CEQA Guidelines allow agencies to prepare different types of EIRs. The two most commonly prepared EIRs are project and program EIRs. In 1993 the Legislature further amended CEQA to create the Master EIR, intended to reduce or eliminate additional environmental review of subsequent projects or activities which could instead be analyzed within a single broader or "master" EIR.

The typical EIR is the ***project*** EIR, which analyzes the significant adverse environmental effects of a specific development project. A project EIR will focus on the physical changes to the environment caused by the proposed project.

A ***program*** EIR allows a lead agency to review the environmental consequences of broad policies or programs at the planning stage, and then later provide more detailed examination of the specific environmental impacts of a subsequent project in either a mitigated negative declaration or project EIR. Program EIRs (and master EIRs) use what is called "tiering" of environmental analysis. The use of "tiered" EIRs has been endorsed and encouraged by the California Legislature. [Pub. Resources Code, § 21093.] The tiering process allows the lead agency to move logically from broad general policy to later specific actions, thus avoiding having to speculate on the latter before analyzing the former. In other words, tiering allows the lead agency to focus on issues which are ready to be approved and exclude those issues that are "not yet ripe." [CEQA Guidelines, § 15385, subd. (b).]

It is important for citizens to understand the difference between program and project EIRs so they do not have any false expectations about what the lead agency must analyze. For example, if a local government (*i.e.*, county) is proposing to amend its general plan's agricultural land use designations within a geographic region, it may decide to proceed with a program EIR to address the broad policy implications of the change in land use and still be justified in awaiting actual project proposals before addressing any specific physical changes caused by the land use. [*See Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 741-746; *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 371-373, 374-377.]

The ***master*** EIR is essentially a more specific program EIR. Unlike a first tier program environmental document that only looks at the environmental consequences from a broad policy perspective, the master EIR is intended to look at the environmental consequences of both the broader policy and the specific project-related impacts of any and all of the identified subsequent projects that will foreseeably follow the new policy. The goal of the master EIR is to eliminate the second tier EIR entirely. If significant environmental effects have been analyzed and mitigated in the master EIR, no subsequent environmental review may be necessary for future projects. [*See* Pub. Resources Code, §§ 21156-21158.3]

(ii) Subsequent and Supplemental EIRs

After an initial EIR has been certified and even after the project has been approved by the lead agency, events sometimes require the preparation of a "subsequent" EIR or a "supplement to an EIR." For example, a project EIR that follows a program EIR is basically a subsequent EIR. The subsequent project EIR will analyze the specific environmental consequences of a project that is being implemented pursuant to the broader policy that was analyzed in the program EIR. [*See* CEQA Guidelines, § 15168, subd. (d).]

Sometimes "substantial changes" are proposed to a project or "occur with respect to the circumstances under which the project is undertaken." "New information" that was unavailable at the time the final EIR was certified may later become available. These situations may require the preparation of a subsequent or a supplemental EIR. [Pub. Resources Code, § 21166, subds. (a)-(c).] The preparation of a subsequent or a supplemental EIR pursuant to section 21166 of the Public Resources Code is distinguished from the "recirculation" of a DEIR for a project under section 21092.1 by the fact that the initial EIR has already been certified as complete. [*See Laurel Heights II, supra*, 6 Cal.4th at 1130.] Subsequent and supplemental EIR analysis addresses the period of time ***after*** certification of the EIR by the lead agency and project approval by either the lead agency or responsible agencies. [*See* CEQA Guidelines, § 15162, subds. (a), (c).]

A ***supplement*** to an EIR augments a previously certified EIR to the extent necessary to address the changes in the project, changed circumstances, or new information. However a subsequent EIR is a complete EIR in itself that focuses on project changes, changed circumstances, or new information. [*See* CEQA Guidelines, § 15163, Discussion.] Both subsequent EIRs and supplements to EIRs must receive the same kind of notice and public review and comment required of other EIRs. [CEQA Guidelines, §§ 15162, subd. (d), 15163, subd. (c).]

An example when a subsequent EIR may be required is when grading activities at a project site uncover an unknown, but significant, archaeological resource. Another example, may be an erroneous determination in the certified EIR that no endangered species are located on the site, but subsequent site work discovers an endangered species.

(iii) Addendum to a Certified EIR or Adopted Negative Declaration

If the lead agency determines that changes to the project, changed circumstances, or new information do not require a subsequent or a supplemental EIR, a public agency may prepare an addendum to the certified EIR. [CEQA Guidelines, § 15164, subd. (a).]

In contrast, where a project has been approved with an adopted negative declaration or mitigated negative declaration, public agencies may use an addendum to the adopted negative declaration "if only minor technical changes or additions are necessary." [CEQA Guidelines, § 15164, subd. (b).] If the changes are more than technical or minor, but still do not necessitate the preparation of a subsequent or a supplemental EIR, a "subsequent negative declaration" must be prepared. A subsequent negative declaration, like a subsequent or supplemental EIR, requires public review and comment; an addendum to either an EIR or a negative declaration does not. [CEQA Guidelines, § 15164, subd. (c).]

(d) Required Elements of an EIR

Basically, EIRs should be "written in plain language." [CEQA Guidelines, § 15140.] The text of the DEIRs should be less than 150 pages, or for projects of unusual complexity, less than 300 pages. [CEQA Guidelines, § 15141.] An EIR's fundamental purpose is to provide public decision-makers with enough meaningful information "to make a decision which intelligently takes into account environmental consequences." [CEQA Guidelines, § 15151; *see generally* CEQA Guidelines, §§ 15140 - 15151.]

(i) General Contents of a DEIR

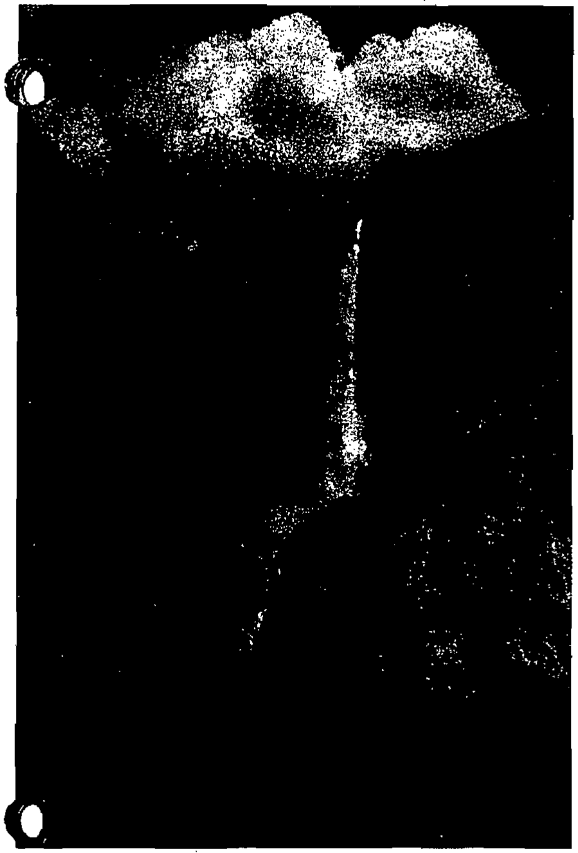
A DEIR must include the following: a table of contents; a brief summary of the proposed project and its consequences; the proposed project's location; a description of the environmental setting; a description of the proposed project's relationship to existing general or regional plans; a description of the proposed project's significant adverse environmental effects and mitigation measures; an analysis of a reasonable range of alternatives to the proposed project; an analysis of the proposed project's growth inducing impacts; an analysis of the proposed project's cumulative impacts; a statement explaining why certain adverse environmental impacts were considered insignificant; a list of all federal, state, and local public agencies, other organizations and private individuals consulted; and, the persons, consulting firm, or agency preparing the DEIR. In some cases, the lead agency may include an analysis of the proposed project's economic or social effects. [*See generally* CEQA Guidelines, §§ 15122-15131.]

(ii) Brief Summary

The brief (or executive) summary must include: each significant adverse environmental impact, along with the proposed mitigation measures or alternatives to the proposed project that will eliminate or reduce the impact; areas of controversy known to the lead agency; and issues the DEIR is intended to resolve. [CEQA Guidelines, § 15123.]

(iii) Project Description

The project description must be complete, accurate, and consistent throughout the DEIR. If the project description is incomplete, inaccurate, confusing, truncated, or misleading, the usefulness of the DEIR as an informational and interactive document will be impaired. [*See generally San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729- 734; *Kings County Farm Bureau v.*



City of Hanford (1990) 221 Cal.App.3d 692, 736-738; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193.]

At a minimum, the project description should include: a map depicting the project's precise location, a statement of the project's objectives, and a general description of the proposed project. The CEQA Guidelines also recommend that the project description include a brief statement describing the intended uses of the DEIR, including: "[a] list of the public agencies that are expected to use the EIR in their decision-making;" and, "[a] list of the approvals for which the EIR will be used." [*See* CEQA Guidelines, § 15124.]

(iv) Environmental Setting

A DEIR "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." [CEQA Guidelines, § 15125.] Without a complete description of the project's environmental setting the DEIR may never adequately investigate and discuss the environmental consequences of the proposed project. [*See San Joaquin Raptor/Wildlife Rescue Center, supra,* 27 Cal.App.4th at 724-729; *see also Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354, 357-358.]

(v) Significant Environmental Effects

The DEIR must identify and focus on the possible significant adverse environmental impacts of a proposed project. [Pub. Resources Code, § 21100, subd (b)(1); CEQA Guidelines, § 15126.2.] The DEIR needs to disclose and discuss the affected resources, anticipated physical changes and any potential related health and safety problems, anticipated alterations to ecological systems, and any other effects on the natural resource base (*i.e.*, water resources, scenic resources.) [CEQA Guidelines, §§ 15126.2, subd. (a); 15143.]

If there are significant adverse environmental impacts that cannot be avoided or reduced with the adoption or implementation of a mitigation measure or an alternative to the proposed project, the DEIR must describe in a separate section why the project is being proposed, notwithstanding these identified and unavoidable significant environmental impacts. [CEQA Guidelines, § 15126.2, subd. (b); Pub. Resources Code, § 21100, subd. (b)(2)(B).]

(vi) Mitigation Measures

CEQA requires public agencies to adopt feasible mitigation measures in order to reduce or eliminate otherwise significant adverse environmental impacts. [Pub. Resources Code, §§ 21002, 21081, subd. (a).] The DEIR describes the mitigation measures that public agencies can adopt before carrying out or approving a project. [Pub. Resources Code, § 21100, subd. (b)(3).]

For each identified significant adverse environmental impact the EIR must identify specific mitigation measures. [CEQA Guidelines, § 15126.4.] If a specific mitigation measure will itself create new significant adverse impacts, these significant impacts must also be discussed in the DEIR, but in less detail. (*Ibid.*)

Mitigation measures need to be able to (1) avoid the identified significant adverse impact altogether, (2) minimize the identified significant adverse impact, (3) rectify the identified significant adverse impact by restoring or rehabilitating the impacted resource, or (4) reduce or eliminate the impact over time by preservation or maintenance operations during the life of the project. [CEQA Guidelines § 15370.]

As noted earlier, lead and responsible agencies should not be allowed to rely on mitigation measures that will be formulated after project approval. [*Kings County Farm Bureau, supra,* 221 Cal.App.3d at 728; *Sundstrom, supra,* 202 Cal.App.3d at 306-308.] Yet recent court cases have allowed deferral of mitigation measures when the public agency commits to meet some realistic performance standard (*i.e.*, two-to-one replacement of impacted vegetation or sensitive habitat) and prevent any physical changes to the environment until the performance standard has been met (*i.e.*, construction of road prohibited until replacement vegetation is established). [*See Sacramento Old City Association, supra,* 229 Cal.App.3d at 1028-1029; Gentry, supra, 36 Cal.App.4th at 1395-1396, *"court allowed conditions providing that various local agency departments would direct or approve the applicant's performance of specified mitigation measures."*]

Note: Citizens must remember that public decision-makers will neither adopt nor reject specific mitigation measures until the time they adopt CEQA's mandatory findings of significance at the time of project approval. [See Pub. Resources Code, § 21081.] The identification and discussion of mitigation measures within the DEIR does not bind the lead and responsible agencies to later adopt and carry them out. Recent appellate court decisions have acknowledged that the adoption of mitigation measures requires consideration of economic and technological feasibility. [*See Native Sun/Lyon Communities v. City of Escondido* (1993) 15 Cal.App.4th 892, 908.] Therefore, a mitigation measure described and discussed in the DEIR may later be deemed to be infeasible at the time of project approval.

(vii) Alternatives to the Proposed Project

To satisfy CEQA's requirements, a DEIR for any proposed project "must consider a reasonable range of alternatives to the project, or to the location of the project." [*Citizens of Goleta Valley v. Board of Supervisors* ("Goleta II") (1990) 52 Cal.3d 553, 566; see Pub. Resources Code, § 21100, subd. (b)(4).] Although recognizing that "CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR," the California Supreme Court has observed that for projects involved with the use of land, "project alternatives typically fall into one of two categories: on-site alternatives, which generally consist of different uses of the land under consideration; and off-site alternatives, which usually involve similar uses at different locations." [*Goleta II,* at 566.]

Note: For the citizen reviewing a DEIR it is important to understand that the fundamental purpose for analyzing alternatives to the proposed project is to reduce or avoid significant environmental harm. The California Supreme Court has stated that an alternative should "offer substantial environmental advantages over the project proposal." [*Goleta II, supra,* 52 Cal.3d at 566.] An alternative is merely a form of mitigation. Thus, public agencies need be concerned only with feasible means of reducing significant environmental impacts. CEQA does not require analysis of every conceivable alternative. Therefore, do not assume an EIR is inadequate simply because it has failed to analyze a particular alternative. The legal issue is whether the lead agency has considered a *reasonable range* of alternatives. [*See Village Laguna of Laguna Beach v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1028-1032.]

The CEQA Guidelines require a DEIR to "describe a range of reasonable alternatives to the project, or to the location of the project, that could 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." [CEQA Guidelines, § 15126.6, subd. (a).] Many DEIRs utilize charts or matrices to show the relative characteristics (*i.e.*, significant effects, structural or geographical differences) of each alternative considered and to summarize comparisons among the alternatives. [*See* CEQA Guidelines, § 15126.6, subd. (d).]

Every DEIR must include a "no project alternative" as one of the alternatives considered. The no project alternative analysis must include a discussion of "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." [CEQA Guidelines, § 15126.6, subd. (e)(2).]

Furthermore, the EIR must identify which alternative is environmentally superior to the others. If the "no project" al-

ternative is the environmentally superior alternative, the EIR must identify which among the other alternatives would cause the least environmental harm. [CEQA Guidelines, § 15126.6, subd. (e)(2).]

In considering an "off-site" or alternative location for the proposed project, the lead agency must consider:

> [W]hether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location. [CEQA Guidelines, § 15126.6, subd. (f)(2)(A).] "Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR." [*Ibid.*]

(viii) Significant Irreversible Changes

For certain specified types of projects a DEIR must include a separate section that analyzes the extent to which the proposed project's effects will commit nonrenewable resources to uses that future generations will probably be unable to reverse. This requirement falls on the following types of projects:

1. The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency [*i.e.*, local general plan, general plan amendment, specific plan];
2. The adoption by a Local Agency Formation Commission [LAFCO] of a resolution making determinations [*i.e.*, annexation of property into city, adoption of city's sphere of influence];
3. A project which will be subject to the requirement for preparing an Environmental Impact Statement [EIS] pursuant to the requirements of the National Environmental Policy Act [NEPA] of 1969 [*i.e*, federally funded highway or transit project]. [CEQA Guidelines, §§ 15126.2, subd. (c), 15127.]

The CEQA Guidelines require the DEIR's analysis of significant irreversible changes to include not only the project's primary effects, but also its secondary effects. For example, the secondary effect of highway or road improvement adjacent to a roadless area may irretrievably increase access to an otherwise inaccessible area. Another example is an accidental release from or catastrophe at a proposed project (*i.e.*, refinery, pipeline, tanker facility, dam, hazardous waste landfill) that would cause irreversible environmental damage. [Pub. Resources Code, § 21100, subd. (b)(2)(B); CEQA Guidelines, § 15126.2, subd. (c).]

(ix) Growth-Inducing Impact of the Proposed Project

A DEIR must analyze how the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly in the surrounding environment. [Pub. Resources Code, § 21100, subd. (b)(5); CEQA Guidelines, § 15126.2 subd. (d).] This DEIR requirement also furthers CEQA's policy that "environmental problems should be considered at a point in the planning process where genuine flexibility remains." [*See Mount Sutro Defense Committee v. Regents of the University of California* (1978) 77 Cal.App.3d 20, 34.] In other words, the analysis of growth-inducing impacts encourages public decision-makers to foresee and consider the consequences of suburban sprawl before they take irreversible actions that make such sprawl a *fait accompli*. Thus, a public agency cannot avoid preparation of an EIR by merely relying upon an existing general plan's zoning or land use designations as a means to prevent further growth beyond the project. This reliance inadequately addresses the project's potential significant growth inducing impacts. [*See Stanislaus Audubon, supra*, 33 Cal.App.4th 144, 157; *see also City of Antioch v. City Council of the City of Pittsburg* (1986) 187 Cal.App.3d 1325, 1335, *court held "construction of the road way and utilities cannot be considered in isolation from the development it presages."]*

(x) Effects Not Found to be Significant

Each DEIR must include a statement that briefly indicates why the lead agency has determined that various potentially significant adverse environmental impacts were not significant and were not

discussed in detail in the DEIR. [Pub. Resources Code, § 21100, subd. (c); see also Pub. Resources Code, § 21002.1, subd. (e).] This statement can be included in an attached copy of the initial study. [CEQA Guidelines, § 15128.]

(xi) Cumulative Impacts
Section 15355 of the CEQA Guidelines defines "cumulative impacts" as:

[T]wo or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

"Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." [CEQA Guidelines, § 15355, subd. (b).]

Most DEIRs have a separate section or subsection within each identified significant effect that discusses and analyzes a proposed project's significant cumulative adverse environmental effects. A DEIR "shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable." [CEQA Guidelines § 15130, subd. (a).] " '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 current projects, and the effects of probable future projects." [CEQA Guidelines, § 15065, subd. (c).] A DEIR need not discuss impacts which do not result in part from the project evaluated in the EIR. [Ibid.] For example, a residential project's incremental contribution to traffic congestion may be deemed cumulatively considerable when added to past, current, and foreseeable residential development within an area. However, a DEIR for a project located near a busy intersection that will generate no incremental traffic to that intersection need not discuss traffic impacts.

The 1998 amendments to the CEQA Guidelines allow lead agencies to limit "probable future projects" to those projects that have submitted a permit application at the time the NOP is issued. [CEQA Guidelines, § 15130, subd. (b)(1)(B)2.]

The purpose of the DEIR's cumulative impacts analysis is to prevent a public agency from committing resources to an irreversible course of action before understanding the long-term consequences of its decision. It is another way of avoiding a piecemeal approach to project decision-making. In overturning an inadequate cumulative impact analysis, one Court of Appeal stated that an improper cumulative impact analysis "avoids analyzing the severity of the problem and allows approval of projects, which, when taken in isolation, appear insignificant, but when viewed together, appear startling." [*Kings County Farm Bureau, supra,* 221 Cal.App.3d 692, 721.]

An adequate cumulative impacts discussion must include either (1) "[a] list of past, present, and reasonably [foreseeable] future projects producing related or cumulative impacts", or (2) "[a] summary of projections contained in an adopted general plan or related planning document which is designed to evaluate regional or areawide conditions." [CEQA Guidelines, § 15130, subd. (b); see also Pub. Resources Code, § 21100, subd. (e).] In *Mountain Lion Coalition v. California Fish and Game Commission,* (1989) 214 Cal.App.3d 1043, the Court required the Fish and Game Commission to assess the cumulative impacts of future hunting seasons when enacting a new mountain lion hunting season. [Id. at 1048, 1050.] If the lead agency is using a general plan, local coastal plan, or some other planning document to determine foreseeable future projects, the document must be referenced and made available to the public for review. [CEQA Guidelines, § 15130, subd. (b)(1)(B).]

The Resources Agency's 1998 amendments to the CEQA Guidelines states that "[n]o 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." **Note:** When considering the cumulative considerable effects of a development project on urban sprawl, citizens need to be aware of prior programmatic EIRs on such things as areawide specific plans, general plans, air quality plans, etc.

(xii) Economic and Social Effects

The CEQA Guidelines authorize the inclusion of a section in the DEIR to provide information on the social and economic impacts of a proposed project. [CEQA Guidelines, § 15131.] Although economic or social effects are not by themselves significant effects on the environment, a project's physical impact on the environment may cause adverse social and economic impacts. These adverse social and economic consequences may raise the project's environmental effects to the threshold level of significance (i.e., freeway project that divides a community, Wal-Mart project that affects downtown businesses). [CEQA Guidelines, §§ 15131, Discussion, 15382; see also Pub. Resources Code, § 21083, subd. (c), *which says: if "[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly," it shall be deemed to be significant.*]

The social and economic implications of a proposed project do not need to be included in the DEIR. The lead agency has discretion to provide this information "in whatever form [it] desires." [CEQA Guidelines, § 15131.]

5) Public Participation in DEIR

(a) Notice of Completion

As soon as the lead agency is prepared to circulate the DEIR for public review and comment, the agency must file a notice of completion ("NOC") with the Governor's Office of Planning and Research ("OPR"). [Pub. Resources Code, § 21161; CEQA Guidelines, § 15085.] Section 15065 of the CEQA Guidelines requires the NOC to include:

(1) A brief description of the project,
(2) The proposed location of the project,
(3) An address where copies of the [DEIR] are available, and
(4) The period during which comments will be received on the [DEIR].

[See also CEQA Guidelines, Appendix C.]

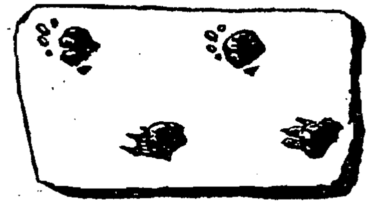
(b) Public Notice

"The Lead Agency shall provide public notice of the availability of a [DEIR] at the same time as it sends a [NOC] to OPR." [CEQA Guidelines, § 15087, subd. (a).] Notice must be given to all organizations and individuals that have previously requested notice in writing. [See Pub. Resources Code, §§ 21092, subd. (b)(3), 21092.2; CEQA Guidelines, § 15087, subd. (a).]

Notice must also be provided in one of the following ways:

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 the property contiguous to the parcel or parcels on which the project is located."

[CEQA Guidelines, § 15087, subd. (a)(1)-(3); see Pub. Resources Code, § 21092, subd. (b)(3)(A)-(C).] When a lead agency files a notice that a DEIR is available for public review and comment, the notice must be posted within 24 hours of receipt in the office of the county clerk of each county in which the project will be located. The notice shall remain posted for at least 30 days. [Pub. Resources Code, § 21092.3.]



CEQA requires the public notice to include:

> [T]he period during which comments will be received on the [DEIR] . . . 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 . . . anticipated as a result of the project, and the address where copies of the [DEIR] . . . and all documents referenced in the [DEIR] . . . are available for review.

[Pub. Resources Code, § 21092, subd. (b)(1.] Additionally, a lead agency is required to solicit comments on the DEIR from all responsible agencies and trustee agencies. [Pub. Resources Code, §§ 21104, 21153; CEQA Guidelines, § 15086.] Lead agencies must also consult or solicit comments on the DEIR from any "public agency which has jurisdiction by law with respect to the project;" any "city or county which borders on a city or county within which the project is located;" and all "state, federal, and local agencies which exercise authority over resources which may be affected by the project." [Pub. Resources Code, §§ 21104, subd. (a); 21153, subd. (a); CEQA Guidelines, § 15086, subd. (a)(3)] Consultation with trustee and responsible agencies is a requirement. The State Board of Forestry had a timber harvest plan overturned for failing to consult with the Department of Fish and Game. [*Sierra Club v. State Board of Forestry, supra,* 7 Cal.4th at 1233.] Note: Lead agency's failure to consult with federal trustee agencies is not reversible error subject to legal challenge. [*Gentry, supra,* 36 Cal.App.4th at 1389.] In light of the court's ruling in *Gentry*, section 15086 of the CEQA Guidelines should be interpreted to merely encourage, not mandate, consultation with Federal trustee agencies.

(c) Comments on DEIR

As emphasized earlier in this *Guide*, the California courts have consistently stressed the essential role public participation and public comments play in the DEIR review process. In its last few opinions the California Supreme Court has emphasized that CEQA should be "scrupulously followed" in order for the public to understand "the basis on which its responsible officials either approve or reject environmentally significant action." The high court has concluded that "the EIR process protects not only the environment but also informed self-government." [*Sierra Club v. State Board of Forestry, supra,* 7 Cal.4th at 1229; *Laurel Heights II, supra,* 6 Cal.4th at 1123; *Goleta II, supra,* 52 Cal.3d at 564; *Laurel Heights I, supra,* 47 Cal.3d at 392.]

The CEQA Guidelines have distilled from the many California appellate court opinions on this subject the following reasons why lead agencies must seek and respond to public comments: "sharing expertise"; "disclosing agency analysis"; "checking for accuracy"; "detecting omissions"; "discovering public concerns"; and, "soliciting counter proposals." [CEQA Guidelines, § 15200, subds, (a)-(f).]

The public review and comment periods for DEIRs cannot be less than 30 days and should not be more than 90 days. However, if the lead agency or a responsible agency is a state public agency (i.e., CalTrans), the minimum review period must be at least 45 days unless the State Clearinghouse (OPR) allows a shorter period. [Pub. Resources Code, § 21091, subds. (a) & (e); CEQA Guidelines, § 15087, subd. (c).]

To ensure the availability of DEIRs for public comment, lead agencies are required to make copies available in their offices and in all public libraries in the area affected by the project. [CEQA Guidelines, § 15087, subd. (e).] Furthermore, a public agency may recoup its actual costs of reproducing a copy of a DEIR from the individual who requests a copy. [CEQA Guidelines, § 15045.] Citizens should feel confident that they may receive a copy of a DEIR, although they may have to pay for the reproduction costs.

(i) Certified Regulatory Programs

In order to eliminate redundant state agency environmental review, the Legislature has authorized the Secretary of the Resources Agency to certify certain state agency regulatory programs which meet specified criteria. These state agencies are then allowed to follow a simplified environmental review process that utilizes the agencies' existing environmental documents or procedures. [Pub. Resources Code, § 21080.5; CEQA Guidelines, §§ 15250-15253.] These agencies' environmental review documents are sometimes referred to as "functional equivalent" documents. [*See* CEQA Guidelines, § 15252.]

It is important for citizens to understand that this provision only exempts these agencies from the requirement to prepare an EIR and CEQA's statutes of limitations set forth in section 21167 of the Public Resources Code. [Pub. Resources Code, § 21080.5, subd. (c).] These state agencies with certified programs must still comply with all of CEQA's remaining policies and requirements, such as identification of mitigation measures and alternatives to a proposed project designed to avoid or reduce the project's significant adverse environmental effects. [*See Mountain Lion Foundation, supra,* 16 Cal.4th at 113, 134-137; *Sierra Club v. State Board of Forestry,* supra, 7 Cal.4th at 1230-1231.]

The approved certified state agency regulatory programs are set forth in the CEQA Guidelines. [CEQA Guidelines, § 15251.] Some notable certified state regulatory programs include: regulation of timber harvest plans by the Department of Forestry and the State Board of Forestry; regulatory hunting and fishing programs of the Fish and Game Commission; incidental take permit review under the California Endangered Species Act by the Department of Fish and Game; regulatory permit and planning programs of the California Coastal Commission; water basin planning of the State Water Resources Control Board and Regional Water Quality Control Boards; and the pesticide regulatory program of the Department of Food and Agriculture.

(d) Doctrine of Exhaustion of Administrative Remedies

The doctrine of exhaustion of administrative remedies makes sure that public officials and agencies are given the opportunity to receive and respond to factual disagreements or legal argument before their final actions are challenged in court. [*See* Pub. Resources Code, § 21177, subd. (a).] Note: CEQA provides the public a great opportunity to influence public decision- making. However, if a citizen fails to take advantage of the opportunity provided and later decides to challenge the public agency's action for failing to comply with CEQA's requirements, his or her challenge is likely to be dismissed for failing to inform the agency of his or her concerns during the public review and comment periods mandated by CEQA. Although a review of the doctrine of exhaustion of administrative remedies could be placed in the *Guide's* section on judicial challenges to a public agency's decision, this discussion has been placed in this part of the *Citizens' Guide* to emphasize the importance of public participation and public comment.

CEQA's environmental review procedures have been built on a foundation of public involvement *at the earliest possible stage in planning and decision-making.* Project opponents are not allowed to "hold their powder" during the administrative proceedings and then "fire their first shots" in the Superior Court. [*See* Pub. Resources Code, § 21177.] To ensure that lead and responsible agencies are given a chance to respond to objections or opposition, the specific issues that may be raised in litigation must first be raised within CEQA's public review or during the public review proceeding provided prior to project approval. [Pub. Resources Code, § 21177, subds. (a) & (b); *see also California Aviation Council v. County of Amador* (1988) 200 Cal.App.3d 337, 340-341, 349, *concurring opinion of Blease J.; Resource Defense Fund v. Local Agency Formation Commission of Santa Cruz* (1987) 191 Cal.App.3d 886, 894.]

"[G]eneralized environmental comments at public hearings" are likely not to satisfy CEQA's exhaustion requirement. [*Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197.] However, citizens do not have to articulate the legal theories or factual disputes with the specificity that would be expected in a court of law. [*Citizens Association for the Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 163.] "But this does not mean an objection need not be raised at all. . . 'It is no hardship . . . to require a layman to make known what facts are contested.'" [*Park Area Neighbors v. Town of Fairfax* (1994) 29 Cal.App.4th 1442, 1449.]

The more vague and generalized the public comment and criticism of the DEIR, the less likely a lead agency's response will reveal anything new or relevant or generate a counter proposal. Comments should be as clear and explicit as possible and include the factual information or legal theories upon which the comment is based. If nothing else, this will cause the public agency to justify its position and reveal whatever bias it may have. For example, a public comment that claims, "the DEIR's analysis fails to provide a reasonable range of alternatives," may preserve a judicial challenge, but it hardly furthers the administrative review process. (A more informative comment could have stated that an alternative location for the project should have been analyzed in order to avoid the significant adverse effect to a wetland that is proposed to be filled. The response, at a minimum, will inform the public of the public agency's attitude toward wetland preservation.)

If the traffic generated by a proposed project (i.e., solid waste transfer station) is going to have a significant adverse impact on a particularly busy intersection within a community, and the DEIR has failed to identify any mitigation measures that will adequately mitigate for this impact, any citizen concerned about this apparent omission should propose "feasible" mitigation measures or alternatives to the project or the project's location that will avoid or reduce the significant adverse traffic impacts on the affected intersection. Even though the responsibility for describing feasible mitigation measures or alternatives to the project rest with the lead agency, there could be no dispute later that the lead agency was not put on notice regarding the claimed deficiency. Although, the public agency may merely justify its omission in its response to the comment, it is also possible that the lead agency will be forced to consider the feasibility of the proposed mitigation measure or alternative to the project raised by the comment. In the FEIR, the public agency may even recommend a modification of the project to reduce or avoid the significant environmental effect. If the modification is adopted by the decision-makers as a condition of approval of the project, CEQA has served its purpose by reducing the project's significant environmental effect on the affected community.

(i) Discretionary Public Hearings

CEQA does not require public hearings as part of its environmental review proceedings, although the CEQA Guidelines do encourage pubic hearings. [CEQA Guidelines, § 15087, subd. (g).] Some public agencies encourage public participation by holding public hearings during the DEIR review period. These agencies (i.e., local planning commissions) are giving the public an opportunity to attend a briefing on the proposed project and the DEIR, to listen to responsible and trustee agency comments, to listen to public comments from other members of the public, and to make their own comments on the project and the adequacy of the DEIR. After the public hearing there is usually still time to present written testimony to the lead agency before the close of the DEIR review period.

Individuals and organizations concerned about a proposed project should take advantage of CEQA's public review process. Furthermore, if no public hearing has been publicly announced, noticed, or scheduled, any group or individual can ask the lead agency to hold a public hearing during the public review period. If enough public interest is shown over a particular project, a public agency may feel compelled to hold a public meeting.

However if no public hearing is held, citizens must still submit written comments on the DEIR, because lead and responsible agencies have the right to limit public comments on a DEIR to written statements. [CEQA Guidelines, § 15087, Discussion.] Therefore, failure to provide written testimony prior to the close of the DEIR public review period may bar any subsequent challenge to the adequacy of the EIR. [Pub. Resources Code, § 21177, subd. (a).]

However, where no notice has been provided and no opportunity has been provided for public review and comment of a DEIR, the doctrine of exhaustion of administrative remedies is inapplicable, since the public was provided no opportunity or forum to exhaust their administrative remedies. [Pub. Resources Code, § 21177, subd. (e); *Murrieta Valley Unified School Dist. v. County of Riverside* (1991) 228 Cal.App.3d 1212, 1227.]

6) Final EIR (FEIR)

The Final EIR (FEIR) incorporates by reference the contents of the DEIR and includes the comments received on the DEIR, a list of the individual citizens, organizations, and public agencies that submitted the comments, and the lead agency's written responses to those comments. [CEQA Guidelines, §§ 15132, 15362, subd. (b).]

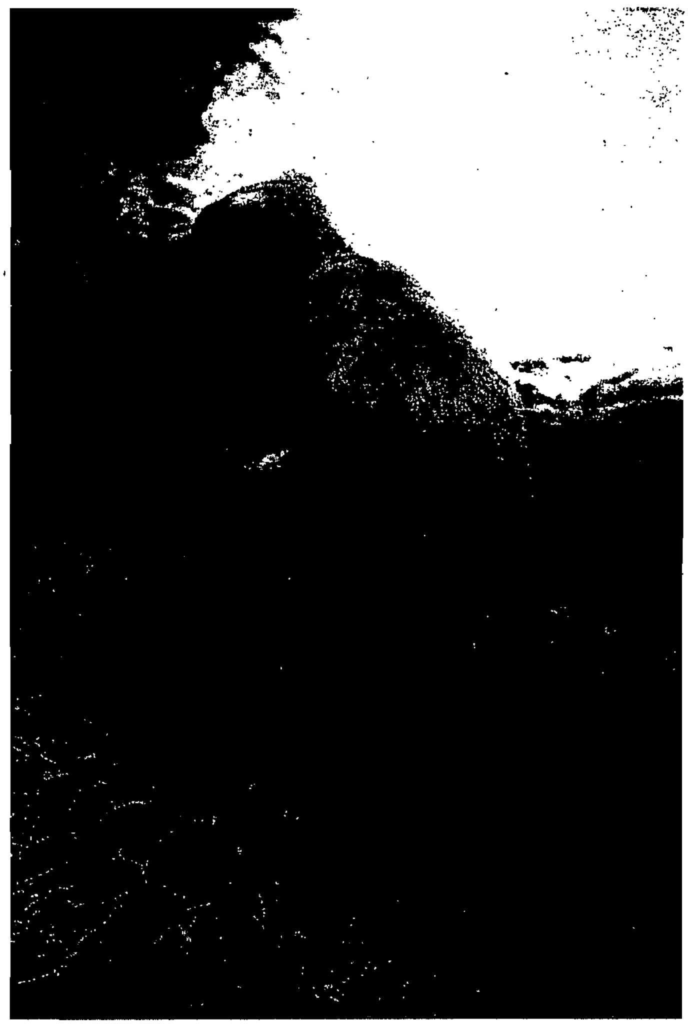
(a) Response to Comments

"The Lead Agency shall evaluate comments on environmental issues received from persons who reviewed the [DEIR] and shall prepare a written response." [CEQA Guidelines, § 15088, subd. (a).] "The written response[s] shall describe the disposition of any significant environmental issue that is raised by commenters." [Pub. Resources Code, § 21091, subd.(d)(2)(B).] "There must be good faith reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice." [CEQA Guidelines, § 15088, subd. (b); *see also Environmental Protection Information Center v. Johnson* (1985) 170 Cal.App.3d 604, 628; People v. County of Kern (1974) 39 Cal.App.3d 830, 841-842; *compare Twain Harte Homeowners Association, Inc. v. County of Tuolumne* (1982) 138 Cal.App.3d 664, 678-687, *where an agency's responses to comments show "as a whole . . . good faith and reasoned analysis . . . [and] adequately serve the disclosure process" they will be deemed adequate even if "the responses are not exhaustive or thorough."]*

The responses may be included in a separate section in the FEIR or can be shown as a revision to the DEIR. Where the responses make a significant change in the text of the DEIR, the lead agency should either revise the DEIR's text or show notes in the margin explaining that the revision is in response to a comment. [CEQA Guidelines, § 15088, subd.(c).]

In many FEIRs the written comments will be photocopied on one page and the responses will be shown on the opposite page with some corresponding numbering or alphabetizing system relating the response to the appropriate comment. When similar comments are made, subsequent responses may refer to the initial response. Oral comments are transcribed or summarized and responses are either noted in the margin or on an opposite page.

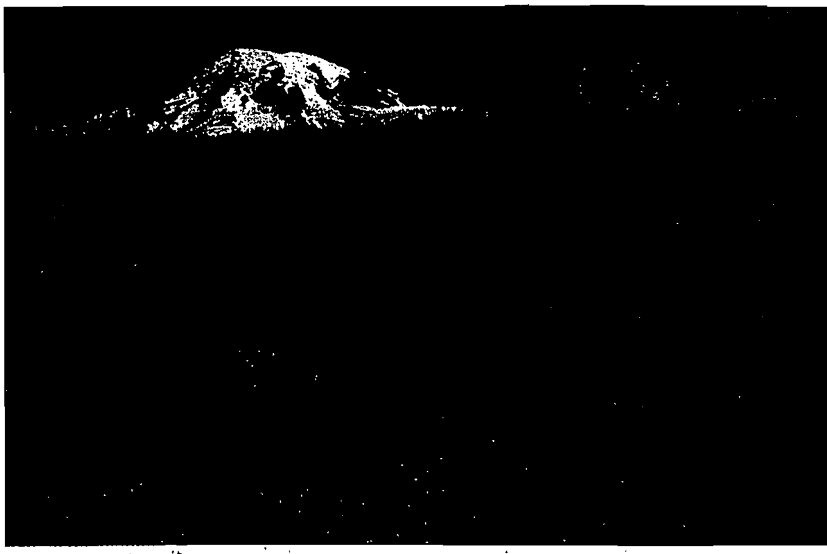
Generally, the more specific the comment, the more specific the lead agency's response. When a responsible agency or trustee agency comments on the adequacy of a mitigation measure, suggests a mitigation measure or identifies a significant effect on the environment not addressed in the DEIR, the lead agency's response likely will suggest a modification or revision of the DEIR to address the concerns of these agencies. Also, an adjacent city's or county's specific comments to a lead agency's DEIR also are likely to get careful consideration in the response. Finally, if a public agency with particular expertise criticizes the DEIR's analysis, the lead agency is going to carefully respond to the criticism. For example, if CalTrans criticizes the level of service ("LOS") or traffic capacity analysis utilized for a segment of an affected highway, the lead agency's traffic consultant will likely modify his or her analysis, incorporate the CalTrans changes, or explain in greater detail why the DEIR's analysis is accurate. A lead agency (or project proponent who is footing the bill) is foolish to shrug off specific comments with superficial, "boiler-plate," conclusory responses.



Citizens should review not only the responses to their comments, but also responses to all other public and public agency comments. Although the FEIR does not have to be and seldom is circulated for public review and comment, the public often will have another chance to comment on the adequacy of the lead agency's environmental review document at the public hearing held to approve the project. At that hearing, citizens can point out contradictory or conflicting, conclusory, or inadequate responses to comments on significant environmental issues.

(b) Recirculation of DEIR

Sometimes a project is modified significantly, or significant new information about the project or its environmental consequences or a mitigation measure comes to light after the DEIR has been circulated for public review and comment but prior to certification of the FEIR. Maybe comments on the DEIR and responses to those comments highlight a serious deficiency in the DEIR's analysis. What happens then?



Pursuant to section 21092.1 of the Public Resources Code, a lead agency is required to recirculate a revised DEIR, or portions thereof, for additional public comment and public agency consultation when it adds "significant new information" to the EIR. The recirculated DEIR, or portions thereof, must receive the same notice and public consultation the initial DEIR received. [Pub. Resources Code, § 21092.1; CEQA Guidelines, § 15088.5, subd. (d).]

Until the California Supreme Court interpreted section 21092.1 of the Public Resources Code in *Laurel Heights II,* [6 Cal.4th 1112] (and the Resources Agency subsequently adopted section 15088.5 of the CEQA Guidelines) it was uncertain what amount of new information in an EIR (i.e., response to comments revising DEIR, modification of a project) triggered CEQA's "significant new information" standard. In determining when section 21092.2 requires recirculation, the high court concluded "the Legislature did not intend to promote endless rounds of revision and recirculation of EIR's. Recirculation was intended to be an exception, rather than the general rule." [*Laurel Heights II, supra,* 6 Cal.4th at 1132.] The court went on to set forth the following legal test for implementing section 21092.1:

> [T]he addition of new information 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.... [R]ecirculation is not required where the new information added to the EIR "merely clarifies or amplifies [] or makes insignificant modifications in [] an adequate EIR.

[*Id.* at 1129-1130; *see also Sutter Sensible Planning, Inc. v. Board of Supervisors* (1981) 122 Cal.App.3d 813, 822-823.] The high court provided four separate scenarios consistent with its legal test for requiring recirculation of an EIR:

1. "[A] new substantial environmental impact resulting from the project or from a new mitigation measure proposed to be implemented;"
2. "[A] substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance;"
3. "[A] feasible project alternative or mitigation measure that clearly would lessen the environmental impacts of the project, but which the project's proponents decline to adopt;" or
4. "[T]he [DEIR] was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless." [*Id.* at 1130; *see also* CEQA Guidelines, § 15088.5, subd. (a)(1)-(4).] The most important issue is whether the public has had a meaningful opportunity to review and comment upon a significant adverse effect. The fact the lead agency has modified or revised the DEIR in response to comments on a specific significant adverse impact or mitigation measure, or even modified its analysis, does not trigger the need for recirculation of the DEIR. An FEIR "by definition contains information not found in the draft in the form of public comments and responses thereto." [*Laurel Heights II, supra,* 6 Cal.4th at 1128-1129.]

(c) Certification of FEIR

The certification of the FEIR is a two-step process: first, the lead agency's decision-maker(s) must conclude that the EIR "has been completed in compliance with CEQA" and represents the lead agency's "independent judgment;" and, second, the lead agency must state that the decision-maker(s) has reviewed and considered the information within the FEIR prior to approving the proposed project. [Pub. Resources Code, § 21082.1, subd. (c)(3); CEQA Guidelines, § 15090.]

The lead agency's decision-maker(s) cannot delegate his or her (their) obligation to "review and consider" the FEIR to an inferior body. [CEQA Guidelines, § 15025.] In other words, if a board of supervisors must approve the project (*i.e.*, general plan amendment), it would be inappropriate for the planning commission to certify the FEIR, even though the local regulations provide for planning commission review of the project and recommendation to the board. The decision- maker must review and consider the contents of the FEIR prior to approving the project.

7) Project Approval

Once the lead agency decision-makers have certified the FEIR, they are now able to approve the proposed project. Remember, CEQA only applies to project approvals, so there is no requirement to certify the FEIR prior to denying the project, even though the FEIR may provide the basis for denying the project. [Pub. Resources Code, § 21080, subd. (b)(5).] The discretion to approve or deny the project rests with the lead agency and CEQA cannot command a certain decision. [CEQA Guidelines, § 15021, subd. (d).] In *Goleta II, supra,* the California Supreme Court emphasized the discretion inherent in this process:

> The wisdom of approving . . . any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed and therefore, balanced. [52 Cal.3d 576.]

(a) CEQA's Mandatory Findings of Significance

In approving a project that will have a significant adverse effect on the environment, all public agencies have a duty mandated by CEQA to "avoid or minimize environmental damage where feasible." [CEQA Guidelines, § 15021, subd. (a); *see also* Pub. Resources Code, § 21002.] Pursuant to this duty, "no public agency shall approve or carry out a project for which an [EIR] 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 . . . [t]he public agency makes one or more of the following findings with respect to each significant effect." [Pub. Resources Code, § 21081.] CEQA's mandatory findings of significance include:

> 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 [EIR].

[Pub. Resources Code, § 21081, subd. (a)(1)-(3).] These mandatory findings must be made by the public agency's decision-making body and cannot be delegated. [CEQA Guidelines, § 15025.] It is through CEQA's findings that public decision-makers inform the public of their attitude and biases regarding the protection of the environment. [*Mountain Lion Foundation, supra,* 16 Cal.4th at 134.] As the California Supreme Court has repeatedly stated:

> If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees.

[*Laurel Heights I, supra,* 47 Cal.3d at 392.] CEQA's mandatory findings must be made by the lead agency and by all responsible agencies that will approve a proposed project. [CEQA Guidelines, § 15096, subd. (h).]

(i) Findings Must Be Based Upon Substantial Evidence

When mitigation measures or alternatives to the proposed project are not incorporated into the project because the public agency has determined that these measures and alternatives are infeasible, the findings must reveal the agency's reasons for reaching that conclusion. Conclusory statements are inadequate. [*Village Laguna of Laguna Beach, supra,* 134 Cal.App.3d 1022; *see also Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 516-517, "*a findings requirement serves to conduce the administrative body to draw legally relevant subconclusions supportive of its ultimate decision; the intended effect is to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions.*"]

However, under the substantial evidence standard, a court will not weigh conflicting evidence and determine on its own whether a mitigation measure is feasible or not. [*Laurel Heights I, supra,* 47 Cal.3d at 393, 407-408, 421-422.] Public agency findings are presumed to comply with the law until proof is presented to the contrary. [Evid. Code, § 664.] Pursuant to the substantial evidence test, unlike CEQA's fair argument standard for preparing an EIR in the first instance, the court is deferential to the public agency's decision. If there is evidence in the record to support the agency's decision, "the court must resolve reasonable doubts in favor of the administrative finding." [*Laurel Heights II, supra,* 6 Cal.4th at 1134-1135.]

(b) Mitigation Reporting or Monitoring Program

When a public agency makes the finding that "changes or alterations" have been incorporated into the project that "mitigate or avoid" the significant environmental effects identified in the certified FEIR, the public agency (both lead and responsible agencies) must adopt a "reporting or monitoring program" designed to "ensure compliance during project implementation." [Pub. Resources Code, §21081.6, subd. (a).] Thus, the lead agency will monitor its conditions of approval and the responsible agencies will monitor their conditions of approval.

Adopted mitigation measures must be "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." [Pub. Resources Code, § 21081.6, subd. (b).] The lead agency's mitigation monitoring and reporting program does not have to be circulated for public review and comment with the DEIR. [*Christward Ministry v. County of San Diego* (1993) 13 Cal.App.3d 31, 49.]

An adopted mitigation measure or alternative to the project that is intended to reduce or avoid an identified significant adverse effect is useless if it is not enforceable. The mitigation monitoring program is a method of ensuring that public agencies have either incorporated the mitigation measures into the project or have made them a condition of the project's approval. [*See San Elijo Ranch, Inc. v. County of San Diego* (1998) 65 Cal.App.4th 608.]

Note: When they become available, citizens should always review the public agency's mandatory CEQA findings (usually a separate document), the mitigation monitoring and reporting program (usually a separate document), and the resolution, ordinance, or decision document approving or carrying out the project with the attached conditions of approval. The mitigation measures that are determined to be feasible should be included in the mitigation monitoring and reporting document. Furthermore, these feasible mitigation measures should appear either as a conditions of approval or as modifications of the project. Any omission among these documents should be pointed out either in writing, if the documents have been made available to the public prior to the public hearing on the proposed project or action, or orally at the public hearing if there has been insufficient time to prepare written comments.

(c) Statement of Overriding Considerations

A lead agency or responsible agency must adopt a "statement of overriding considerations, " when it determines "[s]pecific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, makes infeasible an identified mitigation measure or alternative. [Pub Resources Code, § 21081, subd. (b).] Usually this statement is incorporated in the agency's findings document at the time of project approval.

The statement of overriding considerations allows a public agency to approve a project despite its unmitigated significant adverse environmental effects. [CEQA Guidelines, § 15093.] Like the other findings, the statement of overriding considerations must be based on substantial evidence in the entire record. [Pub. Resources Code, § 21081.5; *see Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1222-1224.] A conclusory statement that the agency prefers jobs to wetlands, for example, may not satisfy the substantial evidence standard.

(d) Notice of Determination

Whenever a lead agency approves or decides to carry out a project subject to CEQA, it shall file a notice of determination ("NOD"). [See Pub. Resources Code, §§ 21108, 21152; CEQA Guidelines, §§ 15075, subd. (a) ("negative declarations"); 15094, subd. (a) ("EIRs").] When the lead agency is a state public agency, the lead agency must file the NOD with the Governor's Office of Planning and Research ("OPR"). [CEQA Guidelines, § 15094, subd. (b).] If the lead agency is a local public agency, it must file the NOD within 5 working days with the county clerk within the county where the project is located. (If the project is in more than one county, then the NOD must be filed with the county clerk of each affected county.) [CEQA Guidelines, § 15094, subd. (c).] However, if the lead agency is local public agency, but a responsible agency is a state public agency, the CEQA Guidelines require the local lead agency to file an NOD with OPR. [CEQA Guidelines, § 15094, subd. (c).]

All members of the public who have filed a request for notice under section 21092.2 of the Pubic Resources Code must receive a copy of the NOD. [*See also* Pub. Resources Code, § 21167, subd. (f).] When the NOD is posted for public inspection, CEQA's extremely short 30-day statute of limitations begins to run. [*See* Pub. Resources Code, § 21167, subds. (b), (c), (e).] If no NOD is filed or posted, CEQA's 180-day statute of limitations applies. [Pub. Resources Code, § 21167, subd. (a).] The statute of limitations is that period of time within which a citizen may challenge a public agency's decision. [CEQA Guidelines, § 15112, subd. (b).]

The NOD is required to contain the following information: identification, location, and common name of project; "brief description of the project"; date of approval; whether the project as approved "will have a significant effect on the environment"; statement an EIR was prepared and certified; "whether mitigation measures were made a condition of approval"; whether CEQA's mandatory findings were made; "whether a statement of overriding considerations was adopted"; and, "address where a copy of FEIR and record of project approval may be examined." For projects approved with an adopted negative declaration the NOD must state that the project will not have a significant effect on the environment, that a negative declaration has been prepared, and, the location where a copy of the negative declaration may be examined. [CEQA Guidelines, §§ 15075, subd. (b) ("negative declarations"); 15094, subd. (a)(1)-(9) ("EIRs"); see also CEQA Guidelines, Appendix D.] (Please review this *Guide's* sections on the use of a negative declaration and mitigated negative declaration, *supra.*)

(i) Notice of Exemption

For projects that are determined to be exempt from CEQA, the public agency or the project applicant may file a notice of exemption ("NOE"). [CEQA Guidelines, § 15062, subd. (c).] If the public agency is a state agency the NOE is filed with OPR. When the public agency is a local agency the NOE is filed with the county clerk in the county(ies) where the project is located. [Pub. Resources Code, §§ 21108, subd. (b), 21152, subd. (b); CEQA Guidelines, § 15062.]

The NOE must include the following information: "brief description of the project"; "a finding that the project is exempt, including a citation to the relevant CEQA Guideline section"; and, "a brief statement

of reasons to support the finding." [CEQA Guidelines, § 15062, subd. (a); *see also* CEQA Guidelines, Appendix E.] If the NOE does not contain this information or fails to accurately describe the project, the NOE may be set aside. [*See McQueen v. Board of Directors of the Mid-Peninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1143-1147; *International Longshoremen's and Warehousemen's Union v. Board of Supervisors* (1981) 116 Cal.App.3d 265, 273-274.]

When a valid NOE is filed, CEQA's 35-day statute of limitations begins. [Pub. Resources Code, § 21167, subd. (d).] If an NOE is not filed or the NOE is set aside, CEQA's 180-day statute of limitations applies. [Pub. Resources Code, § 21167, subd. (d); *see McQueen, supra*, 202 Cal.App.3d at 1143-1147; *International Longshoremen's, supra*, 116 Cal.App.3d at 273-274.]

E. LEGAL CHALLENGE/JUDICIAL REVIEW

Notice of Determination

1) CEQA's Extremely Short Statute of Limitations

Notice of Exemption

After a lead or responsible agency approves a project, and files and posts either an NOD or an NOE, this triggers CEQA's unusually short statute of limitations. [Pub. Resources Code, § 21167, subds. (b), (c), (d), (e); *see Citizens of Lake Murray Association v. San Diego City Council* (1982) 129 Cal.App.3d 436, 440-441.] When an NOD is filed and posted, a 30-day statutory clock begins to run. [Pub. Resources Code, § 21167, subds. (b), (c), (e).] If a valid NOE is filed and posted, a 35-day statutory period for filing a challenge to the public agency's action begins. [Pub. Resources Code, § 21167, subd. (d).] After 30 days (or 35 days in the case of an NOE) from the posting of the notice, the statutory period for challenging an agency's decision under CEQA expires. Any part of a broader lawsuit challenging a public agency's action or decision that includes causes of action under CEQA, that are filed after this period, are subject to dismissal for being beyond the statutory period.

Note: Thirty days goes by extremely fast. If a citizens believe their rights under CEQA have been violated by the public agency's decision and they believe the only remedy available is a legal challenge, those citizens must be prepared to act promptly. There are probably no good reasons or excuses for failing to file a legal challenge within 30 days of the posting of an NOD, and limited defenses for not filing within 35 days of the posting of an NOE. [*See McQueen, supra*, 202 Cal.App.3d at 1143-1147; *International Longshoremen's, supra*, 116 Cal.App.3d at 273-274.]

If the public agency is completely unaware that a project is subject to CEQA, or its staff makes an unwitting mistake by failing to file either an NOD or NOE as required by CEQA, citizens have 180 days to file a legal challenge. [Pub. Resources Code, § 21167, subd. (a), (d).]

A citizen may request written notice of the filing of an NOD or NOE. However, the written request must be made before the notice has been filed. If this written request is timely made, the public agency must send the person written notice within five days. However, this personal written notice does not extend the statutory period for any of CEQA's statutes of limitations. [Pub. Resources Code, § 21167, subd. (f).] So, if a citizen receives the written notice 10-days after the posting of the NOD, only 20 days remain for filing a challenge in court.

2) Standing

The doctrine of exhaustion of administrative remedies was discussed earlier in the *Guide*; but, even when a citizen has exhausted his or her administrative remedies, he or she must still have "standing" to bring a legal challenge. To have standing to seek judicial relief commanding an agency to comply with CEQA, a citizen must show a "clear, present, and beneficial right" to performance of the public agency's duties under CEQA. However, standing has not been a problem for citizens challenging public agency actions under CEQA. CEQA creates public rights, so "it is sufficient that as a citizen he is interested in having the public duty enforced." [*Citizens Association for Sensible Development, supra*, 172 Cal.App.3d at 158; *but compare California Aviation Council, supra*, 200 Cal.App.3d at 344-345; *Braude v. City of Los Angeles* (1990) 226 Cal.App.3d 83, 87-89.]

3) Standard of Review/Challenger's Burden of Proof

This overview briefly passes over the extensive body of law on CEQA's standard of review. Readers are encouraged to seek out any of the fine publications listed in the Bibliography which provide much more in-depth analysis of this topic. This caveat does not change the fact that citizens who file a legal challenge because they disagree with a public agency's determination, action, or decision under CEQA (especially after an EIR has been certified on a proposed project) face very long odds in successfully prosecuting the challenge. This is because a public agency's actions under CEQA are presumed to comply with the applicable law. [*Al Larson Boat Shop, supra,* 18 Cal.App.4th at 740.]

When citizens challenge a public agency for failing to comply with CEQA, the reviewing court must defer to the agency's substantive (factual or evidentiary) determinations. [*Laurel Heights I, supra,* 47 Cal.3d at 393, "court does not pass upon the correctness of the EIR's environmental conclusions, ..."] However, the court must demand strict compliance with CEQA's mandated environmental review procedures. The California Supreme Court emphasized this point when it stated:

> We may not . . . substitute our judgment for that of the people or their local representatives. We can and *must . . . scrupulously enforce* all legislatively mandated CEQA requirements.

[*Goleta II, supra,* 52 Cal.3d at 564, (emphasis added).] This is the essence of CEQA's ***substantial evidence standard of review*** upon which a public agency's decision or EIR will be reviewed by the California courts. [Pub. Resources Code, §§ 21168, 21168.5; *Laurel Heights I, supra,* 47 Cal.3d at 392, fn.5.] Therefore, if the legal dispute turns on the evidence supporting a public agency's determination or decision, the reviewing court will not reweigh the evidence, but instead will defer to the agency's judgment. Unless there is no evidence to support the public agency's decision, the court cannot second-guess the agency's decision. "[T]he mere presence of conflicting evidence in the administrative record does not invalidate" a public agency's decision. [*Barthelemy v. Chino Basin Municipal Water Dist.* (1995) 38 Cal.App.4th 1609, 1620.] "[A] court must resolve any factual issues in favor of the lead agency." [Ibid.]

However, courts owe no deference to public agencies if they have failed to follow or carry out the law. "Failing to proceed in the manner required by the law" is a matter of statutory interpretation that is subject to a court's independent review. [*Sierra Club v. Board of Forestry, supra,* 7 Cal.4th at 1236-37; *East Peninsula Education Council, Inc. v. Palos Verdes Peninsula Unified School District* (1989) 210 Cal.App.3d 155, 165; *San Joaquin Raptor, supra,* 27 Cal.App.4th at 724-729.] Therefore, the likelihood of a successful legal challenge to the adequacy of an EIR or a public agency's decision is improved if the challenge is based on the public agency's failure to carry out CEQA's mandated requirements.

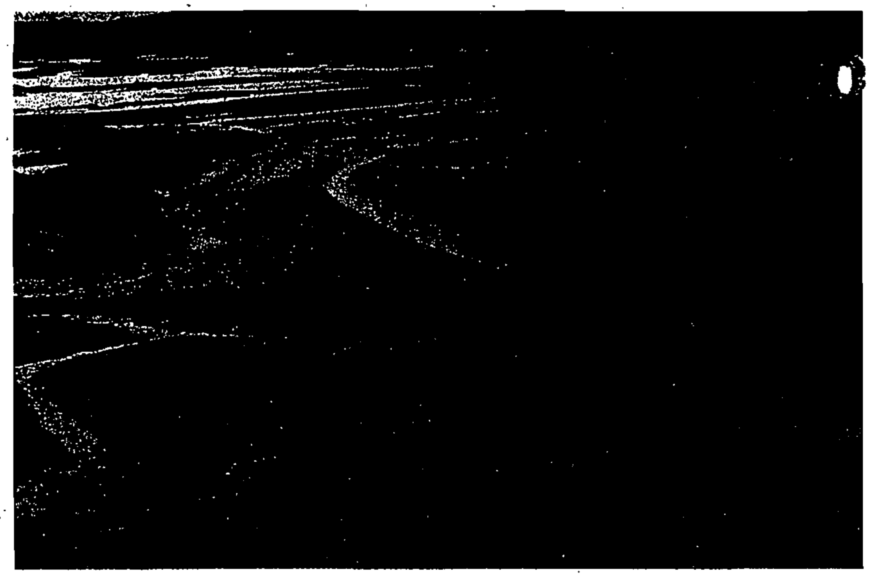
4) Preparing the Administrative Record

When a citizen files a lawsuit against a public agency for failing to comply with CEQA in some manner, the citizen also must file within 10 business days a request with the agency requesting preparation of the administrative record. [Pub. Resources Code, § 21167.6, subd. (a).] The challenger in the action is responsible for the cost of preparation of the record. The costs can include all necessary and reasonable charges for agency staff time spent in record compilation and preparation. [*River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 180-182.] Administrative records can cost anywhere from a few hundred dollars to tens of thousands of dollars. Citizens need to be prepared to pay for the cost of the production of the record in order to prosecute the case.

The administrative record in a CEQA challenge will include all the environmental review documents (i.e., negative declaration, mitigated negative declaration, DEIR, FEIR) including, but not limited to, the following: "all project application materials," "all staff reports," any transcript and minutes of public meetings and hearings, all notices, all written comments, mandated CEQA findings, resolutions of approval and conditions of approval, and "[a]ny other written materials relevant to the . . . public agency's compliance with [CEQA]." [*See* Pub. Resources Code, § 21167.6, subd. (e).]

CEQA alternatively allows the challenger to prepare the administrative record, subject to the review and approval of the public agency as to the record's accuracy. [Pub. Resources Code, § 21167.6, subd. (b)(2).] If the challenger has the capability of preparing the administrative record, some of the costs associated with record production can be saved. It is also true that many public agencies, even when challenged, do not charge challengers the cost of record preparation until after the completion of the case. At that time the losing party is likely to be responsible for court costs and payment of the prevailing party's costs (although not necessarily attorneys' fees), which may include the preparation of the record.

Although the challenger may seek to reduce the size of the record lodged with the court, it is the public agency's right to certify the accuracy of the record in a CEQA challenge. [Pub. Resources Code, § 21167.6, subd. (b)(1)&(2).] Sometimes, the public agency and the challengers' attorneys may be able to negotiate and stipulate to the size of the record filed with the court.



Note: The size of the record and the cost of its production can appear most daunting to an individual citizen petitioner or small citizens/public interest group. However, there is no getting around the need to prepare and file the record with the reviewing court. No court will review any CEQA challenge without an adequate record agreeable to the challenged public agency.

5) Judicial Remedies or Relief

Let us assume that citizens, go to all the trouble and expense of hiring an attorney (or filing an action without an attorney a la Rita Gentry; *see Gentry, supra,* 36 Cal.App.4th at 1367) and the reviewing court subsequently rules in the citizens' favor. What happens then? Generally, the public agency's decisions certifying the FEIR, adopting its findings, and approving the project are set aside. Despite the invalidation of the agency's decision, citizens must understand that a legal victory under CEQA may not ultimately stop the project that they oppose. The approval of a project remains within the discretion of the public decision-makers. The legal victory under CEQA requires that the public agency go back and complete or correct the environmental review that is required before the decision-makers can carry out or approve the proposed project. Once the environmental review is corrected and completed, the public agency may still continue with or approve the project.

Nevertheless, legally adequate environmental review may lead to the imposition of mitigation measures or alternatives that may improve the proposed action or project. Furthermore, exposing or validating the environmental consequences of a proposed project through judicial review may heighten the political risks to the decision-makers, who will have to re-approve a project after complying with CEQA and a court's order.

The relief authorized under CEQA is set forth in section 21168.9 of the Pubic Resources Code. This section of CEQA, however, does not limit the court's power to grant additional or other relief. Being a separate and co-equal branch of state government, a reviewing court may provide whatever relief it feels is appropriate. [*See Laurel Heights I, supra,* 47 Cal.3d at 422-425; *County of Inyo v. City of Los Angeles* (1978) 78 Cal.App.3d 82, 85; Pub. Resources Code, § 21168.9, subd. (c), *"nothing in this section is intended to limit the equitable powers of the court."*]

CEQA authorizes the reviewing court to enter an order requiring "the public agency and any real parties in interest [(*i.e.*, project proponent, developer)] [to] suspend any or all specific project activity or activities . . . that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions . . . to bring the . . . decision into compliance with [CEQA]." The court in San Joaquin Raptor interpreted this provision to allow it to enjoin all activity that would change the physical environment pending the lead agency's correction of its invalidated EIR. [27 Cal.App.4th at 741; *see also Ultramar, Inc. v. South Coast Air Quality Management Dist.* (1993) 17 Cal.App.4th 698, 705.]

Despite the authority to halt projects pending subsequent environmental review, the California courts have also exercised their inherent equitable powers to allow entire projects, certain existing activities, or certain agency actions to proceed while the public agency corrects or amends its environmental review documents to comply with CEQA and the court's order. [*See Laurel Heights I, supra,* 47 Cal.3d at 423-425; *Meridian Ocean Systems, Inc. v. California State Lands Commission* (1990) 222 Cal.App.3d 153, 171-173; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1455-1457.] This authority to allow a project or specific activities to proceed also has been codified by the Legislature in subdivision (a)(2) of section 21168.9 of the Public Resources Code. Public agencies and project proponents will certainly argue that the Legislature's recent amendments to section 21168.9 were intended to encourage the reviewing court to limit its relief to only "those specific project activities in noncompliance with [CEQA]." [Pub. Resources Code, § 21168.9, subd. (b).] So prevailing citizens may be faced with the frustrating reality that even though they have prevailed in their expensive and possibly community-polarizing lawsuit, the project or a portion of the project may be allowed to proceed despite the public agency's failure to comply with CEQA.

(a) Award of Attorney's Fees

Pursuant to the "private attorney general theory" and section 1021.5 of the Code of Civil Procedure, successful CEQA challengers can be awarded their attorney's fees. The private attorney general theory allow citizens to recover their attorney fees if they are the prevailing party and their legal victory protects an important public right or benefit. However, the award and the amount of the award is left to the discretion of the court. Successful CEQA litigants will not be allowed their attorney's fees, however, it they have a personal financial stake in the outcome of the litigation (*i.e.*, a business competitor to a project proponent) or if the citizen or his or her attorney failed to serve the Attorney General's Office with a copy of his or her lawsuit as required by section 21167.7 of the Public Resources Code. [*See Schwartz v. City of Rosemead* (1984) 155 Cal.App.3d 547, 560-561.]

(b) SLAPP Suits

Almost all citizens and citizens groups are concerned about their personal liability when they contemplate filing a lawsuit. Many are concerned that the project proponent (or even some aggressive public agency) will file a counter lawsuit against them. These retaliatory lawsuits are known as "SLAPP" suits. The acronym stands for "strategic lawsuits against public participation." Classic allegations in SLAPP suits are for defamation (i.e., slander or libel), various business and economic injury claims, nuisance, and emotional distress. This type of lawsuit is intended to frighten citizens so they will not exercise their political rights or to "punish those who have done so." [*Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 815.]

The Legislature in 1992 enacted section 425.16 of the Code of Civil Procedure in order to protect citizens from SLAPP suits. This statute states:

> A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the [U.S.] or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. [Code Civ. Proc., § 425.16, subd. (b).] An act in furtherance of a person's constitutional rights has been defined by the Legislature to include:
>
> . . . any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any written or oral statement or writing made in a place open to public or a public forum in connection with an issue of public interest. [Code Civ. Proc., § 425.16, subd. (e).]

Since CEQA encourages public participation and comment, a citizen's written and oral comments on or criticism of the adequacy of a public agency's environmental documents are entitled to absolute immunity and are not the proper subject of claims alleging defamation. [*Dixon v. Superior Court* (1994) 30 Cal.App.4th 733, 745.]

A CEQA litigant who successfully defends against a SLAPP suit by striking the allegation under section 425.16 of the Code of Civil Procedure is entitled to attorneys' fees and costs. [Code of Civ. Proc., § 425.16, subd. (c).] However, the CEQA litigant has the initial burden of proof to demonstrate that section 426.16 of the Code of Civil Procedure is applicable and that the action was brought to chill a constitutional right. For more in-depth review of SLAPP suits, the reader is encouraged to review *Wilcox, supra,* 27 Cal.App.4th 809; Dixon, supra, 30 Cal.App.4th 733, *Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8; and, any of the excellent publications listed in the *Guide's* Bibliography.

GLOSSARY OF TERMS

CATEGORICAL EXEMPTION means an exemption from CEQA for a class of projects based on a finding made by the Secretary of the California Resources Agency that the class of projects does not have a significant effect on the environment. (CEQA Guidelines, § 15354.)

CEQA GUIDELINES are prescribed by the Secretary of the California Resources Agency. They are to be followed by and are binding upon all state and local public agencies in California. (CEQA Guidelines, § 15000; see Pub. Resources Code, § 21082.) The CEQA Guidelines can be found in title 14 of the California Code of Regulations commencing with section 15000.

CERTIFIED REGULATORY PROGRAMS are those state agency regulatory programs that have been certified by the Secretary of the California Resources Agency (pursuant to section 21080.5 of the Public Resources Code) as being exempt from the requirements for preparing EIRs, negative declarations, and initial studies. Nonetheless, these state agencies must still comply with all other CEQA policies and requirements that require significant environmental effects on the environment to be mitigated or avoided where feasible. (CEQA Guidelines, § 15250.)

ENVIRONMENTAL IMPACT REPORT (EIR) means a detailed statement describing and analyzing the significant environmental effects of a project and discussing ways to mitigate or avoid the effects. (Pub. Resources Code, § 21061; CEQA Guidelines, § 15362.)

FAIR ARGUMENT STANDARD requires the lead agency, when it is presented with a fair argument that a project may have a significant effect on the environment, to prepare an EIR even though it may be presented with other substantial evidence that the project will not have a significant effect on the environment. (CEQA Guidelines, § 15064, subd. (g)(1).) Whether a fair argument can be made is to be determined by examining the entire administrative record. (CEQA Guidelines, § 15384.)

FUNCTIONAL EQUIVALENT DOCUMENT is the document used as a substitute for an EIR or negative declaration in a certified regulatory program.

GOVERNOR'S OFFICE OF PLANNING & RESEARCH (OPR) shall review the CEQA Guidelines and make recommendations for changes to the Secretary of the California Resources Agency. OPR shall receive and evaluate proposals for adoption, amendment, or repeal of categorical exemptions and shall make recommendations to the Secretary of Resources. OPR shall provide assistance to any lead agency or project applicant that requests help in identifying responsible agencies. OPR shall ensure responsible agencies provide necessary information to lead agencies. OPR shall resolve any dispute over the designation of a lead agency for a project. OPR receives and files all state lead and responsible agency notices of completion, determination, and exemption. (CEQA Guidelines, § 15023.)

INITIAL STUDY means a preliminary analysis prepared by the lead agency to determine whether an EIR or negative declaration must be prepared or to identify the significant environmental effects to be analyzed in an EIR. (CEQA Guidelines, § 15365, see also CEQA Guidelines, Appendix I; Pub. Resources Code, § 21080, subd. (c)(2).)

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. (Pub. Resources Code, § 21067.) The lead agency will decide whether an EIR or negative declaration will be required for the project. (CEQA Guidelines, § 15367.)

MASTER ENVIRONMENTAL IMPACT REPORT (MEIR) when prepared and certified may allow for limited environmental review of all subsequent projects that were described in the MEIR, which the lead agency has determined will have no significant effect on the environment. (Pub. Resources Code, § 21157.1.)

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. (Pub. Resources Code, § 21064.5.)

NEGATIVE DECLARATION means a written statement, prepared by the lead agency, briefly describing the reasons that a proposed project will not have a significant effect on the environment and therefore does not require the preparation of an EIR. (Pub. Resources Code, § 21064; CEQA Guidelines, § 15371.)

NOTICE OF DETERMINATION (NOD) means a brief notice which is filed by a public agency after it approves or determines to carry out a project which is subject to CEQA. (CEQA Guidelines, § 15373; see also Pub. Resources Code, §§ 21108, subd. (a), 21152, subd. (a).)

NOTICE OF EXEMPTION (NOE) means a brief notice which may be filed by either a public agency or a project applicant after the public agency has determined that the project it has approved or is going to carry out is exempt from CEQA. (CEQA Guidelines, § 15374; see also Pub. Resources Code, §§ 21108, subd. (b), 21152, subd. (b).)

NOTICE OF PREPARATION (NOP) 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 a project. (CEQA Guidelines, § 15375.)

PROJECT means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment. (Pub. Resources Code, § 21065.) The term "project" means the whole of an action which is being approved and which may be subject to several discretionary approvals by public agencies. The term "project" does not mean each separate governmental approval. (CEQA Guidelines, § 15378.)

DISCRETIONARY PROJECT means a project which requires the exercise of judgment or deliberation when the public agency decides to approve or disapprove a particular activity. (CEQA Guidelines, § 15357.)

MINISTERIAL DECISION describes a governmental decision or action involving little or no personal judgment by the public official as t the wisdom or manner of carrying out the project. A ministerial decision involves only the use of fixed standards or objective measures. (CEQA Guidelines, § 15369.)

PROJECT means the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

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. (Pub. Resources Code, § 21063.) This term does not include agencies of the federal government. (CEQA Guidelines, § 15379.)

RESPONSIBLE AGENCY means a public agency, other than the lead agency which has responsibility for carrying out or approving a project. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.)

SCOPING is a method of early public agency consultation that helps bring parties together to resolve concerns of affected federal, state and local agencies, the proponent of the project or action, and interested members of the public. The purpose is to identify the range of actions, alternatives, mitigation measures, and significant environmental effects that need to be analyzed in an EIR, as well as to eliminate those issues found not to be important. (CEQA Guidelines, §15083.)

STATE CLEARINGHOUSE is the state agency within the Governor's Office of Planning and Research (located at 1400 Tenth Street, Sacramento, California , 95814) where all draft EIRs and negative declarations to be reviewed by state agencies are to be submitted. (CEQA Guidelines, §§ 15023, subd. (c), 15105, 15205.) Copies of the notices of public review periods for negative declarations and EIRs for state agencies are filed with the State Clearinghouse. (CEQA Guidelines, §§ 15073, subd. (b), 15085, subd. (d).)

STATEMENT OF OVERRIDING CONSIDERATIONS is the written statement of the public agency that allows the occurrence of significant adverse environmental effects identified in the final EIR because the benefits of the proposed project outweigh the unavoidable adverse environmental effects. (CEQA Guidelines, § 15093.) The statement of overriding considerations is the mandatory finding made by the public agency prior to approving a project that "[s]pecific 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 [EIR]." (Pub. Resources Code, § 21081, subd. (a)(3), (b).) The statement of overriding consideration must be based upon substantial evidence in the record. (Pub. Resources Code, § 21081.5.)

SUBSEQUENT ENVIRONMENTAL IMPACT REPORT is an EIR prepared after the certification of a previous EIR for a project where the lead agency has determined that either:

(1) substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
(2) substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR 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, shows any of the following:
   (a) the project will have one or more significant effects not discussed in the previous EIR;
   (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 on the environment, 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.

(CEQA Guidelines, § 15162.)

SUBSTANTIAL EVIDENCE shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (Pub. Resources Code, § 21080, subd. (c).) The term "substantial evidence" 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. (CEQA Guidelines, § 15384.)

SUPPLEMENTAL OR SUPPLEMENT TO AN EIR augments a previously certified EIR to the extent necessary when only minor additions or changes would be necessary to make the previous EIR legally adequate. In contrast, a "subsequent EIR" is a complete EIR. (CEQA Guidelines, § 15163.)

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. The "second tiered" narrower or site specific EIR incorporates by reference the general discussions from the former broader EIR and concentrates solely on the issues specific to the project or site specific activity under review. (CEQA Guidelines, § 15385; Pub. Resources Code, § 21068.5.)

TRUSTEE AGENCY means a state agency which has jurisdiction by law over natural resources which are held in trust for the people of the State of California. State 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. (CEQA Guidelines, § 15386.)

BIBLIOGRAPHY

The following are resources that are available to the public for further help and information about the California Environmental Quality Act and other environmental laws.

State Clearinghouse/Governor's Office of Planning and Research (OPR)

For questions about CEQA, CEQA Guidelines, a specific EIR, or whether a state or local agency has filed a notice of preparation (NOP), notice of completion (NOC), or a notice of determination (NOD), citizens should feel free to call the State Clearinghouse at (916) 445-0613. (Remember: Local public agencies must file notices with the county clerk's office in the affected county where the project is located. However, if a state responsible or trustee agency is involved, usually OPR gets the notices, too.) If you are calling about a specific EIR or project, providing the State Clearinghouse number (which is usually on the front cover of the DEIR, initial study, or negative declaration), will expedite the call. However, if you only know the name of the project, title of the EIR, or the lead agency (i.e., Cal-Trans, City of Pacific Grove), the very helpful people at the State Clearinghouse will probably be able to provide you with the information you need.

You may also write to either OPR or the California Resources Agency if you have questions about CEQA or the CEQA Guidelines:

Governor's Office of Planning and Research
State Clearinghouse
1400 Tenth Street
Sacramento, CA 95814

Secretary of Resources
California Resources Agency
1416 9th Street, Room 1311
Sacramento, CA 95814

You can also find CEQA and the CEQA Guidelines on the Internet at the Resources Agency's LUPIN site which can be seen at **http://ceres.ca.gov./planning.**

You may also order copies of CEQA and the CEQA Guidelines from:

Department of General Services
Publications Section
P.O. Box 1015
North Highlands, CA 95660
(916) 973-3700 (no phone orders accepted)

The Consulting Engineers and Land Surveyors of California (CELSOC) prepares a very handy soft bound pamphlet that contains CEQA and the CEQA Guidelines. CELSOC's publication is updated every year with recent changes to the statute and guidelines. The non-member rate is $19.50. Orders can be made by phone: (916) 441-7991; fax: (916) 441-6312. CELSOC's website is www.celsoc.org and its email address is staff@celsoc.org.

Additional online resources/environmental gateway pages:

California Resources Agency: http://ceres.ca.gov/

US Fish and Wildlife Service: http://www.fws.gov/

California Department of Fish and Game: http://www.dfg.ca.gov/

Information Center for the Environment (UC Davis): http://ice.ucdavis.edu/

Dept. of Fish and Game Natural Diversity Database: http://spock.dfg.ca.gov/Endangered/endangered.html

National Environmental Policy Act (NEPA): http://www.law.indiana.edu/envdec/a.html

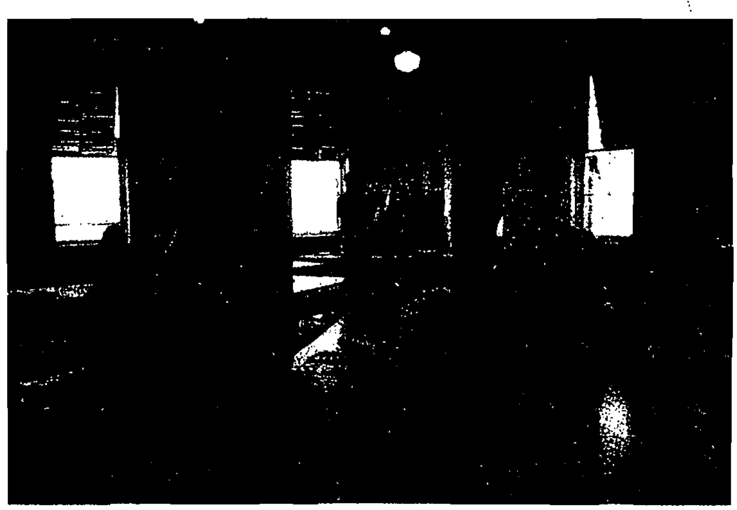
Publications about CEQA

Guide to the California Environmental Quality Act (CEQA)
by Michael H. Remy, Tina A. Thomas, James G. Moose, and Whitman F. Manley
(1999 [Tenth] edition Solano Press) Single soft bound volume.
This is a very complete review of CEQA and includes the statute and guidelines, summary of major CEQA cases, and index. The 1999 edition costs $70 plus shipping and handling. To order call Solano Press at (800) 931-9373. Solano Press is also on the Internet at http://www.solano.com email address: spbooks@solano.com.

Practice Under the California Environmental Quality Act
by Stephen Kostka and Michael Zischke 2-volume loose leaf.
This also is a very complete review of CEQA and includes the statute, guidelines and an index. Because it is loose leaf within a hard-shell three ring binder, it is updated by inserting revised pages into the existing binder and tossing out the out-dated material. (The latest updated version costs $159 plus shipping and handling.) To order, call CEB at (800) 232-3444. Order on line: www.ceb.ucop.edu.

CEQA Deskbook
by Ronald E. Bass, Albert I. Herson, Kenneth M. Bogdan
(1999 edition, Solano Press) Single soft bound volume.
This publication is a step-by-step "how to" format based on Bass and Herson's former "Successful CEQA Compliance: A Step-by-Step Approach" ('94 edition, '95 Supp.) (The 1999 edition costs $50 plus shipping and handling.) To order call Solano Press at (800) 931-9373. Solano Press is also on the Internet at http://www.solano.com. email address: spbooks@solano.com.

CEQA Workshops
Since October 1998, the Planning and Conservation League Foundation has offered monthly introductory community workshops focusing on the fundamentals of CEQA. The workshop series is intended to present useful information about CEQA, strengthen local Californians' familiarity with this important environmental law, encourage participation in local environmental decision making, and foster a broader coalition of citizen activists. For more information about having a workshop in your community, contact PCL at (916) 444-8726, or visit www.pcl.org.



PLANNING AND CONSERVATION LEAGUE
F O U N D A T I O N

926 J Street, Suite 612 • Sacramento, CA 95814

Phone: (916) 444-8726 • Fax: (916) 448-1789
http://www.pcl.org • email: pclmail@pcl.org

EXHIBIT 402

COUNCIL ON ENVIRONMENTAL QUALITY
EXECUTIVE OFFICE OF THE PRESIDENT

A Citizen's Guide to the NEPA

Having Your Voice Heard

DECEMBER 2007

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DECEMBER 2007

This guide is based on research and consultations undertaken by the Council on Environmental Quality (CEQ) concerning the need for a Citizen's Guide to the National Environmental Policy Act (NEPA). Participants in the NEPA Regional Roundtables held in 2003-2004 clearly voiced the need for an guide that provides an explanation of NEPA, how it is implemented, and how people outside the Federal government — individual citizens, private sector applicants, members of organized groups, or representatives of Tribal, State, or local government agencies — can better participate in the assessment of environmental impacts conducted by Federal agencies (see *http://ceq.eh.doe.gov/ntf*). This guide is informational and does not establish new requirements. It is not and should not be viewed as constituting formal CEQ guidance on the implementation of NEPA, nor are recommendations in this guide intended to be viewed as legally binding.

Table of Contents

List of Appendices

List of Acronyms

CE:	Categorical Exclusion
CEQ:	Council on Environmental Quality
CFR:	Code of Federal Regulations
EA:	Environmental Assessment
EIS:	Environmental Impact Statement
EMS:	Environmental Management System
EPA:	The Environmental Protection Agency
FONSI:	Finding of No Significant Impact
NEPA:	The National Environmental Policy Act
NOI:	Notice of Intent
ROD:	Record of Decision

Purpose of the Guide

This guide has been developed to help citizens and organizations who are concerned about the environmental effects of federal decisionmaking to effectively participate in Federal agencies' environmental reviews under the National Environmental Policy Act (NEPA).[1] With some limited exceptions, all Federal agencies in the executive branch have to comply with NEPA before they make final decisions about federal actions that could have environmental effects. Thus, NEPA applies to a very wide range of federal actions that include, but are not limited to, federal construction projects, plans to manage and develop federally owned lands, and federal approvals of non-federal activities such as grants, licenses, and permits. The Federal Government takes hundreds of actions every day that are, in some way, covered by NEPA.

The environmental review process under NEPA provides an opportunity for you to be involved in the Federal agency decisionmaking process. It will help you understand what the Federal agency is proposing, to offer your thoughts on alternative ways for the agency to accomplish what it is proposing, and to offer your comments on the agency's analysis of the environmental effects of the proposed action and possible mitigation of potential harmful effects of such actions. NEPA requires Federal agencies to consider environmental effects that include, among others, impacts on social, cultural, and economic resources, as well as natural resources. Citizens often have valuable information about places and resources that they value and the potential environmental, social, and economic effects that proposed federal actions may have on those places and resources. NEPA's requirements provide you the means to work with the agencies so they can take your information into account.

[1] National Environmental Policy Act of 1969, *as amended*, 42 U.S.C. §§ 4321-4347, available at *www.nepa.gov*.

History and Purpose of NEPA

Congress enacted NEPA in December, 1969, and President Nixon signed it into law on January 1, 1970. NEPA was the first major environmental law in the United States and is often called the "Magna Carta" of environmental laws. Importantly, NEPA established this country's national environmental policies.

To implement these policies, NEPA requires agencies to undertake an assessment of the environmental effects of their proposed actions prior to making decisions. Two major purposes of the environmental review process are better informed decisions and citizen involvement, both of which should lead to implementation of NEPA's policies.

Who is Responsible for Implementing NEPA?

Every agency in the executive branch of the Federal Government has a responsibility to implement NEPA. In NEPA, Congress directed that, to the fullest extent possible, the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in NEPA.[2] To implement NEPA's policies, Congress prescribed a procedure, commonly referred to as "the NEPA process" or "the environmental impact assessment process."

NEPA's procedural requirements apply to all Federal agencies in the executive branch. NEPA does not apply to the President, to Congress, or to the Federal courts.[3]

Because NEPA implementation is an important responsibility of the Federal Government, many Federal agencies have established offices dedicated to NEPA policy and program oversight. Employees in these offices prepare NEPA guidance, policy, and procedures for the agency, and often make this information available to the public through sources such as Internet websites. Agencies are required to develop their own capacity within a NEPA program in order to develop analyses and documents (or review those prepared by others) to ensure informed decisionmaking.[4] Most agency NEPA procedures are available on-line at the NEPAnet website *http://ceq.eh.doe.gov/nepa/regs/agency/agencies.cfm*). Agency NEPA procedures are published in

[2] Section 102 of the National Environmental Policy Act of 1969, 42 U.S.C. §4332.

[3] CEQ NEPA Regulations 40 C.F.R.§1508.12.

[4] Council on Environmental Quality , "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" 40 C.F.R. section 1507.2, available at *www.nepa.gov*. Future references to the CEQ NEPA Regualtions will be cited as : CEQ NEPA Regulations, 40 C.F.R. §1507.2.

National Environmental Policy Act Sec. 101
[42 USC § 4331]

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may —

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

the Federal Register for public review and comment when first proposed and some are later codified and published in the Code of Federal Regulations.[5] If you experience difficulty locating an agency's NEPA procedures, you can write or call the agency NEPA point of contacts and ask for a copy of their procedures.[6]

To What Do the Procedural Requirements of NEPA Apply?

In NEPA, Congress recognized that the Federal Government's actions may cause significant environmental effects. The range of actions that cause significant environmental effects is broad and includes issuing regulations, providing permits for private actions, funding private actions, making federal land management decisions, constructing publicly-owned facilities, and many other types of actions. Using the NEPA process, agencies are required to determine if their proposed actions have significant environmental effects and to consider the environmental and related social and economic effects of their proposed actions.

NEPA's procedural requirements apply to a Federal agency's decisions for actions, including financing, assisting, conducting, or approving projects or programs; agency rules, regulations, plans, policies, or procedures; and legislative proposals.[7] NEPA applies when a Federal agency has discretion to choose among one or more alternative means of accomplishing a particular goal.[8]

Frequently, private individuals or companies will become involved in the NEPA process when they need a permit issued by a Federal agency. When a company applies for a permit (for example, for crossing federal lands or impacting waters of the United States) the agency that is being asked to issue the permit must evaluate the environmental effects of the permit decision under NEPA. Federal agencies might require the private company or developer to pay for the preparation of analyses, but the agency remains responsible for the scope and accuracy of the analysis.

[5] The draft agency implementing procedures, or regulations, are published in the Federal Register, and a public comment period is required prior to CEQ approval. Commenting on these agency regulations is one way to be involved in their development. Most agencies already have implementing procedures; however, when they are changed, the agency will again provide for public comment on the proposed changes.

[6] See Appendices A and D for information on how to access agency points of contact and agency websites.

[7] CEQ NEPA Regulations, 40 C.F.R. § 1508.18. Note that this section applies only to legislation drafted and submitted to Congress by federal agencies. NEPA does not apply to legislation initiated by members of Congress.

[8] CEQ NEPA Regulations, 40 C.F.R. § 1508.23.

When Does NEPA Apply?

NEPA requires agency decisionmakers to make informed decisions. Therefore, the NEPA process must be completed before an agency makes a final decision on a proposed action. Good NEPA analyses should include a consideration of how NEPA's policy goals (Section 101) will be incorporated into the decision to the extent consistent with other considerations of national policy. NEPA does not require the decisionmaker to select the environmentally preferable alternative or prohibit adverse environmental effects. Indeed, decisionmakers in Federal agencies often have other concerns and policy considerations to take into account in the decisionmaking process, such as social, economic, technical or national security interests. But NEPA does require that decisionmakers be informed of the environmental consequences of their decisions.

The NEPA process can also serve to meet other environmental review requirements. For instance, actions that require the NEPA process may have an impact on endangered species, historic properties, or low income communities. The NEPA analysis, which takes into account the potential impacts of the proposed action and investigates alternative actions, may also serve as a framework to meet other environmental review requirements, such as the Endangered Species Act, the National Historic Preservation Act, the Environmental Justice Executive Order, and other Federal, State, Tribal, and local laws and regulations.[9]

Who Oversees the NEPA Process?

There are three Federal agencies that have particular responsibilities for NEPA. Primary responsibility is vested in the Council on Environmental Quality (CEQ), established by Congress in NEPA. Congress placed CEQ in the Executive Office of the President and gave it many responsibilities, including the responsibility to ensure that Federal agencies meet their obligations under the Act. CEQ oversees implementation of NEPA, principally through issuance and interpretation of NEPA regulations that implement the procedural requirements of NEPA. CEQ also reviews and approves Federal agency NEPA procedures, approves of alternative arrangements for compliance with NEPA in the case of emergencies, and helps to resolve disputes between Federal agencies and with other governmental entities and members of the public.

[9] CEQ NEPA Regualtions, 40 C.F.R. § 1502.25.

In 1978, CEQ issued binding regulations directing agencies on the fundamental requirements necessary to fulfill their NEPA obligations.[10] The CEQ regulations set forth minimum requirements for agencies. The CEQ regulations also called for agencies to create their own implementing procedures that supplement the minimum requirements based on each agency's specific mandates, obligations, and missions.[11] These agency-specific NEPA procedures account for the slight differences in agencies' NEPA processes.

The Environmental Protection Agency's (EPA) Office of Federal Activities reviews environmental impact statements (EIS) and some environmental assessments (EA) issued by Federal agencies.[12] It provides its comments to the public by publishing summaries of them in the Federal Register, a daily publication that provides notice of Federal agency actions.[13] EPA's reviews are intended to assist Federal agencies in improving their NEPA analyses and decisions.[14]

Another government entity involved in NEPA is the U.S. Institute for Environmental Conflict Resolution, which was established by the Environmental Policy and Conflict Resolution Act of 1998 to assist in resolving conflict over environmental issues that involve Federal agencies.[15] While part of the Federal Government (it is located within the Morris K. Udall Foundation, a Federal agency located in Tucson, Arizona), it provides an independent, neutral, place for Federal agencies to work with citizens as well as State, local, and Tribal governments, private organizations, and businesses to reach common ground. The Institute provides dispute resolution alternatives to litigation and other adversarial approaches. The Institute is also charged with assisting the Federal Government in the implementation of the substantive policies set forth in Section 101 of NEPA.[16]

[10] CEQ NEPA Regulations, 40 C.F.R. parts 1500-1508, available at *www.nepa.gov*.

[11] CEQ NEPA Regualations, 40 C.F.R. § 1507.3.

[12] Clean Air Act, 42 U.S.C. § 7609.

[13] See Appendix B for information on the Federal Register.

[14] For additional infomation see *http://www.epa.gov/compliance/nepa/index.htm*.

[15] Environmental Policy and Conflict Resolution Act of 1998, 20 U.S.C. §§ 5601-5609.

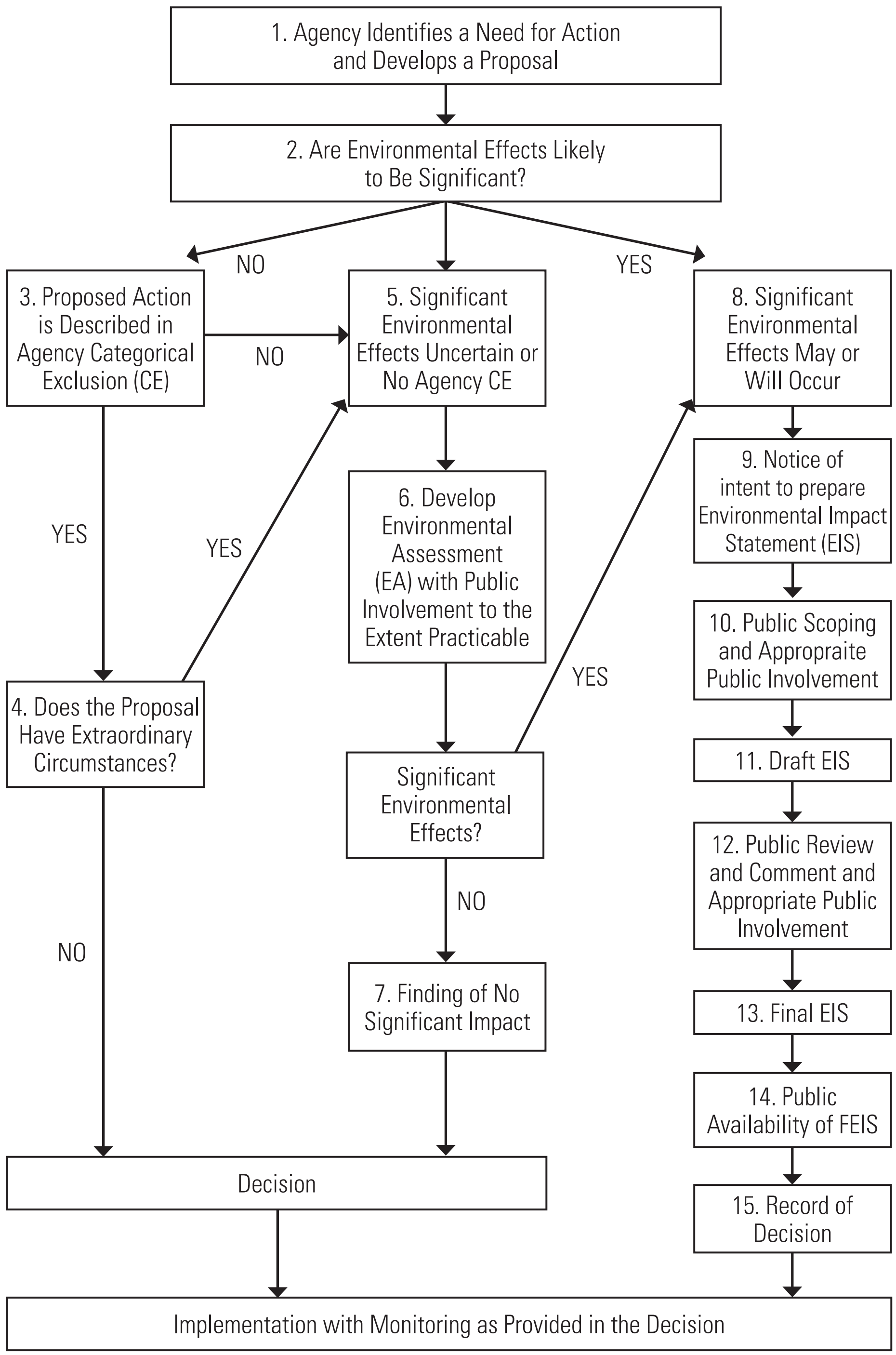
[16] For a discussion of the relationship between Section 101 of NEPA and conflict resolution, including specific case examples and recommendations for strengthening that relationship see the National Environmental Conflict Resolution Advisory Committee, "Final Report — Submitted to the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation," (April 2005), available at *http://www.ecr.gov* by clicking on "Resources" and "NEPA and ECR.".

Navigating the NEPA Process

Each year, thousands of Environmental Assessments (EAs) and hundreds of Environmental Impact Statements (EISs) are prepared by Federal agencies. These documents provide citizens and communities an opportunity to learn about and be involved in each of those environmental impact assessments that are part of the Federal agency decisionmaking process. It is important to understand that commenting on a proposal is not a "vote" on whether the proposed action should take place. Nonetheless, the information you provide during the EA and EIS process can influence the decisionmakers and their final decisions because NEPA does require that federal decisionmakers be informed of the environmental consequences of their decisions.

This guide will help you better navigate through the NEPA process and better understand the roles of the various other actors. While reading the guide, please refer to the following flowchart, "The NEPA Process," which details the steps of the NEPA process. For ease of reference, each step of the process is designated with a number which is highlighted in the text discussing that particular step. While agencies may differ slightly in how they comply with NEPA, understanding the basics will give you the information you need to work effectively with any agency's process.

The NEPA Process



**Significant new circumstances or information relevant to environmental concerns or substantial changes in the proposed action that are relevant to environmental concerns may necessitate preparation of a supplemental EIS following either the draft or final EIS or the Record of Decision (CEQ NEPA Regulations, 40 C.F.R. § 1502.9(c)).*

The NEPA process begins when an agency develops a proposal to address a need to take an action.

The need to take an action may be something the agency identifies itself, or it may be a need to make a decision on a proposal brought to it by someone outside of the agency, for example, an applicant for a permit. Based on the need, the agency develops a proposal for action (Number 1 in Figure 1). If it is the only Federal agency involved, that agency will automatically be the "lead agency," which means it has the primary responsibility for compliance with NEPA.

Some large or complex proposals involve multiple Federal agencies along with State, local, and Tribal agencies. If another Federal, State, local, or Tribal agency has a major role in the proposed action and also has NEPA responsibilities or responsibilities under a similar NEPA-like law[17], that agency may be a "joint lead agency." A "joint lead agency" shares the lead agency's responsibility for management of the NEPA process, including public involvement and the preparation of documents. Other Federal, State, Tribal, or local government agencies may have a decision or special expertise regarding a proposed action, but less of a role than the lead agency. In that case, such a Federal, State, Tribal, or local government agency may be a "cooperating agency."

A "cooperating agency" is an agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative). Thus, a "cooperating agency" typically will have some responsibilities for the analysis related to its jurisdiction or special expertise.

Once it has developed a proposed action, the agency will enter the initial analytical approach (Number 2 in Figure 1) to help it determine whether the agency will pursue the path of a Categorical Exclusion (CE), an Environmental Assessment (EA), or an Environmental Impact Statement (EIS).

[17] About a quarter of the states have such laws; for example, New York, Montana, Washington, and California all have such laws. New York City also has such a law. A list with references is available at *www.nepa.gov* by clicking on "State Information" or directly at *http://ceq.eh.doe.gov/nepa/states.html*.

Special Situations

- On rare occasions, Congress may exempt an action from NEPA.
- If the agency needs to take an action that would typically require preparation of an environmental impact statement in response to an emergency, and there is insufficient time to follow the regular NEPA process, then the agency can proceed immediately to mitigate harm to life, property, or important resources, and work with CEQ to develop alternative arrangements for compliance with NEPA (40 C.F.R. §1506.11).
- The NEPA analyses and document may involve classified information. If the entire action is classified, the agency will still comply with the analytical requirements of NEPA, but the information will not be released for public review. If only a portion of the information is classified, the agency will organize the classified material so that the unclassified portions can be made available for review (40 C.F.R. §1507.3(c)).

Implementing the NEPA Process

Categorical Exclusions (CEs) (Number 3 in Figure 1)

A CE is a category of actions that the agency has determined does not individually or cumulatively have a significant effect on the quality of the human environment.[18] Examples include issuing administrative personnel procedures, making minor facility renovations (such as installing energy efficient lighting), and reconstruction of hiking trails on public lands. Agencies develop a list of CEs specific to their operations when they develop or revise their NEPA implementing procedures in accordance with CEQ's NEPA regulations.

A CE is based on an agency's experience with a particular kind of action and its environmental effects. The agency may have studied the action in previous EAs, found no significant impact on the environment based on the analyses, and validated the lack of significant impacts after the implementation. If this is the type of action that will be repeated over time, the agency may decide to amend their implementing regulations to include the action as a CE. In these cases, the draft agency procedures are published in the *Federal Register*, and a public comment period is required. Participation in these comment periods is an important way to be involved in the development of a particular CE.

[18] CEQ NEPA Regulations, 40 C.F.R. § 1508.4.

If a proposed action is included in the description provided for a listed CE established by the agency, the agency must check to make sure that no extraordinary circumstances exist that may cause the proposed action to have a significant effect in a particular situation. Extraordinary circumstances typically include such matters as effects to endangered species, protected cultural sites, and wetlands (Number 4 in Figure 1). If there are no extraordinary circumstances indicating that the effects of the action may be significant, then the agency can proceed with the action.

If the proposed action is not included in the description provided in the CE establised by the agency, or there are extraordinary circumstances, the agency must prepare an EA or an EIS, or develop a new proposal that may quality for application of a CE. When the agency does not know or is uncertain whether significant impacts are expected, the agency should prepare an EA to determine if there are significant environmental effects.

Environmental Assessments (EA) (Number 5 in Figure 1)

The purpose of an EA is to determine the significance of the environmental effects and to look at alternative means to achieve the agency's objectives. The EA is intended to be a concise document that (1) briefly provides sufficient evidence and analysis for determining whether to prepare an EIS; (2) aids an agency's compliance with NEPA when no environmental impact statement is necessary; and (3) facilitates preparation of an Environmental Impact Statement when one is necessary.[19]

An EA should include brief discussions of:

- the need for the proposal,
- alternative courses of action for any proposal which involves unresolved conflicts concerning alternative uses of available resources,
- the environmental impacts of the proposed action and alternatives, and
- a listing of agencies and persons consulted.[20]

[19] CEQ NEPA Regulations, 40 C.F.R. § 1508.9.
[20] CEQ NEPA Regulations, 40 C.F.R. § 1508.9(b).

Because the EA serves to evaluate the significance of a proposal for agency actions, it should focus on the context and intensity of effects that may "significantly" affect the quality of the human environment.[21] Often the EA will identify ways in which the agency can revise the action to minimize environmental effects.

When preparing an EA, the agency has discretion as to the level of public involvement (Number 6 in Figure 1). The CEQ regulations state that the agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing EAs.[22] Sometimes agencies will choose to mirror the scoping and public comment periods that are found in the EIS process. In other situations, agencies make the EA and a draft FONSI available to interested members of the public.

Some agencies, such as the Army, require that interested parties be notified of the decision to prepare an EA, and the Army also makes the EA publicly available. Some agencies keep a notification list of parties interested in a particular kind of action or in all agency actions. Other agencies simply prepare the EA. Not all agencies systematically provide information about individual EAs, so it is important that you read the specific implementing procedures of the proposing agency or ask the local NEPA point of contact working on the project about the process and let the appropriate agency representative know if you are interested in being notified of all NEPA documents or NEPA processes related to a particular type of action.

The EA process concludes with either a Finding of No Significant Impact (FONSI) (Number 7 in Figure 1) or a determination to proceed to preparation of an EIS. A FONSI is a document that presents the reasons why the agency has concluded that there are no significant environmental impacts projected to occur upon implementation of the action.[23] The EA is either summarized in the FONSI or attached to it.

In two circumstances, the CEQ regulations require agencies to make the proposed FONSI available for public review for 30 days. Those situations are:

- ❖ if the type of proposed action hasn't been done before by the particular agency, or

[21] CEQ NEPA Regulations 40 C.F.R. § 1508.27.
[22] CEQ NEPA Regulations, 40 C.F.R. § 1501.4(e)(2).
[23] Government Printing Office Electronic Information Enhancement Act of 1993, 44 U.S.C. §§ 4101-4104.

❖ if the action is something that typically would require an EIS under the agency NEPA procedures.[24]

If this is the case, the FONSI is usually published in the *Federal Register*,[25] and the notice of availability of the FONSI will include information on how and where to provide your comments. If the requirement for a 30 day review is not triggered the FONSI often will not be published in the Federal Register. It may be posted on the agency's website, published in local newspapers or made available in some other manner. If you are interested in a particular action that is the subject of an EA, you should find out from the agency how it will make the FONSI available.

Environmental Impact Statements (EIS) (Number 8 in Figure 1)

A Federal agency must prepare an EIS if it is proposing a major federal action significantly affecting the quality of the human environment.[26] The regulatory requirements for an EIS are more detailed than the requirements for an EA or a categorical exclusion and are explained below.

Notice of Intent and Scoping (Numbers 9 and 10 in Figure 1)

The EIS process begins with publication of a Notice of Intent (NOI), stating the agency's intent to prepare an EIS for a particular proposal. (Number 9 in Figure 1). The NOI is published in the Federal Register, and provides some basic information on the proposed action in preparation for the scoping process (Number 10 in Figure 1).[27] The NOI provides a brief description of the proposed action and possible alternatives. It also describes the agency's proposed scoping process, including any meetings and how the public can get involved. The NOI will also contain an agency point of contact who can answer questions about the proposed action and the NEPA process.

The scoping process is the best time to identify issues, determine points of contact, establish project schedules, and provide recommendations to the agency. The overall goal is to define the scope of issues to be addressed in depth in the analyses that will be included in the EIS. Specifically, the scoping process will:

[24] 42 U.S.C. § 4332(C).

[25] Scoping is a NEPA term of art that describes one major public involvement aspect of the NEPA EIS process (CEQ NEPA Regulations, 40 C.F.R. § 1501.7).

[26] CEQ NEPA Regulations, 40 C.F.R. § 1501.7. More information on scoping can be found in CEQ's guidance on scoping at *www.nepa.gov*.

[27] Public hearings are run in a formal manner, with a recording or minutes taken of speakers' comments. Public meetings may be held in a variety of formats, and may be much more informal than hearings.

- ❖ Identify people or organizations who are interested in the proposed action;
- ❖ Identify the significant issues to be analyzed in the EIS;
- ❖ Identify and eliminate from detailed review those issues that will not be significant or those that have been adequately covered in prior environmental review;
- ❖ Determine the roles and responsibilities of lead and cooperating agencies;
- ❖ Identify any related EAs or EISs;
- ❖ Identify gaps in data and informational needs;
- ❖ Set time limits for the process and page limits for the EIS;
- ❖ Identify other environmental review and consultation requirements so they can be integrated with the EIS; and
- ❖ Indicate the relationship between the development of the environmental analysis and the agency's tentative decisionmaking schedule.[28]

As part of the process, agencies are required to identify and invite the participation of interested persons. The agency should choose whatever communications methods are best for effective involvement of communities, whether local, regional, or national, that are interested in the proposed action. Video conferencing, public meetings, conference calls, formal hearings, or informal workshops are among the legitimate ways to conduct scoping. It is in your interest to become involved as soon as the EIS process begins and to use the scoping opportunity to make thoughtful, rational presentations on impacts and alternatives. Some of the most constructive and beneficial interaction between the public and an agency occurs when citizens identify or develop reasonable alternatives that the agency can evaluate in the EIS.

[28] CEQ NEPA Regulations, 40 C.F.R. § 1501.7. More information on scoping can be found in CEQ's guidance on scoping at *www.nepa.gov* by clicking on "CEQ Guidance."

NEPA is About People and Places

Tent Rocks, Jemez Mountains.

Southern Regional NEPA Roundtable discussion on the NEPA Task Force report *Modernizing NEPA Implementation*

US District Courthouse, Sioux Falls, SD

From top left: Tent Rocks photo courtesy of Michael Dechter; Courthouse, Sioux Falls, South Dakota, photo courtesy of General Services Administration, *http://rmrpbs.gsa.gov/internet/PBSWeb.nsf/0/a704c21a7427f8d4872569b50079ac3d?OpenDocument*

Draft EIS (Number 11 in Figure 1)

The next major step in the EIS process that provides an opportunity for your input is when the agencies submit a draft EIS for public comment. The Environmental Protection Agency (EPA) publishes a Notice of Availability in the Federal Register informing you and other members of the public that the draft is available for comment (Number 12 in Figure 1). The EPA notices are also available at *http://www.epa.gov/compliance/nepa/eisdata.html*. Based on the communication plan established by the agency, websites, local papers, or other means of public notice may also be used. The comment period is at least 45 days long; however, it may be longer based on requirements spelled out in the agency specific NEPA procedures or at the agency's discretion. During this time, the agency may conduct public meetings or hearings as a way to solicit comments.[29] The agency will also request comments from other Federal, State, Tribal, and local agencies that may have jurisdiction or interest in the matter.

One key aspect of a draft EIS is the statement of the underlying purpose and need.[30] Agencies draft a "Purpose and Need" statement to describe what they are trying to achieve by proposing an action. The purpose and need statement explains to the reader why an agency action is necessary, and serves as the basis for identifying the reasonable alternatives that meet the purpose and need.

The identification and evaluation of alternative ways of meeting the purpose and need of the proposed action is the heart of the NEPA analysis. The lead agency or agencies must, "objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated."[31] Reasonable alternatives are those that substantially meet the agency's purpose and need. If the agency is considering an application for a permit or other federal approval, the agency must still consider all reasonable alternatives. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant. Agencies are obligated to evaluate all reasonable alternatives or a range ofreasonable alternatives in enough detail so that a reader can compare and contrast the environmental effects of the various alternatives.

[29] Public hearings are run in a formal manner, with a recording or minutes taken of speakers' comments. Public meetings may be held in a variety of formats, and may be much more informal than hearings.

[30] CEQ NEPA Regulations, 40 C.F.R. § 1502.13.

[31] CEQ NEPA Regulations, 40 C.F.R. § 1502.14.

Agencies must always describe and analyze a "no action alternative." The "no action" alternative is simply what would happen if the agency did not act upon the proposal for agency action. For example, in the case of an application to the U.S. Army Corps of Engineers for a permit to place fill in a particular area, the "no action" alternative is no permit. But in the case of a proposed new management plan for the National Park Service's management of a national park, the "no action" alternative is the continuation of the current management plan.

If an agency has a preferred alternative when it publishes a draft EIS, the draft must identify which alternative the agency prefers. All agencies must identify a preferred alternative in the final EIS, unless another law prohibits it from doing so.[32]

The agency must analyze the full range of direct, indirect, and cumulative effects of the preferred alternative, if any, and of the reasonable alternatives identified in the draft EIS. For purposes of NEPA, "effects" and "impacts" mean the same thing. They include ecological, aesthetic, historic, cultural, economic, social, or health impacts, whether adverse or beneficial.[33] It is important to note that human beings are part of the environment (indeed, that's why Congress used the phrase "human environment" in NEPA), so when an EIS is prepared and economic or social and natural or physical environmental effects are interrelated, the EIS should discuss all of these effects.[34]

CEQ NEPA Regulation Section 1508.8
[40 C.F.R. § 1508.8.]

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect 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.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

[32] CEQ NEPA Regulations, 40 C.F.R. § 1502.14(e).
[33] CEQ NEPA Regulations, 40 C.F.R. §§ 1508.7, 1508.8.
[34] CEQ NEPA Regulations, 40 C.F.R. § 1508.14.

In addition to the purpose and need, identification of reasonable alternatives, and the environmental effects of the alternatives, the draft EIS will contain a description of the environment that would be affected by the various alternatives.

The EIS will also have a list of who prepared the document and their qualifications,[35] a table of contents, and an index.[36] The agency may choose to include technical information in appendices that are either circulated with the draft or readily available for review.[37]

Final EIS (Number 13 in Figure 1)

When the public comment period is finished, the agency analyzes comments, conducts further analysis as necessary, and prepares the final EIS. In the final EIS, the agency must respond to the substantive comments received from other government agencies and from you and other members of the public.[38] The response can be in the form of changes in the final EIS, factual corrections, modifications to the analyses or the alternatives, new alternatives considered, or an explanation of why a comment does not require the agency's response.[39] Often the agency will meet with other agencies that may be affected by the proposed action in an effort to resolve an issue or mitigate project effects. A copy or a summary of your substantive comments and the response to them will be included in the final EIS.[40]

When it is ready, the agency will publish the final EIS and EPA will publish a Notice of Availability in the Federal Register. The Notice of Availability marks the start of a waiting period (Number 14 in Figure 1). A minimum of 30 days must pass before the agency can make a decision on their proposed action unless the agency couples the 30 days with a formal internal appeals process.[41] This provides time for the agency decisionmaker to consider the purpose and need, weigh the alternatives, balance their objectives, and make a decision.

There is an additional (but rarely used) procedure worth noting: pre-decision referrals to CEQ.[42] This referral process takes place when

[35] CEQ NEPA Regulations, 40 C.F.R. § 1502.17.
[36] CEQ NEPA Regulations, 40 C.F.R. § 1502.10.
[37] CEQ NEPA Regulations, 40 C.F.R. § 1502.18.
[38] CEQ NEPA Regulations, 40 C.F.R. § 1503.4.
[39] CEQ NEPA Regulations, 40 C.F.R. § 1503.4(a).
[40] CEQ NEPA Regulations, 40 C.F.R. § 1503.4(b).
[41] CEQ NEPA Regulations, 40 C.F.R. § 1506.10. If the end of the 30 day wait period is less than 90 days after the notice of availability of the Draft EIS, was published in the Federal Register, then the decision must await the expiration of the 90 days.
[42] CEQ NEPA Regulations, 40 C.F.R. part 1504.

EPA or another Federal agency determines that proceeding with the proposed action is environmentally unacceptable. If an agency reaches that conclusion, the agency can refer the issue to CEQ within 25 days after the Notice of Availability for the final EIS is issued. CEQ then works to resolve the issue with the agencies concerned. CEQ might also refer the agencies to the U.S. Institute for Environmental Conflict Resolution to try to address the matter before formal elevation.[43] There is no provision for citizens to formally refer an action to CEQ; however, CEQ typically provides an opportunity for public involvement in a referral.

Record of Decision (ROD) (Number 15 in Figure 1)

The ROD is the final step for agencies in the EIS process. The ROD is a document that states what the decision is; identifies the alternatives considered, including the environmentally preferred alternative; and discusses mitigation plans, including any enforcement and monitoring commitments.[44] In the ROD, the agency discusses all the factors, including any considerations of national policy, that were contemplated when it reached its decision on whether to, and if so how to, proceed with the proposed action. The ROD will also discuss if all practical means to avoid or minimize environmental harm have been adopted, and if not, why they were not.[45] The ROD is a publicly available document. Sometimes RODs are published in the Federal Register or on the agency's website, but if you are interested in receiving the ROD you should ask the agency's point of contact for the EIS how to obtain a copy of the ROD.

[43] The U.S. Institute reports disputes it is involved with to CEQ and requests concurrence from CEQ to engage in those disputes involving two or more federal agencies.
[44] CEQ NEPA Regulations, 40 C.F.R. § 1505.2.
[45] CEQ NEPA Regulations, 40 C.F.R. § 1505.2(c).

Environmental Management Systems (EMS)

Executive Order (EO 13423) and a subsequent memorandum issued from the Office of Management and Budget and CEQ direct all agencies to adopt an Environmental Management System (EMS). "An EMS is a systematic approach to identifying and managing an organization's environmental obligations and issues that can complement many aspects of the NEPA review process." (Boling, E.A. 2005. Environmental Management Systems and NEPA: A Framework for Productive Harmony. The Environmental Law Reporter. 35 ELR 10022. Environmental Law Institute). EMSs are typically used by organizations and agencies to set up the procedures that will help them comply with the specific requirements of environmental laws and regulations, such as air and water permits. EMSs can be particularly useful in NEPA in the context of post-decision monitoring and mitigation. Using the procedures provided by an EMS, agencies can better ensure they are proper implementation of mitigation measures and provide a mechanism for monitoring the actual effects of the mitigation. (CEQ, Aligning National Environmental Policy Act Processes with Environmental Management Systems — A Guide for NEPA and EMS Practitioners (April 2007) available at *www.nepa.gov* by clicking on "Aligning NEPA Processes with Environmental Mangement Systems."

Supplemental EIS (Asterisk in Figure 1)

Sometimes a Federal agency is obligated to prepare a supplement to an existing EIS. An agency must prepare a supplement to either a draft or final EIS if it makes substantial changes in the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. An agency may also prepare a supplemental EIS if it determines that doing so will further the purposes of NEPA.[46] A supplemental EIS is prepared in the same way as a draft or final EIS, except that scoping is not required. If a supplement is prepared following a draft EIS, the final EIS will address both the draft EIS and supplemental EIS.

[46] CEQ NEPA Regulations, 40 C.F.R. § 1502.9(c).

EPA's Review

EPA plays a critical role in other agencies' NEPA processes. EPA is required to review and provide comments on the adequacy of the analysis and the impact to the environment.[47] EPA uses a rating system that summarizes its recommendations to the lead agency (see Appendix C). If EPA determines that the action is environmentally unsatisfactory, it is required by law to refer the matter to CEQ.

The Office of Federal Activities in EPA is the official recipient of all EISs prepared by Federal agencies, and publishes the notices of availability in the Federal Register for all draft, final, and supplemental EISs. The publication of these notices start the official clock for public review and comment periods and wait periods.[48] In addition to the Federal Register, the notices and summaries of the EPA comments are available at *http://www.epa.gov/compliance/nepa/eisdata.html*.

When and How to Get Involved

It Depends on the Agency

To determine the specific steps in the process where public involvement will be the most effective, it is very important to review the agency's NEPA implementing procedures. As previously mentioned, NEPA processes differ among agencies. For example, the Federal Highway Administration provides a 30 day comment period (with or without a public meeting) on all EAs that they develop before a FONSI is issued while some other agencies have no required comment periods for EAs.[49]

In addition, new legislation can change the way NEPA is implemented in agencies. For example, after the passage of the "Safe, Accountable, Flexible, Efficient Transportation Equity Act", which is transportation legislation that Congress passed in August 2005, the Department of Transportation updated its NEPA processes to implement the new transportation legislation. The Federal Highway Administration and Federal Transit Administration have kept websites up to date and are tracking the evolving guidance at *http://www.environment.fhwa.dot.gov/strmlng/index.asp* by clicking on "SAFETEA-LU."

[47] Clean Air Act, 42 U.S.C. § 7609.
[48] CEQ NEPA Regulations, 40 C.F.R. § 1506.10.
[49] Federal Highway Administration NEPA Regulations, 23 C.F.R. § 771.119 (2005).

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59

Congress included some modifications to the regular NEPA process for proposed actions that require preparation of EISs in SAFETEA-LU. For example, SAFETEA-LU requires the lead agency to provide an opportunity as early as practicable during the environmental review process for the public to weigh in on both defining the purpose and need for a proposal and determining the range of alternatives to be considered. Congress provided for a process whereby some states could assume responsibilities for all environmental compliance, including NEPA. Congress also established a 180 day statute of limitations for lawsuits challenging agency approvals of projects.

If you are involved or anticipate becoming involved in the NEPA process for a proposed highway or federal mass transit proposal, you should become familiar with the specific requirements of SAFETEA-LU for the NEPA process. One good way to do this is check information on the Federal Highway Administration's website at *www.fhwa.dot.gov/safetealu*. By clicking on "Cross Reference" you will find both the requirements of the law and FHWA regulations and implementing guidance.

You should also be aware that in the context of highway planning, much work is done at a pre-NEPA stage through statewide, municipal, and rural planning processes. These processes often set the stage for the NEPA process and you should be aware of your opportunities to get involved at that earlier stage. You can learn more about these processes by going to the Federal Highway Administration's website listed above, or by obtaining a copy of "A Citizen's Guide to Transportation Decisionmaking", available at *www.fhwa.dot.gov/planning/citizen/index.htm* or by writing to the Federal Highway Administration at 1200 New Jersey Avenue, S.E., HEPP-20, Washington, D.C. 20590, Attention: Transportation Planning Capacity Building Team; or calling 202 366-0106. Another publication that may be of assistance is "The Metropolitan Transportation Planning Process: Key Issues. A Briefing Notebook for Transportation Decisionmakers, Officials, and Staff." That publication is being updated to reflect the changes in the SAFETEA-LU law, and should be available through the same website and addresses above.

Be Informed of Actions

Sometimes citizens are generally interested in actions taking place in a particular area (for example, in your community or in an ecosystem or a facility that affects you). If this is the case, you can inform the appropriate agency or agencies that you would like to be notified of any proposed action or any environmental impact analysis that might be prepared in that area. In addition, many agencies now have websites where they post notices for actions they are proposing.

Active Involvement

Being active in the NEPA process requires you to dedicate your resources to the effort. Environmental impact analyses can be technical and lengthy. Active involvement in the NEPA process requires a commitment of time and a willingness to share information with the decisionmaking agency and other citizens. You may participate as an individual, get involved by working with other interested individuals or organizations, or by working through your local, Tribal, or State government. For example, if an agency is taking an action for which your local, State or Tribal government has special expertise or approval authority, the appropriate State, local or Tribal agency can become a "cooperating agency" with the Federal agency.[50] This formal status does not increase their role in decisionmaking, but it does allow the governments to use their knowledge and authorities to help shape the federal decisionmaking.

Another way to participate is to check with local experts such as biologists or economists at a university to assist with your review of the NEPA analyses and documents. You can also form study groups to review environmental impact analyses and enlist experts to review your comments on the documents. There are many examples, such as the one in the following box, of situations where citizen groups have worked with agencies to develop an alternative to a proposal where the agency adopted that alternative.

[50] CEQ NEPA Regulations, 40 C.F.R. §§ 1501.6, 1508.5.

Forest Service Herbicide Use in the Pacific Northwest

In many cases, cooperation isn't the first experience that communities and agencies share with one another. In the case of aerial herbicide spraying by the Forest Service in the 1980's across Washington and Oregon, litigation gave way to collaboration that yielded a better decision for all parties.

At issue was the use of 2,4-D, a herbicide comprising half of the well known Agent Orange, which was being sprayed on large tracts of clear-cut forest in an effort to suppress competition with the replanted conifers from all other plants, including native trees and grasses. In 1984, as a result of a citizen lawsuit, a federal judge ordered the Forest Service to stop herbicide use until the agency addressed the problems associated with its use. The Forest Service decided to draft a new EIS for vegetation management and thereby opened the door for public involvement in their decision.

A coalition of tree planters, scientists, rural residents, and herbicide reform activists volunteered to work with the Forest Service to develop an alternative that didn't rely on herbicides for vegetation management. The group identified several simple alternatives such as planting two-year old trees rather than planting seedlings, because the trees are better able to deal with encroachment. Likewise, letting native red alders grow will actually benefit new conifer growth because the alders fix nitrogen in the soils. Much to the coalition's surprise the forest supervisor selected most of the "least-herbicide" approaches for implementation.

Through NEPA, citizens were able to educate and assist the decision-makers in developing their alternatives. Central to their approach was bringing to the table alternatives that met their goals of reducing herbicide use and the goals of the decision-maker to effectively manage vegetation.

Information taken from "Standing Up for This World" by Mary O'Brien in September/October 2004 issue of *Orion*, pages 56-64.

Your involvement in the NEPA process does not have to be confined to commenting on the analysis. If the agency adopts monitoring and mitigation in the ROD, upon request, it must make available to the public the results of relevant monitoring.[51] It must also, upon request,

[51] CEQ NEPA Regulations, 40 C.F.R. §1505.3(d).

inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.[52] Community groups can also be involved in monitoring.[53]

In summary, there are several opportunities to get involved in the NEPA process:

- ❖ when the agency prepares its NEPA procedures,
- ❖ prior to and during preparation of a NEPA analysis,
- ❖ when a NEPA document is published for public review and comment, and
- ❖ when monitoring the implementation of the proposed action and the effectiveness of any associated mitigation.

Other Processes that Require Public Involvement

When a proposed action is part of a permitting process there may also be opportunities to comment provided in the statute or regulations for that permitting process in addition to the NEPA public involvement opportunities discussed above. For example, public involvement is required by most Federal agency land use planning regulations. While this guide does not explore all of those additional possibilities for comment, the NEPA team working on a particular proposal will be familiar with the various comment periods and will be able to inform you of those opportunities. Note that the permitting and NEPA processes should be integrated or run concurrently in order to have an effective and efficient decisionmaking process.

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[52] CEQ NEPA Regulations, 40 C.F.R. §1505.3(c).

[53] See *www.malpaiborderlandsgroup.org/science.asp* for discussion of work undertaken by the Science Advisory Committee of the Malpai Borderlands Group in southeastern Arizona and southwestern New Mexico.

Public Comment Periods

Agencies are required to make efforts to provide meaningful public involvement in their NEPA processes.[54] Citizens involved in the process should ensure that they know how agencies will inform the public that an action is proposed and the NEPA process is beginning (via Federal Register, newspapers, direct mailing, etc.); that certain documents are available; and that preliminary determinations have been made on the possible environmental effects of the proposal (e.g., what level of analysis the agency will initially undertake).

Agencies solicit different levels of involvement when they prepare an EA versus an EIS. In preparing an EIS, agencies are likely to have public meetings and are required to have a 45 day comment period after the draft EIS is made available. In the case of an agency preparing an EA, the CEQ regulations require the agency to involve the public to the extent practicable, but each agency has its own guidelines about how to involve the public for EAs. In any case, citizens are entitled to receive "environmental documents", such as EAs, involved in the NEPA process.[55]

In terms of a specific agency, required public comment periods associated with an EA or an EIS can be found in its NEPA implementing procedures. In some cases, the draft EIS that an agency prepares may be extremely long. In such cases, an agency may grant, requests to extend the comment period to ensure enough time for the public and other agencies to review and comment.

Citizens who want to raise issues with the agency should do so at the earliest possible stage in the process. Agencies are much more likely to evaluate a new alternative or address a concern if it is raised in a timely manner. And the Supreme Court has held in two NEPA cases that if a person or organization expects courts to address an issue, such as evaluating a particular alternative, the issue must have been raised to the agency at a point in the administrative process when it can be meaningfully considered unless the issue involves a flaw in the agency's analysis that is so obvious that there is no need for a commentator to point it out specifically.

[54] CEQ NEPA Regulations, 40 C.F.R. §§ 1501.4(b), 1506.6(b).
[55] CEQ NEPA Regulations, 40 C.F.R. §§ 1506.6, 1508.10.

How to Comment

Comments may be the most important contribution from citizens. Accordingly, comments should be clear, concise, and relevant to the analysis of the proposed action. Take the time to organize thoughts and edit the document submitted.[56] As a general rule, the tone of the comments should be polite and respectful. Those reviewing comments are public servants tasked with a job, and they deserve the same respect and professional treatment that you and other citizens expect in return. Comments that are solution oriented and provide specific examples will be more effective than those that simply oppose the proposed project. Comments that contribute to developing alternatives that address the purpose and need for the action are also effective. They are particularly helpful early in the NEPA process and should be made, if at all possible, during scoping, to ensure that reasonable alternatives can be analyzed and considered early in the process.

In drafting comments, try to focus on the purpose and need of the proposed action, the proposed alternatives, the assessment of the environmental impacts of those alternatives, and the proposed mitigation. It also helps to be aware of what other types of issues the decisionmaker is considering in relationship to the proposed action.

Commenting is not a form of "voting" on an alternative. The number of negative comments an agency receives does not prevent an action from moving forward. Numerous comments that repeat the same basic message of support or opposition will typically be responded to collectively. In addition, general comments that state an action will have "significant environmental effects" will not help an agency make a better decision unless the relevant causes and environmental effects are explained.

Finally, remember that decisionmakers also receive other information and data such as operational and technical information related to implementing an action that they will have to consider when making a final decision.

[56] There are many reference books for how to research issues, review documents, and write comments. One in particular is "The Art of Commenting" by Elizabeth Mullin from the Environmental Law Institute (Mullin, Elizabeth D. 2000. t The Art of Commenting: How to Influence Environmental Decisionmaking with Effective Comments, Environmental Law Institute. Washington, DC). Another useful reference for those involved in commenting on transportation projects is the American Association of State Highway and Transportation Official's (AASHTO) Practitioner's Handbook 05-Utilizing Community Advisory Committees for NEPA Studies, December, 2006, available at *http://environment.transportation.org* or available through AASHTO's Center for Environmental Excellence by calling (202) 624-3635.

What If Involvement Isn't Going Well?

For the purposes of this discussion, "not going well" means that you or your organization believes that the lead agency isn't giving the public sufficient opportunity to get involved or isn't using that involvement effectively. Perhaps you think that the agency should hold a public meeting, and it refuses to do so. Or you or your community or group has developed an alternative that you think meets the purpose and need of the proposed action and reflects the policies set forth in NEPA, but the agency says it won't analyze it in the NEPA document. Maybe you want an extension of the comment period because the document is very lengthy, and you simply need more time to review it. Or maybe you feel that communications between your organization and the lead agency have, for some reason, not been constructive.

The most appropriate steps to take if you find yourself in these kinds of situations always depend, of course, on the particular people, timing and proposal at hand. Nonetheless, here are some possible factors and courses of action to consider.

Don't Wait Too Long

First, don't wait too long to raise your concerns; raise them as soon as practicable. If you just sit back and hope that things will get "better" or that your comments will have greater effect later, you may hear that "you should have raised this sooner." At times, waiting can be detrimental to you as well as to the rest of the public and the agency involved. For example, if you feel strongly that a particular alternative should be addressed and do not raise it during the scoping process, then it will not get the benefit of comparative analysis with the other alternatives. In addition, it could result in a more expensive and lengthy process (costing taxpayers, including yourself, more) if your delayed suggestion results in the agency deciding to issue a supplemental EIS analyzing that alternative. Or if you, or your organization, later go to court to argue that a certain alternative should have been analyzed in the NEPA document, the judge may find that the court won't consider that information because you should have raised your concern earlier during the NEPA process.

Contact the Agency

Your first line of recourse should be with the individual that the agency has identified as being in charge of this particular process.

See if you can sit down with him or her to discuss your concern(s). You may be pleasantly surprised at the response.

Other Assistance

If, for some reason, you believe that the process ahead may be particularly contentious or challenging, given a past history of community conflict or deeply divided interests, consider raising with the lead agency the possibility of designing a collaborative process with outside assistance.

One source of such assistance is the U.S. Institute for Environmental Conflict Resolution. Located in Tucson, Arizona, as part of the Morris K. Udall Foundation, the Institute is a Federal entity that offers neutral environmental conflict resolution design, facilitation, education, training, and mediation. Anyone, whether in or out of government, can call the Institute and ask to speak to a professional staff person to discuss the potential for the Institute's involvement in a proposed federal action. You might want to look at its website at www.ecr.gov or contact the Institute to get a better sense of who they are and what they do.[57] There may also be an environmental conflict resolution office in your state that can provide assistance, and there are also many other individuals and organizations in the private sector that provide various types of conflict resolution services. The U.S. Institute also maintains a publicly accessible roster of environmental mediators and facilitators (available at *www.ecr.gov* by clicking on "Resources").

NEPA's Requirements

Perhaps your concern involves understanding a legal requirement. There are, of course, many ways to obtain the advice of lawyers knowledgeable about the NEPA process: the lead agency, private attorneys, and public interest attorneys. Build your own understanding by reading information on the NEPA net website at *http://www.NEPA.gov*. You may also call the General Counsel's office or the Associate Director for NEPA Oversight at the Council on Environmental Quality for assistance in interpreting NEPA's legal requirements or for advice and assistance if you have tried to work with the lead agency but feel those efforts have been unsuccessful (see Appendix D for contact information).

[57] The Institute can be contacted via mailing address: U.S. Institute for Environmental Conflict Resolution, 130 S. Scott Ave. Tucson, AZ 85701; phone: (520) 901-8501; or electronic mail: usiecr@ecr.gov. You might also be interested in reviewing the April 2005 report of the National Environmental Conflict Resolution Advisory Committee that discusses the linkages between NEPA's policies and environmental conflict resolution and is available at *http://www.ecr.gov* by clicking on "Resources" and "NEPA and ECR".

Remedies Available

Finally, of course, there are both administrative and judicial remedies available. A few Federal agencies, such as the Bureau of Land Management and the Forest Service, have an administrative appeals process. Each process is specific to that agency. If an appeal is available, you may find it beneficial to invoke it to try to resolve your concerns with the agency's decisions without the need for a legal challenge. Moreover, a statute or agency regulation may require you to exhaust such an appeal procedure before seeking judicial review. Citizens who believe that a Federal agency's actions violate NEPA may seek judicial review (after any required administrative appeals) in Federal court under the Administration Procedures Act. If you are represented by a lawyer, you should consult with him or her about appropriate options and about communicating with the Federal agencies.

Final Thoughts

This guide was developed to explain the National Environmental Policy Act (NEPA), how it is implemented, and how people outside the Federal government — individual citizens, private sector applicants, members of organized groups, or representatives of Tribal, State, or local government agencies — can better participate in the assessment of environmental impacts conducted by Federal agencies. To learn more about CEQ and NEPA, visit our web sites at *http://www.whitehouse.gov/ceq* and *http://www.nepa.gov* or contact the CEQ Associate Director for NEPA Oversight at (202) 395-5750. Your thoughts and comments on improving this Guide for future editions are always welcome and can be addressed to:

CEQ NEPA Citizens Guide
722 Jackson Place, NW
Washington, DC 20503

Appendix A

NEPAnet and How to Use It

NEPAnet
http://www.NEPA.gov

NEPAnet is the Council on Environmental Quality's NEPA website which is supported by the Department of Energy. It contains a wealth of information related to NEPA as it has developed over the years in agencies and through the courts. Guidance as well as studies and reports from CEQ can be accessed from the site; and information on NEPA training can also be found.

Under the "National Environmental Policy Act (NEPA)" section there are several useful links including:

- ❖ The NEPA Statute
- ❖ Executive Orders
- ❖ CEQ Regulations for Implementing NEPA
- ❖ Individual Federal Agency Procedures for Implementing NEPA*
- ❖ CEQ Guidance; topics include:
  - — Environmental Conflict Resolution
  - — Emergency Actions
  - — Cumulative Effects Analysis
  - — Cooperating Agencies

** The agency implementing procedures can be accessed here and are mentioned throughout the Citizen's Guide as an important part of the process.*

- — Purpose and Need
- — Forest Health Projects
- — Environmental Justice
- — Transboundary Impacts
- — Pollution Prevention
- — Scoping
- — Forty Most Asked Questions Concerning CEQ's NEPA Regulations
- — Wetlands
- — Prime Agricultural Land
- — Wild and Scenic Rivers

❖ Federal Agency NEPA Web Sites

❖ Federal NEPA Contacts

❖ State Information

❖ Tribal Information

The other sections provide information about:

❖ CEQ NEPA Studies

❖ CEQ NEPA Reports

❖ Environmental Impact Statements

❖ Environmental Impact Analysis

❖ Environmental Impact Assessment Professional Organizations

❖ International Environmental Impact Assessments

❖ NEPA Litigation

❖ NEPA Case law

❖ NEPA Training Information

Appendix B

The Federal Register and How to Use It

http://www.gpoaccess.gov/fr/index.html

The Federal Register is the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents. It is updated daily by 6 a.m. and is published Monday through Friday, except Federal holidays.

This is where you'll find notices from Federal agencies regarding their NEPA actions. Information on the availability of documents, schedule of meetings, and notices of intent to prepare EISs are also published in the Federal Register. In addition, EPA publishes a list of EISs that they have received from agencies each week, and a summary of ratings on EISs that they have reviewed.

The easiest way to pull up notices is to have as much information as possible. Key words such as the name of the agency, location of the action, date or date ranges of the publication are all helpful in the search.

Appendix C

EPA's EIS Rating System

EPA's Environmental Impact Statement Rating System Criteria
http://www.epa.gov/compliance/nepa/comments/ratings.html

This website includes information about EISs that have been filed with EPA, EISs that are available for public comment, and information about EPA's review and rating of individual EISs.

EPA has developed a set of criteria for rating draft EISs. The rating system provides a basis upon which EPA makes recommendations to the lead agency for improving the draft EIS.

- ❖ Rating the Environmental Impact of the Action
- ❖ Rating the Adequacy of the Draft Environmental Impact Statement (EIS)

Rating The Environmental Impact of The Action

- ❖ **LO (Lack of Objections):** The review has not identified any potential environmental impacts requiring substantive changes to the preferred alternative. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposed action.
- ❖ **EC (Environmental Concerns)**: The review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact.

- **EO (Environmental Objections)**: The review has identified significant environmental impacts that should be avoided in order to adequately protect the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). The basis for environmental Objections can include situations:

  1. Where an action might violate or be inconsistent with achievement or maintenance of a national environmental standard;
  2. Where the Federal agency violates its own substantive environmental requirements that relate to EPA's areas of jurisdiction or expertise;
  3. Where there is a violation of an EPA policy declaration;
  4. Where there are no applicable standards or where applicable standards will not be violated but there is potential for significant environmental degradation that could be corrected by project modification or other feasible alternatives; or
  5. Where proceeding with the proposed action would set a precedent for future actions that collectively could result in significant environmental impacts.

- **EU (Environmentally Unsatisfactory):** The review has identified adverse environmental impacts that are of sufficient magnitude that EPA believes the proposed action must not proceed as proposed. The basis for an environmentally unsatisfactory determination consists of identification of environmentally objectionable impacts as defined above and one or more of the following conditions:

  1. The potential violation of or inconsistency with a national environmental standard is substantive and/or will occur on a long-term basis;
  2. There are no applicable standards but the severity, duration, or geographical scope of the impacts associated with the proposed action warrant special attention; or

3. The potential environmental impacts resulting from the proposed action are of national importance because of the threat to national environmental resources or to environmental policies.

Rating The Adequacy of The Draft Environmental Impact Statement (EIS)

- **1 (Adequate):** The draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.
- **2 (Insufficient Information):** The draft EIS does not contain sufficient information to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the proposal. The identified additional information, data, analyses, or discussion should be included in the final EIS.
- **3 (Inadequate):** The draft EIS does not adequately assess the potentially significant environmental impacts of the proposal, or the reviewer has identified new, reasonably available, alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. The identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. This rating indicates EPA's belief that the draft EIS does not meet the purposes of NEPA and/or the Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS.

Appendix D

Agency NEPA Contacts

http://www.NEPA.gov
http://ceq.eh.doe.gov/nepa/contacts.cfm

The list of Federal NEPA Contacts is maintained on NEPAnet (*http://www.NEPA.gov*) under the heading "National Environmental Policy Act (NEPA)" and is periodically updated.

The complete list is available via the link entitled "Federal NEPA Contacts" or available directly at *http://ceq.eh.doe.gov/nepa/contacts.cfm*. If you do not have computer access, call CEQ at (202) 395-5750 for assistance.

The CEQ NEPA Contacts are:

Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503
Phone: 202-395-5750
Fax: 202-456-6546

Mr. Horst Greczmiel, Associate Director for NEPA Oversight
Ms. Dinah Bear, General Counsel
Mr. Edward (Ted) Boling, Deputy General Counsel

Appendix E

Some Useful Definitions from the
Council on Environmental Quality
NEPA Implementing Regulations

Excerpts from 40 CFR part 1508
http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm

Section 1508.4 Categorical exclusion.

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in Sec. 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

Section 1508.5 Cooperating agency.

"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in Sec. 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

Section 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Section 1508.8 Effects.

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect 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.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Section 1508.9 Environmental assessment.

"Environmental assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

1. Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
2. Aid an agency's compliance with the Act when no environmental impact statement is necessary.
3. Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

Section 1508.11 Environmental impact statement.

"Environmental impact statement" means a detailed written statement as required by section 102(2)(C) of the Act.

Section 1508.12 Federal agency.

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian Tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

Section 1508.13 Finding of no significant impact.

"Finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

Section 1508.14 Human environment.

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (Sec. 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

Section 1508.16 Lead agency.

"Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

Section 1508.18 Major federal action.

"Major federal action" includes actions with effects that may be major and which are potentially subject to federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Sec. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (Secs. 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

1. Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.
2. Adoption of formal plans, such as official documents prepared or approved by Federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.

3. Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.
4. Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Section 1508.20 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 affected 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.

Section 1508.22 Notice of intent.

"Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

Section 1508.23 Proposal.

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

Section 1508.25 Scope.

"Scope" consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs.1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequencies together, such as common timing or geography. An agency may

wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

(1) No action alternative.

(2) Other reasonable courses of actions.

(3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

Section 1508.27 Significantly.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park

lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Section 1508.28 Tiering.

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

> (a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.
>
> (b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). 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.

EXHIBIT 403

2009
California Environmental Quality Act (CEQA)
Statute and Guidelines

This book is an unofficial copy of CEQA (Public Resources Code 21000-21177) and the CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000-15387) available from http://leginfo.ca.gov and http://ceres.ca.gov/ceqa/index.html as of January 1, 2009. While AEP has made every effort to see that this book is accurate, and that no changes have been made to the content of these state documents as a result of reformatting and reprinting, readers should reference official state versions to verify accuracy. Readers should also be aware that some changes in statutes, guidelines, or case law may have gone into effect since the date of publication. This book does not attempt to offer legal advice and readers should consult their own attorney.

AEP

40747 Baranda Court
Palm Desert, CA 92260
(760) 799-2740

www.califaep.org

Contents

Overview of the Association of Environmental Professionals

AEP is a non-profit organization of professionals working to improve their skills as environmental and resource managers. Since its formation in 1974, AEP has grown to over 1,775 members including: planners, environmental scientists, biologists, lawyers, noise specialists, transportation planners, paralegals, archeologists, geologists, engineers, visual analysts, and other professionals in numerous disciplines. There are nine local AEP chapters that cover the following regions:

- Channel Counties
- Inland Empire
- Los Angeles County
- Monterey Bay Area
- Orange County
- San Diego
- San Francisco Bay
- Superior California
- Central

AEP is dedicated to the enhancement, maintenance and protection of the natural and human environment, as well as the continued improvement of the environmental profession and its members.

AEP'S MISSION IS TO:

- Enhance, maintain and protect the quality of the natural and human environment.
- Encourage and carry out research and education, including regular meetings for the benefit of AEP members, the public and concerned professionals in all fields related to environmental planning and analysis.
- Improve public awareness and involvement in the environmental planning, analysis and review process.
- Improve communication and advance the state of the art among people who deal with the environmental planning, analysis and evaluation.

NAEP AFFILIATION

California AEP is affiliated with the National Association of Environmental Professionals and serves as the California Chapter for NAEP. California AEP members are not obligated to join NAEP but may do so to receive the additional benefits of NAEP. California AEP's affiliation with NAEP provides additional benefits to members of both organizations by fostering networking and educational opportunities between the two organizations. For additional information about NAEP, please visit www.naep.org.

AEP MEMBERSHIP CATEGORIES

Full (Individual) Membership

The $140.00 annual membership dues includes all of the many services, benefits and discounts of membership. Depending on your location, you will become a member of the local chapter nearest you and will start to receive the newsletter for that Chapter, which will list AEP activities in your area. The AEP State Board also provides outlying area support through the Directors at Large, to keep members in touch with items of interest and to facilitate establishment of new Chapters.

Sponsor Membership

For annual dues of $220.00, Government or Corporate Sponsors are provided one Full Membership which can "float" within the sponsor company, special recognition at the annual State Conference, a 10 percent discount on advertising, and a highlighted listing in AEP's statewide magazine the *Environmental Monitor*. Each Chapter may provide additional recognition for Sponsor Members. The floating membership entitles one individual from the sponsor company to attend local chapter activities, regional workshops and the State Conference at the discounted member rate. NOTE: The company takes responsibility to notify the appropriate AEP officer regarding which employee will attend a given AEP activity on behalf of the company.

Student Membership

The $20.00 annual dues includes all of the individual membership services and eligibility for the annual AEP Student Awards Program. Student members must be currently enrolled in 12 units or more at an accredited school. The State Conference Committee typically offers students reduced registration rates to the State Conference. In addition, AEP is an excellent resource for internship opportunities and networking with environmental professionals while seeking employment opportunities. Contact the local chapter for more information on student benefits and activities.

AEP MEMBERSHIP BENEFITS AND SERVICES

Web Site

AEP's website is a great resource for members, providing information about upcoming events, pending legislation and membership information. AEP's website address is www.califaep.org.

Environmental Monitor

The *Environmental Monitor is a* quarterly statewide magazine with information on top leaders in the profession, articles of interest, job opportunities and summaries of state and local chapter activities. The magazine is recognized throughout the environmental planning profession as an important source of information.

Environmental Assessor

The *Environmental Assessor* is a pull-out of environmental legislative activities for your personal library. The *Environmental Assessor* includes information describing the latest environmental legislation working through the State Senate and Assembly, the status of such legislation, and the position of AEP on such legislation. It also provides an update from AEP's State Legislative Committee and its interaction with and recommendations to the State Legislature.

Local Chapter Activities

Local chapters are governed by the local members with guidance and assistance, as needed, from the State Board. The local chapters offer a wide range of services and activities, typically consisting of a regular newsletter, membership meetings featuring top environmental professionals discussing current environmental topics, and a chance to network with local environmental professionals from diverse backgrounds and environmental fields. Some chapters engage in educational activities based upon topical environmental issues and trends.

Environmental Services Bulletin

The Environmental Services Bulletin announces statewide job opportunities. This service also allows for private consultants to bid on new project contracts.

Annual State Conference

California AEP holds an annual Conference at various locations throughout the state, providing members with an opportunity to hear leading speakers in the environmental field, improve their skills, network with people from around the state, and discuss major environmental issues with experts in the field.

Professional Practice Insurance Discounts

AEP members can receive a discount on general liability and professional liability insurance through AEP's partnership with Hilb Rogal & Hobbs PPIB.

Annual CEQA Workshops

Annual CEQA workshops provide updates of existing and recently adopted CEQA laws and current court actions. AEP members receive a discount when attending the annual CEQA workshops at locations throughout the state. The format of the workshops has proven successful, providing both basic and advanced information.

Membership Certificate

A membership certificate, suitable for framing, is sent to each new AEP member.

Annual CEQA Handbook

AEP annually publishes a CEQA Handbook, including the up to date text of the Statute and Guidelines, an update of CEQA Legislation and Court Cases, and a comprehensive index. Members receive a free copy of the CEQA Handbook. Additional copies in hardcopy and electronic (CD) format are available.

Legislative Activities

AEP has an active Legislative Committee which closely tracks and responds to proposed CEQA legislation in order to influence the pending legislation in a positive and meaningful manner. Current summaries and analysis of the bills are published regularly in the *Environmental Assessor* and on AEP's website.

Regional Area Support

Regional area support ensures representation no matter where you live. Directors-at-Large and state-sponsored events provide service to all areas within California.

Professional Award Program

The Professional Award Program provides an excellent opportunity for professional recognition of outstanding achievements and document preparation. AEP offers an awards program, the results of which are presented at the State Conference.

Association of Environmental Professionals Continuing Education Credit

Members who attend AEP workshops and other events earn special credit. CEQA Workshop participants are able to count attendance toward continuing education credit requirements under AICP and MCLE.

Member Services

To contact the AEP Membership Hotline, call (760) 799-2740.

Special Committees

The AEP Board appoints special committees to address issues of concern to its membership. Committees include the Legislative Committee, the Mitigation Practices Working Group, and the Environmental Justice Working Group.

Professional Discounts

AEP is continuously negotiating professional discounts for AEP members to attend U.C. Extension courses and to obtain professional guidebooks of interest to members. The discounts vary depending on the event and/or the publisher.

Membership application forms are also available from your local AEP Chapter
or at http://www.califaep.org.

Membership Application

www.califaep.org

GENERAL INFORMATION

First Name ______ Last Name ______ Firm/Agency ______

Address ______

City ______ State ______ Zip ______ Email ______

Daytime Phone No. ______ Ext. ______ Fax ______

☐ Check here to be OMITTED from the AEP Web Site Directory   Employment type ☐ Non-Profit ☐ Private ☐ Public ☐ Other ______

☐ Check here to receive the *Environmental Monitor* in electronic form ONLY.

☐ Please send me a National Association of Environmental Professionals (NAEP) membership application.

Which AEP Chapter would you like to belong to and receive news and information (see region information in box below)? ______

TO PAY BY CREDIT CARD, PLEASE FILL OUT BELOW

Card Holder Name ______ Signature ______

Billing Address ______ City ______ State ______ Zip ______

Card type ☐ Visa ☐ Mastercard Card No. ______ CVC ______ Exp. Date ______

AREAS OF INTEREST (SELECT 3)

☐ 1. CEQA/NEPA Compliance
☐ 2. Environmental Impact Analysis
☐ 3. Resource Management
☐ 4. Solid/Hazardous Waste
☐ 5. Air Quality
☐ 6. Noise
☐ 7. Transportation
☐ 8. Hydrology/Water
☐ 9. Endangered Species/Biology
☐ 10. Geology/Seismic
☐ 11. Cultural Resources
☐ 12. Growth Management/ Regional Planning
☐ 13. Environmental Law/Policy
☐ 14. Land Use/Site Planning
☐ 15. Geographic Information Systems
☐ 16. Environmental Justice
☐ 17. Environmental Engineering
☐ 18. Other ______

CHAPTER REGIONS & MEMBERSHIP

AEP Code of Ethics

1. Conduct myself and my work in a manner that will uphold the honor, integrity, and dignity of the profession.
2. Uphold the stated intent as well as the letter of environmental policies, laws, and regulations which are adopted by governmental bodies or agencies.
3. Not engage in, encourage, or condone dishonesty, fraud, deceit, discrimination, or misrepresentation in the solicitation, preparation, or use of work prepared by me or under my direction.
4. Fully disclose to my employers and my prospective clients any economic or ethical interests which could reasonably be interpreted as a conflict of interest by them or by other affected parties with regard to my professional work.
5. Ensure a good faith effort in full disclosure, technical accuracy, sound methodology, and objectivity in the collection, analysis, interpretation, and presentation of environmental information by me or under my direction.
6. Achieve the highest level of professional competency for myself and for those I supervise.

______
Signature

Signature acknowledges full understanding and acceptance of the AEP Code of Ethics and Professional Conduct Guidelines.

OFFICE USE ONLY   Co.___ R___   Date ______   Amount ______   Check # ______

Status	Please Check
New Member Application	☐
Change of Address, Etc.	☐

Membership Category	Annual Dues	Please Check
Full AEP Member	$140.00	☐
AEP Sponsor	$220.00	☐
AEP Student Member*	$ 20.00	☐

**For full time students. Please include current student schedule showing 12 units or more with application.*

AEP Chapter Areas
☐ 1. Channel Counties
☐ 2. Inland Empire
☐ 3. Los Angeles
☐ 4. Monterey Bay
☐ 5. Superior California
☐ 6. Orange County
☐ 7. San Diego
☐ 8. San Francisco Bay Area
☐ 9. Central

Summary of Key 2008 CEQA Court Cases

By Terry Rivasplata of ICF Jones & Stokes

The following discussions of California court decisions are summaries of the main points of each case and are certainly no substitute for legal advice. For more detail and interpretation, please consult your legal counsel.

Friends of Riverside's Hills v. City of Riverside (Nov. 24, 2008) __ Cal.App. 4th __

Litigation procedure is the foundation of this case. In 2006, the City approved a series of subdivision maps within the La Sierra Lands specific plan. Friends challenged the city's approvals on the basis of CEQA; alleging various failures to incorporate the mitigation measures identified in the specific plan's EIR. Friends initiated the litigation within CEQA's statute of limitations and filed the required litigation notices in accordance with CEQA's requirements.

The City countered the lawsuit by claiming that Public Resources Code Section 66499.37, which is in the Subdivision Map Act (SMA), requires the plaintiff to also file a summons with the City within 90 days of its action on the subdivisions. Absent such additional summons, the City argued, Friends litigation was time barred. The trial court agreed and dismissed Friends' petition for mandate.

The Court of Appeal affirmed the lower court's action. Case law has made it clear that the 90-day service of summons requirement under Section 66499.37 is mandatory and acts like a statute of limitations for actions under the SMA. Friends argued that this conflicted with the requirements of CEQA and that CEQA's requirements should control.

The Court noted that "[a]s a general rule, when two statutes relate to the same subject, the more specific one will control unless they can be reconciled. When the two statutes can be reconciled, they must be construed "in reference to each other, so as to "harmonize the two in such a way that no part of either becomes surplusage."'" (citing *Royalty Carpet Mills v. City of Irvine* [2005] 125 Cal.App.4th 1110, 1118; quoting *DeVita v. County of Napa* [1995] 9 Cal.4th 763, 778-779).

Neither CEQA nor the SMA contains provisions that would preclude compliance with both their requirements. "In sum, Friends was required to comply with the SMA's 90-day service of summons requirement found at Government Code section 66499.37, even though it had already personally served a copy of the petition in compliance with CEQA at Public Resources Code section 21167.6, subdivision (a)."

On a technical point, the Court observed that the proposed cause of action was linked to the SMA even though it was filed under CEQA. The implementation of the mitigation measures related to conditions of approval for the maps in question. Therefore, it could not be argued that the petition for mandate did not involve the SMA and therefore would not be subject to Section 66499.37. In the court's opinion, "Friends was required to comply with the 90-day summons requirement for the CEQA cause of action, because it both overlapped with the SMA causes of action and could have been (and was) brought under the SMA."

OWL Foundation v. City of Rohnert Park (Nov. 20, 2008) __ Cal.App. 4th __

This case examines the adequacy of a water supply assessment (WSA) for a large development project. Consistent with its general plan, the City of Rohnert Park considered the approval of a number of specific plans. The City has been at the center of a long-running battle with nearby land owners over the availability of water, and the effect of City growth on the land owners' water supplies. Prior litigation had resulted in previous water supply studies and in a limit on the city's use of groundwater. The City prepared a WSA analyzing the availability of water to meet the future demands of these projects. OWL challenged the adequacy of the WSA, alleging that it did not cover a sufficient portion of the underlying groundwater basin to enable the City to properly assess water supply availability, pursuant to the requirements of Water Code Section 10910. OWL contended that the selected study area disguised the actual impact of the new demand on groundwater levels. The trial court held for OWL.

The Court of Appeal reversed. Prior to examining the adequacy of the WSA in light of Section 10910, the Court distinguished this case from *California Water Network (C-WIN) v. Newhall County Water District* (2008) 161 Cal.App. 4th 1464. The C-WIN court had found that a WSA could not be challenged prior to certification of a project's final EIR and approval. As a general matter, the present Court agreed with the C-WIN decision, however it found that there were extenuating circumstances in the Rohnert Park case. Here, the city had certified the EIR and was concurrently being challenged by OWL in another lawsuit on the same grounds that were advanced here. The parties of the CEQA lawsuit had entered into a stipulation staying that lawsuit and agreeing that the outcome of this action would dictate the result in the CEQA suit.

Section 10910(f)(5) provides that when a project will rely on groundwater for its supply the WSA must analyze "the sufficiency of the groundwater from the basin or basins from which the proposed project will be supplied to meet the projected water demand associated with the project." The Court observed that nothing in the plain language of this statute requires a basin-wide study of past and future pumping by all users. Therefore, there was no requirement that the WSA include an estimate of past and projected pumping from all users in the basin, as OWL had argued.

The Court further found that, as a practical matter, "requiring a water supplier to collect data on pumping throughout a groundwater basin would impose an enormous if not impossible burden on the water supplier, particularly given the relatively brief [90-day] time frame required to complete a WSA." Groundwater is not regulated by the state, and detailed groundwater budgets are not available for most groundwater basins. That was the situation here.

The large Santa Rosa Valley Groundwater Basin that underlies the project complicates any attempt to conduct a basin-wide analysis of groundwater sufficiency. The basin is geologically complex and besides municipal users, there are thousands of individual wells tapping its water. The Court noted that this task would not necessarily be simplified by the analysis of a subbasin. The function of a WSA is to provide information about groundwater for a specific project. It isn't intended to be a general planning document for groundwater management. That would be the role of a groundwater management plan or similar exercise.

OWL argued that the WSA must at least examine a representative subbasin large enough to reflect the recharge rates and water production levels throughout the area. They further contended that the study area must conform to a basin or subbasin identified by the Department of Water Resources (DWR) and was defective because it relied in part on watershed boundaries. The Court found that Section 10910(f)(5) does not require the use of a particular method for analyzing groundwater sufficiency. The City, therefore, has discretion to select a suitable methodology as long as its selection is supported by substantial evidence in the record. DWR's boundaries do not necessarily provide "sensible boundaries" for evaluating the adequacy of the groundwater examination for a specific project. DWR itself attested that the Santa Rosa Valley Groundwater Basin has a complex hydrology. The Court concluded that the water supplier must have the discretion to determine what works best in their situation to support their WSA.

The City had substantial evidence to support its selection of the WSA's study area. The City's hydrologists selected an area that reflected past studies, available groundwater data, and their review of subsurface geologic conditions. The Court looked at the administrative record, not simply the WSA, to conclude that there was substantial evidence to support the selected study area. By itself, the WSA's discussion was not enough, but other studies provided the additional substantiation needed. The Court found that the selection was not arbitrary, capricious, or lacking evidentiary support.

The Court looked favorably on the fact that the WSA employed two types of empirical analyses to determine groundwater supplies: a water budget model and an examination of pumping and groundwater levels. Using the two analyses avoided the possibility that the water budget model (which accounted for groundwater flows into and out of the study area) could have been skewed by the improper inclusion of areas with high recharge potential (as OWL contended). Both methods produced similar estimates from a combination of sources, and had consistent results.

Save Tara v. City of West Hollywood (Oct. 30, 2008) __ Cal. 4th __

In May of 2004 the City of West Hollywood approved an agreement with a developer for the reuse and redevelopment of a large historic home (nicknamed "Tara" after the home in *Gone with the Wind*) that had been willed to the City by a wealthy widow. The agreement would convey the property to the developer, provide the developer a loan, and allow the construction of 35 units of housing on the site. While the agreement that all CEQA requirements be satisfied at some future time, it also gave the City Manager authority to waive those requirements. The historic home would be retained as part of the project, but would have been altered by the development. The agreement would allow the developer to receive final approval of a grant from the federal Housing and Urban Development Department (HUD) that would provide funding for the project. A "Scope of Development" discussion attached to the draft agreement described the construction related to the project in some detail. At the time of the approval, the City's housing manager assured the Council that the project would be subject to further planning approvals and these were "not a rubber stamp" for the project.

Save Tara sued the City in July 2004 alleging that the City had violated CEQA by failing to prepare and consider a CEQA document prior to approving the agreement. In August, the City and the developer executed a revised agreement that specified that CEQA requirements would apply and could not be waived by the City Manager. The trial court held for the City, finding that the provision for future CEQA compliance was satisfactory.

The Court of Appeal reversed, opining that conditioning a development agreement on future CEQA compliance is insufficient because CEQA "is intended to be part of the decisionmaking process itself, not an examination, *after the decision has been made*, of the possible environmental consequences of the decision." The Court of Appeal was satisfied that prior to the May approval the City knew enough about the project to prepare a CEQA analysis. Meanwhile, between the time of the trial court decision and consideration by the Court of Appeal, the City had prepared and certified a Final EIR for the project. The Court of Appeal, by a 2-1 vote, ordered the City to prepare a new EIR. The dissenting justice argued that the case was moot in light of the certified EIR.

The Supreme Court upheld the decision of the Court of Appeal in most regards. The City asserted that certification of the Final EIR rendered the case moot. The Supreme Court disagreed. "No irreversible physical or legal change has occurred during pendency of the action, and Save Tara can still be awarded the relief it seeks, an order that City set aside its approvals."

The Court set out two considerations important to the timing of EIR preparation: "(1) that CEQA not be interpreted to require an EIR before the project is well enough defined to allow for meaningful environmental evaluation; and (2) that CEQA not be interpreted as allowing an EIR to be delayed beyond the time when it can, as a practical matter, serve its intended function of informing and guiding decision makers." The Court held that the decision over when a project is sufficiently defined to allow CEQA analysis is a legal question (which allows independent judicial review). Citing its 2007 *Muzzy Ranch* decision, the Court noted that it had already found the question of whether an action is in fact a project is one of law. The Court opined that:

> "To accord overly deferential review of agencies' timing decisions could allow agencies to evade CEQA's central commands. While an agency may certainly adjust its rules so as to set "[t]he exact date of approval" (Cal. Code Regs., tit. 14, §15352, subd. (a)), an agency has no discretion to define approval so as to make its commitment to a project precede the required preparation of an EIR."

The City argued that the August 2004 agreement committed the City to future CEQA compliance, thereby eliminating the need to prepare a CEQA document before entering into the agreement. Save Tara countered that allowing deferral of CEQA analysis rendered the EIR requirement a "dead letter." The Court adopted what it called "an intermediate position:"

> "A CEQA compliance condition can be a legitimate ingredient in a preliminary public-private agreement for exploration of a proposed project, but if the agreement, viewed in light of all the surrounding circumstances, commits the public agency as a practical matter to the project, the simple insertion of a CEQA compliance condition will not save the agreement from being considered an approval requiring prior environmental review."

The Court distinguished the Court of Appeal decisions in *Stand Tall on Principles v. Shasta Union High Sch. Dist.* (1991) 235 Cal.App.3d 772 and *Concerned McCloud Citizens v. McCloud Community Services Dist.* (2007) 147 Cal.App.4th 181 from the present case. Neither case convinced the Court that a "broad rule exists permitting EIR preparation to be postponed in all circumstances by use of a CEQA compliance condition." Section 15004(b)(2)(A) provides an exception for land purchases, but that should not be interpreted as allowing the deferral in situations other than that described in the section. The City argued to limit the need for a CEQA analysis to "unconditional agreements irrevocably vesting development rights." The Court disagreed:

> "Such a rule would be inconsistent with the CEQA Guidelines' definition of approval as the agency's "*earliest* commitment" to the project. (Cal. Code Regs., tit. 14, §15352, subd. (b), italics added.) Just as CEQA itself requires environmental review before a project's approval, not necessarily its *final* approval (Pub. Resources Code, §§21100, 21151), so the guideline defines "approval" as occurring when the agency *first* exercises its discretion to execute a contract or grant financial assistance, not when the *last* such discretionary decision is made."

The Court rejected the notion that CEQA can be "postponed until the last governmental step is taken." Here, the City had expressed its favor for the project, defended it publicly, devoted substantial public resources to it, and announced a detailed agreement to go forward with the project, all without CEQA review. Under those circumstances, it is not practical to assume that a later CEQA review would be more than a post hoc rationalization of the project's approval.

In keeping with its theme of taking an intermediate road, the Court refused to find that "any agreement, conditional or unconditional, would be an 'approval' requiring prior preparation of CEQA documentation if at the time it was made the project was sufficiently well defined to provide 'meaningful information for environmental assessment.'" Approval is not the same as an agency's mere interest in, or inclination to support a project, no matter how well-defined the project may be. In the Court's words: "we look both to the agreement itself and to the surrounding circumstances, as shown in the record of the decision, to determine whether an agency's authorization or execution of an agreement for development constitutes a 'decision which commits the agency to a definite course of action in regard to a project.' (Cal. Code Regs., tit. 14, §15352.)"

Here, the City had committed to the project by advising HUD the City had approved the sale of property and had committed up to $1 million in financial aid; announcing that the HUD grant would be used to redevelop Tara; advising residents who opposed the project that while variations in the project might be considered, the City must fulfill its obligation to redevelop the property; and ruling out other public uses of the property such as a library, park, or cultural center. Furthermore, the City was proceeding with relocating the existing tenants of the property.

The Supreme Court disagreed with the Court of Appeal only on the issue of whether to require the City to prepare a new EIR. Save Tara did not challenge the adequacy of the Final EIR certified by the City in 2006. As a result, that EIR "is conclusively presumed to comply with CEQA's standards unless a subsequent or supplemental environmental EIR is needed for any of the reasons set out in [Public Resources Code] section 21166." Since the 2006 EIR was based on the City's invalidated approvals, it may need revision. Whether that is so can be decided by the City, subject to review of the superior court under the substantial evidence standard.

Gray v. County of Madera (Oct. 24, 2008) __ Cal.App.4th __

Madera County approved a zone change, Williamson Act cancellation, conditional use permit, and mining permit to allow operation of a hard rock quarry (producing aggregate) and hot-mix asphalt batch plant on a 125-acre portion of the 540-acre Madera Ranch. In addition, the project included a two-mile long road to connect the site to County Road 209 and realignment of the County Road. The approval stipulated that the quarry would be allowed to produce up to 900,000 tons of aggregate per year for 50 years and projected truck traffic to be about 320 round trips daily. In full operation, the quarry was expected to use up to 72,000 gallons of water per day. After closure of the quarry, there would be a three-year reclamation phase. After hearings before the Planning Commission and Board of Supervisors, the County certified an EIR and approved the project.

Gray then brought suit, offering several arguments for invalidating the EIR. The trial court held for the County and this appeal ensued.

The Court of Appeal reversed the lower court's decision. Gray alleged that the Final EIR should have included written responses to expert comments they had submitted regarding the alleged inadequacy of the hydrology/water and noise analyses after the end of the review period. The Court opined that "a lead agency may, but is not required, to respond to late comments." Accordingly, the absence of written responses to these "untimely expert opinions" did not by itself invalidate the Final EIR. However, the County does have the burden to show that substantial evidence exists to support its environmental conclusions. That can include evidence to counteract the information submitted in the comments.

Gray argued that the EIR failed to adequately analyze impacts on surface and ground water, that its mitigation measures were inadequate in that regard, and that the draft EIR should have been recirculated because an amended mitigation measure and to analyze economic impacts related to water. The EIR found that the project could result in declines in water levels and pumping rates at nearby wells both during operations and after closure of the mine. The EIR offered mitigation measures providing for monitoring and replacement of water from Madera Ranch wells or, if necessary, bottled water. At its meeting, the Board modified one of the water supply mitigation measures to include a contingency provision: if the measure failed to provide sufficient bottled water to affected residences, the Board would hold a public hearing, require preparation of a hydrologic report, and require the formation of a water system to supply the water.

The Court held that the expert evidence submitted by Gray did not undermine the groundwater study prepared for the draft EIR. Additionally, the findings of the draft EIR study supported the conclusions in the draft EIR. While Gray argued that the County should have undertaken further groundwater testing, the Court held that the fact that testing was feasible didn't require the County to do additional testing because the initial testing was sufficient to support the County's conclusions. Additional testing would be necessary for other reasons, however.

With regard to the adequacy of the water resources mitigation measures, the Court found that "there is no substantial evidence to support the EIR's conclusion that the proposed mitigation measures are adequate." The mitigation measures were made conditions of approval, so the Court concluded that they are fully enforceable, as CEQA requires. However, while the mitigation measures will provide a replacement for the neighbors' lost water, none of the measures "will provide neighboring residents with the ability to use water in substantially the same manner that they were accustomed to doing if the Project had not existed and caused a decline in the water levels of their wells."

Further, there was no substantial evidence on which to conclude that neighboring wells would provide additional potable water. No evidence supported the County's contention that the currently confined aquifers that supplied the Project and neighboring wells would remain confined once the mine pit was excavated. The Regional Water Quality Control Board (RWQCB) had warned that the pit could form a connection between production wells and neighboring wells. In the event that occurred, the neighboring property owners would be subject to the RWQCB's regulatory oversight.

The Court held that providing replacement water through bottled water at neighbors' request "is not a viable or effective mitigation measure." The RWQCB had advised the County that such an approach could not account for fluctuating water demand and suggested that a water system be required. Although the Board modified a mitigation measure to require a water system as a contingency, the proposal was not studied further.

The Court also found that the EIR did not analyze the potentially significant effects of the water replacement measures. Examples cited by the Court include the impact of using non-potable water for livestock and on wildlife and habitats. The EIR also failed to consider the impacts of disposing of empty water bottles.

Further, the Court held that the water supply mitigation measures were improperly deferred. Deferred mitigation is allowed only when the lead agency commits to the mitigation and the measure contains performance standards to ensure its adequacy. The County's mitigation goal of replacing neighbors' lost water is not a performance standard, according to the Court. And, the Board of Supervisors' contingency measure for installing a water system was never studied for feasibility. In the words of the Court, "[t]hus the County is improperly deferring until the impact occurs the study of whether such a system is feasible."

Curiously, the Court noted that the County could have found the impact unavoidable and adopted a statement of overriding considerations. Instead, the County relied upon infeasible or unproven mitigation measures to conclude that the measure was less than significant.

Given that the Board had amended one of the mitigation measures, the Court found that the water portion of the DEIR should have been recirculated. The addition of the contingency measure with its potential water system requirement was "significant new information" requiring recirculation.

The Court dismissed Gray's claim that the EIR should have addressed the economic impacts on neighboring property owners. Gray "presented no evidence that any significant physical changes to the environment will result from any loss in the property value of neighboring lands [arising] from a potential decline in water levels in private wells." The County had information about property values surrounding a similar mine in Colorado that indicated that there may not be a decline in property values anyway.

The Court held that the DEIR improperly deferred traffic mitigation. The mitigation required improvements to Road 209, construction of State Route (SR) 41 improvements in coordination with Caltrans, contribution of "an equitable share of the cost of construction of future improvements if requested by Caltrans or Madera County" (as determined by a formula provided in the DEIR), and contribution to a long-term County maintenance fee. These were apparently to be ad hoc, project-specific fees and were not contributions to a county traffic impact fee program. The Court found no substantial evidence that Caltrans had made any definite commitment to when improvements would take place. It concluded that there was no evidence that the SR 41 improvements would be made when needed. The County, meanwhile, had no mitigation plan in place for the affected roadways. So, the Court concluded that there was no substantial evidence that this mitigation would be adequate. (Note that here the Court relied on past cases where a contribution to an existing road impact fee program was held to be adequate traffic mitigation and a mitigation plan was required for adequate mitigation of impacts to endangered species [*Save our Peninsula Comm. v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99 and *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261]. Those cases did not address a situation like this one, where the traffic fee is project-specific, and no other cases have required there to be a traffic "mitigation plan" in order to find that the traffic fee is feasible. In fact, *Save our Peninsula* set no requirement for ad hoc fees such as the one imposed by Madera County to be linked to a mitigation plan.)

Gray also claimed that the noise study for the quarry was inadequate because it used the wrong methodology for determining cumulative impact. The County noise analysis found that, with the exception of one residence (for which it adopted a statement of overriding considerations), no other noise increases exceeded 2.1 dB. Because this did not exceed the 3-5 dB increase the County "commonly required to identify noise impacts," the County concluded that the impacts were less than significant. The Court found that the County failed to account for the fact that noise levels along SR 41 already exceeded the County's standard for residential exposure. Therefore, the County should have assessed whether the 2.1 dB increase was considerable in light of the existing cumulative noise level. The statement of overriding considerations for the single home did not fulfill this requirement.

Gray alleged that the surveys done for the presence of California tiger salamander (CTS) were inadequate, based on a comment from the California Department of Fish and Game asserting that a protocol survey was necessary. The Court disagreed. The County had contracted for surveys that indicated that no suitable aquatic breeding habitat existing within 1.3 miles of the project site. This provided substantial evidence that the project would not affect the CTS. "The fact that additional studies might be helpful does not mean they are required" (citing *Associated Irritated Residents v. Madera County* [2003] 107 Cal.App.4th 1383). The Court then added that "requiring a study that takes place over two winters could conflict with the requirement that EIRs for private projects be prepared and certified within one year." It is unknown whether the Court intended this to be a restriction on needed biological surveys.

The Court also dismissed Gary's contention that the air quality analysis was inadequate. The draft EIR concluded that project emissions of ROG, NOx, and PM10 would be significant and included seven mitigation measures. Gray argued that the draft EIR was flawed because it failed to include an analysis of diesel emissions from transport trucks. The Court found that the discussion of diesel emissions in the County's Health Risk Assessment for toxic air contaminants was based on an air dispersion model that took into account transport emissions. That provided substantial evidence for the County's conclusion.

The Court dismissed Gray's argument that the draft EIR deferred mitigation of light and glare impacts. The draft EIR had found light and glare to be less than significant on the basis of mitigation requiring lights to be hooded, limiting lighting to within the site boundaries, prohibiting blinking or bright lights, and other restrictions. In the Court's view, these were adequate performance standards. "More specific details of the lighting plan may be deferred until the quarry and its related buildings and plants are built and the placement of lights determined."

The Court found that the draft EIR failed to adequately analyze the project cumulative impacts. In particular, the analysis did not reference all of the documents used and did not specify where a copy of the Madera County General Plan could be found. "the lack of evidence on what planning documents were used leads us to conclude that there is no substantial evidence supporting any of the cumulative impacts analysis…" The Court did uphold the County's limiting of probable future cumulative projects to those for which an application had been filed with the County and for setting the date of the Notice of Preparation's release as the cut-off date for the search of probable future projects.

The Court dismissed Gray's contention that the growth inducing analysis was inadequate. The Court held that "[w]hile we agree that lowering the cost of aggregate would reduce one of the barriers to growth, the DEIR could reasonably conclude that there were other barriers to growth, including the zoning of the lands surrounding the Project site."

Finally, the Court also held that the County should have prepared a SB 610 water supply assessment for the project. Here, the water to be used for the mine is not part of a public water system. However, the mitigation measure revised by the Board of Supervisors will potentially require domestic water to be supplied to nearby residences. Based on the conclusion in *Vineyard Area Citizens v. City of Rancho Cordova* (200&) 40 Cal.4th 412 that "[a]n EIR evaluating a planned land use project must assume that all phases of the project will eventually be built and will need water," an SB 610 analysis is therefore required. The Court did not discuss whether there would be 500 or more residences affected.

Environmental Protection and Information Center v. California Department of Forestry and Fire Protection (2008) 44 Cal.4th 459

This case is concerned with the Headwaters Forest, Pacific Lumber's proposed "Sustained Yield Plan" for timber operations on the forest, and the state and federal Endangered Species Act incidental take permits. The Supreme Court held that an incidental take permit under the California ESA cannot contain a "no surprises" clause that would effectively prohibit future mitigation measures in response to changed circumstances. While this type of provision exists in the federal act, the CESA provision that impacts must be "fully mitigated" does not allow for that sort of limitation. The Court also invalidated the SYP because it literally could not identify a discrete, approved SYP.

In the small portion of this 90-page opinion devoted to CEQA, the Court held that the EIS/EIR contained sufficient evidence to support its conclusion that the SYP would have a less than significant impact on wildlife. Because the project also included an HCP, the purpose of which was to mitigate the effects of the SYP, there was no need for findings to be made under CEQA Guidelines Section 15091.

Further, the Court upheld CDF's projections approach to cumulative impact analysis. Although there was no particular "general plan or related planning document" on which to base the EIS/EIR's cumulative impact analysis, the Court found that the EIS/EIR "contains within itself a great deal of information concerning current conditions of critical species and their habitat equivalent to what would be contained in general plans or similar planning documents." This case is somewhat unique in that the SYP/HCP was the first master planning document for Pacific Lumber's holdings, so this may not be a far-reaching part of the opinion.

Sunset Skyranch Pilots Association v. County of Sacramento (2008) 164 Cal.App.4th 671

The Sunset Skyranch Pilots applied to Sacramento County for a renewal of the conditional use permit (CUP) that authorized operation of the Sunset Skyranch. The CUP up for renewal was the same one at the heart of the *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270 decision. The Skyranch is a small privately-owned public-use airport. The County denied the CUP renewal (without preparing any CEQA analysis) and Sunset Skyranch Pilots sued on several grounds attempting to have that denial overturned.

In the published portion of this case, the Court of Appeal held that denial of the CUP renewal constituted a "project" under CEQA. Furthermore, despite the provision of CEQA allowing denial of a project without preparation of a CEQA analysis, the County must prepare an initial study before it can take action on the renewal. The key to the Court's decision is that the airport is an existing physical feature. If the CUP is not renewed, the airport will necessarily be removed, that removal will result in physical changes to the environment, and those changes may have significant effects. It follows therefore, that an initial study must be prepared to determine the type of CEQA document to be prepared.

Accordingly, the Court overturned the County's denial and ordered the County to prepare an Initial Study to consider the potential impacts of not renewing the CUP.

In re: Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings (2008) 43 Cal.4th 1143

This case consolidated a number of CEQA challenges to the EIS/EIR that was certified for the CalFed project in 2000. Simply put, CalFed is a long-range, joint federal and state strategy for balancing water transfer with environmental and habitat issues within the Sacramento Delta.

The Court of Appeal held that CALFED's Bay Delta Programmatic EIR was inadequate because it: (1) eliminated the alternative of reducing water exports from the Delta as a means to control growth; (2) did not fully describe sources of water and the impacts of taking that water for use in the program; and (3) inadequately described the proposed "Environmental Water Account." The Supreme Court reversed on all of these points and upheld the adequacy of the CALFED Programmatic EIR.

CALFED identified four fundamental objectives of the program that are paraphrased here: (1) improve ecosystem quality and functions; (2) reduce the mismatch between Bay-Delta water supplies and the beneficial uses dependent on the Bay-Delta system; (3) provide good water quality for all beneficial uses; and (4) reduce the vulnerability of Delta functions to catastrophic levee failures. Alternatives must meet most or all of the project objectives and be feasible. An EIR need not examine every possible alternative. Analysis is guided by the "rule of reason" and whether the alternative feasibly meets project objectives. This decision adds a further consideration: does the alternative achieve the project's "underlying fundamental purpose?" Here, CALFED had defined the fundamental purpose of this program "to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta system." Further, the program "was established to reduce the conflicts and provide a solution that competing interests could support."

Based on the experience of years of conflicts over solutions to the Bay-Delta's problems, CALFED determined that its four primary objectives had to be addressed concurrently in an integrated manner if the project was to be successful and therefore feasible. A reduced export alternative would not meet the water supply reliability objective. Opponents argued that the reduced water supply alternative could meet reliability objectives for the Delta and points north. The Court held that the underlying purpose of CALFED project is to encompass all beneficial uses of Delta water and "cannot be achieved by an alternative that benefits some groups of water users at the expense of the others." Therefore, CALFED properly exercised its discretion when it declined to further study the reduced export alternative in the final PEIS/EIR.

The Court further held that although a lead agency cannot give a project's purpose an artificially narrow definition in order to limit the available alternatives, it "may structure its analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal." Here, the determination that an integrated solution was necessary and that the water supply objective could not be met by the reduced exports alternative was supported by substantial evidence and supported by the rule of reason. CALFED adequately made the case that an integrated approach, where all the objectives would need to be met in order to solve the problems of the Bay-Delta system, made a reduced export alternative infeasible.

The Court found that the Court of Appeal had failed to sufficiently distinguish between the Bay-Delta's baseline environmental setting and the impacts caused by the proposed program. As a result, the Court of Appeal's request for a reduced export alternative attempted to solve the Bay-Delta's existing environmental problems (as detailed in the setting of the PEIS/EIR), but didn't address the impacts of the CALFED program. Those problems "would continue to exist even if there were no CALFED program" and therefore were not impacts that would determine the required range of alternatives.

The Court of Appeal's decision held that CALFED's PEIS/EIR did not contain sufficient detail about the sources of water that would be used to implement the program and failed to analyze the secondary environmental effects of supplying that water. The Supreme Court disagreed. The PEIS/EIR is a "first-tier program EIR" that is not required to "identify with certainty [the] particular sources of water for second-tier projects that will be further analyzed before implementation during later stages of the program." Similarly, the secondary effects of obtaining water from potential sources may be analyzed in general terms in the first-tier document. In the words of the Supreme Court: "[a]lthough it does not identify specific future water sources with certainty, the PEIS/R does evaluate in general terms the potential environmental effects of supplying water from potential sources. This was sufficient."

The PEIR/EIS itself describes the tiering scheme. Clearly, it was prepared with the expectation that it will be used for first-tier analysis, with more detailed second-tier CEQA analyses following for the many activities described in the PEIR/EIS. The Supreme Court distinguished the CALFED program from the situations in *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, and *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818 relied upon by the Court of Appeal. Those cases dealt with development projects on specific sites with readily quantifiable water requirements. CALFED on the other hand, is a "broad, general, multi-objective, policy-setting, geographically dispersed" program. The generalized nature of the program, its 30-year implementation period, and the uncertainty inherent in attempting to foresee specific water sources and their impacts are adequately addressed by a general, first-tier analysis and this is not an improper deferral of analysis.

The Supreme Court summarized its reasoning as follows:

> "The purpose of tiering is to allow a lead agency to focus on decisions ripe for review. (Pub. Resources Code, § 21093, subd. (a); Cal. Code Regs., tit. 14, § 15385, subd. (b).) An agency that chooses to tier may provide analysis of general matters in a broader EIR, then focus on narrower project-specific issues in later EIR's. (Cal. Code Regs., tit. 14, § 15152, subd. (a).) Future environmental documents may incorporate by reference general discussions from the broader EIR, but a separate EIR is required for later projects that may cause significant environmental effects inadequately addressed in the earlier report. (*Id*., § 15152, subds. (a) & (f).)
>
> "The PEIS/R complied with CEQA by identifying potential sources of water and analyzing the associated environmental effects in general terms. The level of detail contained in the PEIS/R's impact analysis was consistent with its first-tier programmatic nature. Although later project-level EIR's may not simply tier from the PEIS/R analysis and will require an independent determination and disclosure of significant environmental impacts (see Cal. Code Regs., tit. 14, § 15152, subd. (f)), this stage of program development did not require a more detailed analysis of the Program's future water sources, nor did it appear practicable. By compelling CALFED at the first-tier stage to provide greater detail about potential sources of water for second-tier projects, the Court of Appeal's decision undermined the purpose of tiering and burdened the program EIR with detail that would be more feasibly given and more useful at the second-tier stage. Such details were properly deferred to the second-tier of the CALFED Program, when specific projects can be more fully described and are ready for detailed consideration."

The Environmental Water Account (EWA) is a project proposed in conjunction with CALFED's ecosystem restoration program. As such, it is a second-tier project. CALFED had continued to define this project while working on the PEIR/EIS, but chose not to include that information in the PEIR/EIS. The Supreme Court held that under the principle of tiering, "it is proper for a lead agency to use its discretion to focus a first-tier EIR on only the general plan or program, leaving project-level details to subsequent EIR's (sic) when specific projects are being considered."

Plaintiffs also argued that the PEIR/EIS should have analyzed the "big-picture" impact of the EWA's expected need to acquire one million acre-feet of water from a variety of prospective sources. The Supreme Court disagreed. Unlike a project with site-specific water requirements, the EWA relies on flexible management of a variety of water assets that may exist throughout the state. The PEIR/EIS' generalized analysis of the environmental consequences of the mechanisms that will be used in the EWA was sufficient for this first-tier document and properly deferred specific analyses to the subsequent project-level EIR.

Sierra Club v. City of Orange (2008) 163 Cal.App.4th 523

The City certified a combined supplemental EIR and EIR (SEIR/EIR) as part of the approval of the "Santiago Hills II Planned Community" and the "East Orange Planned Community" projects. An EIR had previously been certified for a previously approved version of the Santiago Hills development, so the EIR for Santiago Hills II approached the analysis as a project-level supplemental EIR. The EIR approached development within the East Orange Planned Community on the basis of the level of information known about the 3 phases being proposed at that time. Phase 1 was analyzed at the project level, and Phases 2 and 3 were analyzed at a "program" level. After approval of the various components of the project, the City filed a Notice of Determination. Shortly thereafter, the City realized that the NOD contained an erroneous approval date, so it filed a second NOD.

The Sierra Club sued, arguing that the EIR failed to: disclose the baseline conditions; describe the project and its setting; disclose impacts and mitigation measures; consider the project as a whole; and adequately analyze a range of alternatives. The trial court decided in favor of the City.

The City argued that the Sierra Club had filed its litigation after the end of the statute of limitations. Court of Appeal dismissed that argument. The 30-day statute of limitations does not begin to run if the NOD is substantially defective. Here, the original notice failed to comply with the CEQA Guidelines' content requirements. The limitations period properly began to run when the second NOD was filed, and the Sierra Club filed within 30 days of that time. Otherwise, the Court decided in favor of the City and dismissed the Sierra Club's various arguments.

The project description adequately described this phased project, including the potential for annexation of parts of the site. As an illustration, the County LAFCO commented that the boundaries "are relatively fixed." The fact that the City may eventually annex only a portion of the East Orange Planned Community doesn't make the project description inadequate.

The court dismissed the Sierra Club's claim that the SEIR/EIR was inadequate because it broke up impacts by separate project components. Sierra Club had failed to exhaust its administrative remedies on this point by failing to present this objection to the City during the CEQA review process. Although Sierra Club obliquely raised the issue at the NOP stage, the Court noted that Public Resources Code Section 21177, which defines when alleged grounds for noncompliance must be presented, requires objections to be brought up "during the public comment period … or prior to the close of the public hearing on the project." Further, the other comments cited by the Sierra Club were "isolated and unelaborated comments" that didn't coherently raise the piecemealing argument to the City. (For those keeping score, the Court's refusal to consider the comments raised at the NOP stage conflicts with the Fifth District Court of Appeal's holding in *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683.)

Sierra Club contended that the water quality impact analysis for Irvine Lake was inadequate for failing to include more baseline pollutant information and evidence of consistency with the regional Basin Plan. As above, the Court concluded that the Sierra Club had failed to raise this issue to the City as required under Section 21177. Those comments that were timely again failed to coherently define the issue. Regarding the baseline water quality information; technical information was included in one of the EIR's appendices. The Court noted that "the Guidelines permit the use of appendices containing technical detail" and that the water quality information was therefore available for public review along with the draft SEIR/EIR and was made a part of the final SEIR/EIR.

The Sierra Club argued that the traffic analysis improperly included in the baseline those trips that would have been generated under the earlier approved version of Santiago Hills. The Court found no evidence to support this claim. The SEIR/EIR disclosed the new traffic that would result from Santiago Hills II, relative to existing conditions, as well as the difference in traffic generation levels relative to the earlier approved version. This conformed to the requirements for supplemental EIRs under the CEQA Guidelines.

The project would result in traffic impacts on Santiago Canyon Road. The City analyzed these impacts based on the methodology established in its general plan. The Sierra Club contended that because Santiago Canyon Road is a county road, the SEIR/EIR must disclose traffic impacts in the manner in which must be disclosed under the County general plan (which uses a different methodology). The Court disagreed. The City's methodology was a reasonable approach to analyzing traffic impacts. The fact that the Sierra Club disagrees with the methodology "doesn't require invalidation of the SEIR/EIR, if it provides accurate information."

The Sierra Club claimed that the SEIR/EIR's alternatives analysis was inadequate because it included only one alternative with substantial environmental advantages over the project. The Court rejected the premise that an alternative that is superior to the project in some area does not qualify as an adequate alternative. The Sierra Club argued the SEIR/EIR was inadequate because it failed to include an alternative suggested during the public review. The Court found that this alternative was included in the Final SEIR/EIR, issued in advance of the public hearings on the project, and rejected this argument, noting that a "final EIR will almost always contain information not included in the draft EIR." It also rejected the Sierra Club's claim that the SEIR/EIR didn't adequately describe the alternatives. The Court observed that the discussion of alternatives need not be exhaustive. The City's use of a "checkbox matrix" and short discussions to describe and compare the project's alternatives was consistent with Section 15126.6 of the CEQA Guidelines. "The SEIR/EIR's discussion of project alternatives may not be perfect, but it is sufficient."

Ebbetts Pass Forest Watch, et.al. v. California Department of Forestry and Fire Protection (2008) 43 Cal.4th 936

Forest Watch sued CDF over the Department's approval of three Timber Harvest Plans (THPs) in Tuolumne County. The THP process is a certified regulatory program under CEQA; CDF has adopted voluminous regulations for the preparation of a THP for and assessment of the potential environmental impacts of timber cutting operations.

The California Court of Appeal found that CDF had failed to comply with its adopted rules regarding the species-specific study area to be identified when analyzing cumulative impacts on species (Pacific fisher and spotted owl) and their habitat. The Court also held that CDF failed to adequately analyze the reasonably foreseeable impacts from the use of herbicides during timber harvesting operations and improperly relied upon the Department of Pesticide Regulation's (DPR) registration of herbicides for use as a reason not to examine or mitigate further.

The Supreme Court reversed this decision. The Court held that a functional equivalent program such as a THP is subject to the CEQA standard of review. Under that standard, the courts' inquiry extends only to determine whether there was a prejudicial abuse of discretion. A prejudicial abuse exists when either the agency has not proceeded in a manner required by law or its determination or decision is not supported by substantial evidence.

CDF's rules for the preparation of THPs require a single, watershed-based study area for all the affected species rather than individually pertinent areas, by species (Forest Practices Rules Technical Rule Addendum No.2). In some instances, that approach would not be sufficient to analyze cumulative impacts on a species. However, when the Court examined the actual analyses and responses to comments contained in the THP at issue, it found that the analyses and responses properly considered the effects of the THPs on the Pacific fisher and spotted owl along the Sierra Nevadas, including National Forest lands. The studies provided to CDF as part of the THP application and separate federal studies addressing conditions throughout the Sierra showed that the analysis actually considered the broader view beyond the watershed.

In the Court's words:

> "The THP's [sic] explicitly expanded their scope of view beyond the state planning watersheds to the United States Forest Service's Area of Concern 5 and to the region as a whole in order '[t]o assess the potential cumulative effects on wildlife that may have a current range large enough to extend beyond the Cal Planning Watershed.' By doing so, the THP's [sic] avoided any violation of the pertinent provision of the Forest Practice Rules (Cal. Code Regs., tit. 14, § 898) and its associated Technical Rule Addendum No. 2 (*id*., foll. § 952.9)."

The Court concluded, with regard to whether a THP comply with the letter of Technical Rule Addendum No. 2's methodology for analysis, that "the technical addendum is properly read to direct that a timber harvest plan's cumulative-impacts assessment be reasonably tailored, in geographic scope as in other respects, to the species under discussion, but not to require rigid adherence to a particular analytical process." Because this argument was over the procedure being followed, the Court held that it could reach its conclusion without examining whether CDF had substantial evidence to support its impact conclusions.

With regard to herbicide use, the THPs asserted that the precise application of herbicides to any given site was not reasonably foreseeable and that, assuming the herbicides were applied as intended, their impact would be less than significant. Nonetheless, the THP contained "a detailed discussion of the herbicides that may be used, their potential impacts, and alternatives to their use." The Court concluded that the THP incorrectly stated that analysis of herbicide use was not reasonably foreseeable. But that did not mean the general, non-site-specific analysis included in the THPs was inadequate. "Applying the substantial evidence standard to this predominantly factual question, we conclude CDF did not abuse its discretion by accepting the plans' finding that the precise parameters of future herbicide use could not be predicted, and hence failing to demand a more detailed, site-specific analysis of impacts and mitigation measures."

Moving to the question of the THPs' reliance on DPR registration to avoid examining the effects of specific herbicides, the Court stated that "we agree with plaintiffs that the fact a sister agency had assessed the environmental effects of various herbicides *in general* and registered them for use did not excuse CDF from assessing those herbicides' use as *part of a particular timber harvest plan*. (original emphasis)" When registering herbicides, DPR does not certify that they will not cause a significant environmental effect. In fact, DPR's regulations allow it to register herbicides that would have significant adverse effects if the herbicide's beneficial effects are found to outweigh them. The Court found that:

> "CDF therefore had no grounds to state in its response to public comments that because of the Department of Pesticide Regulation's registration program "we do not have the authority to approve or disapprove any project regarding the use of chemicals." To the contrary, as the lead agency evaluating timber harvests, CDF has not only the authority but also the duty to approve, disapprove, and impose mitigation measures on timber harvest plans, including measures to address the foreseeable use of herbicides in planned silvicultural operations."

However, as earlier, when examining the content of CDF's responses to comments on the THP, the Court found that the responses provided "an extensive discussion of potential impacts, mitigation measures, and alternatives to herbicide use. CDF thus did not erroneously rely on the Department of Pesticide Regulation's regulatory program and fail to conduct its own environmental impacts assessment."

Forest Watch complained that CDF's responses relied on information that was outside the administrative record. Presumably, this was information not included in the THP. The Court found no requirement in either CEQA or the Forest Practices Act "requiring that source materials available to the public be physically incorporated into a timber harvest plan or official response to comments." The citing or referencing of these documents was sufficient.

Moss v. County of Humboldt (May 7, 2008) 162 Cal.App.4th 1041

In 1997, the County approved a tentative subdivision map and adopted a mitigated negative declaration for a 4-lot subdivision along Luffenholtz Creek. The creek supplies water for the City of Trinidad downstream and would supply three of the parcels with water. Moss subsequently allowed the tentative map to expire and was unsuccessful in subsequent litigation to have it reactivated.

In 2004, Moss filed a new subdivision application that was essentially identical to his expired tentative map. The County concluded that this was a new project requiring a new CEQA review. After an initial study, the County concluded than an EIR was required. Moss appealed this decision to the Board of Supervisors, but his appeal was denied. The County Board cited new evidence from the City of Trinidad indicating that the city's water use had increased substantially from the time the MND was adopted, that a water shortage would increase fire danger in the city, and that project runoff might affect water quality. The Board also contended that Luffenholtz Creek was within the mapped habitat area for the listed coho salmon and that the main fork of the creek is habitat for coastal cutthroat trout, as species of special concern.

Moss filed a petition for writ of mandate challenging the Board's decision to require an EIR. The trial court found that Moss' subdivision was not a new project, but that substantial evidence supported the need to prepare a subsequent EIR. Moss appealed the decision requiring an EIR; the County appealed the ruling that the application was not a new project.

In a consolidated decision, the Court of Appeal found that the subdivision application was not a new project. Moss submitted the same tentative map and it was undisputed that the proposed subdivision had not changed in any substantial way. The Court noted that case law is in conflict over whether the determination that a project is "new" or not is a question of fact (as held by *Mani Brothers Real Estate Group v. City of Los Angeles* [2007] 153 Cal.App.4th 1385) or a question of law (as held by *Save Our Neighborhood v. Lishman* [2006] 140 Cal.App.4th 1288). It differentiated the Moss case from both prior cases because it revolves around the effect of the expiration of the tentative map rather than changes in the project or the applicant. The Court held that the legal effect of the expiration of a tentative map on CEQA review is a question of law.

After examining the question of whether the expiration of the tentative map effectively erased the prior CEQA analysis, the Court concluded that it did not. CEQA and the Subdivision Map Act operate independently. Based on CEQA's broad definition of "project," the expiration of the tentative map didn't convert the subdivision into a new project for CEQA purposes.

Because this was the same project, Public Resources Code Section 21166 applied to the County's determination of whether to prepare a subsequent EIR. Consequently, a subsequent EIR would only be required when there is substantial evidence that there is a new significant effect or more severe significant effect not disclosed in the original CEQA document. This determination is not subject to the "fair argument" test applied to the preparation of an initial CEQA document. The Court held that the County was incorrect in determining that the resubmitted map should be subject to full CEQA review.

To hedge its bets on this issue, in addition to contending that this was a new project, the County had also found that under Section 21166 the resubmitted application triggered the need for additional CEQA review based on new information that was not available at the time the 1997 MND was adopted. There was the evidence presented by the City regarding impacts on water supply and quality, and the purported evidence of impacts on special status fish in Luffenholtz Creek. The Court examined the evidence to determine whether it constituted "substantial evidence" of the type needed to support preparation of a subsequent EIR. The evidence showed that water use had increased by 74 percent since preparation of a 1995 study of the capacity of Trinidad's water treatment plant. However, the ability of the creek to supply adequate water to both the project and the city had not been previously studied. This justified the County's determination that further study was needed in a subsequent analysis.

The Court did not find substantial evidence to support purported impacts on either water quality or fire safety. The testimony of the city's mayor to the Board was based on speculation, not facts. At the same time, the Court recommended that the supplemental analysis of water supply impacts consider the issue of water supply for fire fighting.

The Court carefully reviewed the evidence of impacts on coho salmon and found that, in reality, the County had no evidence that the creek was within the critical habitat area of that species of salmon, nor that salmon could even negotiate the mouth of the creek to access it. With regard to the coastal cutthroat trout, there was substantial evidence (albeit anecdotal) that a population was present in the creek.

Court concluded that the County may require a supplemental review under Section 21166, but only on the project's impacts on water supply to Trinidad and the population of cutthroat trout.

California Water Impact Network v. Newhall County Water District (2008) 161 Cal.App. 4th 1464

In previous action, the Court of Appeal had invalidated the water supply assessment (WSA) in the EIR for a 584-acre industrial business park in the City of Santa Clarita (*California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App..4th 1219). In complying with the court order, the City asked the Newhall County Water District (District) to prepare a new WSA. The District approved the WSA and forwarded it to the City for inclusion in the revised EIR for the project.

Before the City certified the EIR and took action on the project, the Water Impact Network (CWIN) brought suit against the District alleging that the revised WSA was misleading and inadequate. CWIN sought a writ of mandamus to force the District to revise its WSA. CWIN alleged that unless the District were ordered to revise the WSA before the EIR was completed, there would be no other judicial review that could force improvements to the WSA.

The District countered that the WSA is not subject to mandamus action and that CWIN had failed to exhaust its administrative remedies.

The Court found that the WSA is not a final decision that commits the City to a course of action. Therefore, it isn't subject to a writ of mandamus (which is limited to quasi-legislative or ministerial acts). The WSA is a factual determination that provides information to the City's CEQA process. In reviewing the judicial history of SB 610, the legislation establishing the WSA requirement, the Court found nothing to indicate that the Legislature "intended… to provide an additional avenue for judicial intervention in the middle of the CEQA process at the behest of any party other than the lead agency."

The WSA does not create an obligation on the part of the District to serve the project. Further, the lead agency has an independent obligation to assess water availability beyond the information contained in the WSA. Therefore, the WSA isn't a final decision subject to mandamus.

The decision on the project and its EIR would be subject legal challenge once a final decision was rendered by the City. The WSA could be challenged in that context.

CWIN failed to exhaust its administrative remedies before bringing suit. The City had not completed the CEQA process. As a result, the City had not been offered the opportunity to respond to CWIN's issues. Judicial review of the WSA properly occurs after EIR certification and a decision on the project. That judicial review can mandate corrections to the water supply analysis if warranted.

St. Vincent's Catholic School for Boys v. City of San Rqfael (2008) 161 Cal.App.4th 989

The St. Vincent's School is located in Marin County at the northern end of the City of San Rafael. It has been the center of a long fight over the urbanization of this high profile site. St Vincent's unsuccessfully sued the City over San Rafael's refusal to amend its general plan to facilitate annexation of the property into the City and its eventual development.

St. Vincent's claimed that since it had been included in the City's prior general plan, then the EIR for the proposed general plan should examine the impacts of removing it. The Court of Appeal disagreed. The City properly analyzed the proposed general plan against existing conditions.

St. Vincent's argued that including it within the general plan was not properly analyzed as an alternative. The Court held that the EIR correctly considered the impacts of alternatives. The No Project alternative was sufficiently described to allow comparison with the proposed general plan.

The Court further held that the City Council's early direction to staff to exclude St Vincent's property from the area to be considered for potential annexation in the draft general plan update was not a "project" subject to CEQA analysis. The direction did not change the status quo in that the property was outside the city limit, nor is there any vested right to annexation.

St Vincent's argued that eliminating its land from future annexation would mean that the development that might have occurred there would instead be built somewhere else. The Court found that the city had adequately addressed the question of "displacement" in the FEIR response. The city showed that the general plan update would provide adequate housing sites to meet projected demand without the need for the units that might have been provided by development of the St Vincent's site. There was no evidence that displacement would occur as suggested by St Vincent's.

The Court of Appeal upheld the trial court's award to the City of its costs for preparing a portion of the record. As allowed under CEQA, St. Vincent's elected to prepare the administrative record for this case. After reviewing the information provided them by the City and finding that it contained few e-mails, St Vincent's asked the City to undertake the lengthy and costly task of searching its computers for any and all e-mails pertinent to the project. On appeal, St. Vincent's argued that the award of costs is barred by the Public Records Act and Code of Civil Procedure.

The Court disagreed. The Court held that CEQA allows the parties to pay for “any reasonable costs or fees imposed for the preparation of the record of proceedings,” but also requires that “the party preparing the record shall strive to do so at reasonable cost in light of the scope of the record.” (Public Resources Code Section 21167.6) In general, the prevailing party (the City) is awarded costs. Here, the question was whether Section 21167.6 precluded an award of any costs if the plaintiff elected to prepare the record.

St. Vincent’s had requested the City to undertake a broad search of its computer files that substantially delayed the trial, but apparently this search did not result in a single e-mail that provided any information that bolstered its claims in the case. The Court complained that St. Vincent’s had made its request for e-mails “not because it had identified any ‘gaps’ in the voluminous planning documents contained in the 20 boxes [of files initially provided by the City], but because it was not satisfied with the number of emails (sic) contained in the 20 boxes.”

The Court held that Section 21167.6 obligates those who are preparing the record of proceedings to control costs as well as expedite CEQA litigation. The Court concluded that St. Vincent’s had not met this obligation: “Accordingly, we hold that where necessary to preserve the statutory purposes of cost-containment and expediting CEQA litigation, the prevailing party in a CEQA action may recover ‘reasonable costs or fees imposed for the preparation’ of the record, even if the non-prevailing party elected to prepare the record pursuant to section 21167.6, subdivision (b)(2).”

Cerna v. City of Oakland, et al (April 11, 2008) 161 Cal.App.4th 1340

Cerna sued the City and the Oakland Unified School District over a tragic accident in which an unlicensed motorist hit six pedestrians and killed a child who were crossing a street on while their way to school. CEQA was pulled into this negligence case on the unique theory that the school district had specifically assumed responsibility for the pedestrians’ safety when it prepare an EIR for the school that analyzed traffic safety impacts.

The Court of Appeal held that “[t]he CEQA EIR does not raise a triable issue of District liability for student injured in a crosswalk on their way to school.” The purpose of CEQA is to provide long-term protection to the environment and provide detailed information on the potential environmental consequences of an agency’s decision. It does not constitute an assumption of district responsibility for student safety under Education Code Section 44808.

Committee for Green Foothills v. Santa Clara County Board of Supervisors (April 10, 2008) __ Cal.App.4th __

This Court of Appeals case involves a question of when the statute of limitations applies to CEQA determinations. It has been accepted for review by the California Supreme Court. The Supreme Court will render a final decision; in the meantime, the Appeals decision cannot be cited as precedent.

Committee to Save the Hollywoodland Specific Plan and Hollywood Heritage v. City of Los Angeles (2008) 161 Cal.App.4th 1168

This case involves a fence built without permits in the Hollywoodland neighborhood of Los Angeles. A distinct feature of this 1920s-era subdivision is its many granite retaining walls and stairways. These walls are a listed city historical resource.

The fence in question was built in 2002 on one of these walls. The wall was in a backyard, below street grade, and not easily visible from the street. The owner built the fence for privacy and to help keep people from falling from the street into their backyard.

In 2003, the Department of Building and Safety tagged the fence as being in violation of the Hollywoodland Specific Plan. The homeowner applied for an exception to allow the fence to be replaced. A series of reviews by city agencies and commissions ensued. One product of this process was a report that recommended denial of the fence, but explained why a 42-inch high fence would be suitable instead. The report also found the project exempt under CEQA.

The Committee argued to the City that the proposed exception was inconsistent with the specific plan, allowed private use of the public right-of-way, and lacked evidentiary support. The Planning Commission denied the proposal, but approved a compromise 54-inch high fence, based on the categorical exemption. On appeal, the City Council upheld the Planning Commission's approval of the 54-inch fence.

The Committee sued. The trial court held for the City.

The Court of Appeal upheld the City's approval of the exception. The circumstances surrounding the project site and its situation were sufficiently unusual to warrant the grant of an exception and the City had substantial evidence to support its conclusion.

Nonetheless, the Court overturned the City's use of the categorical exemption. Categorical exemptions cannot be applied if the project may have a significant effect due to unusual circumstances. Nor can an exemption be applied to a project that may cause a substantial adverse change in the significance of a historical resource. The Court found that the City had not examined whether the fence might harm the wall's stability and failed to adequately consider whether the fence would adversely affect the historic significance of the granite wall that it was to built upon.

California Sportfishing Protection Alliance v. SWRCB (2008) 160 Cal.App.4th 1625

In 2003, the SWRCB approved an amendment to the exiting Basin Plan for the San Joaquin and Sacramento Rivers that set temperature standards for Deer Creek. Deer Creek flows through Cameron Park and its year-round flow is largely fed by the community's wastewater treatment plant. The temperature varies due to effluent discharges throughout the year.

The Basin Plan mandated that no cold or warm waters were to be incrased by more than 5 degrees F above the natural receiving water temperature. The RWQCB amended this provision to establish a scientifically-based temperature standard for Deer Creek that set maximum daily and average monthly temperatures. The new standards did not violate the EPA temperature criteria for the fish species documented to exist in Deer Creek. Contemporaneous studies showed that Deer Creek did not have a self-sustaining trout or anadromous salmon population.

The Alliance sued the SWRCB, alleging violation of the Porter-Cologne and Clean Water Acts by failure to recognize and protect cold-water fish. It also alleged that the substitute environmental document prepared for the decision violated CEQA requirements. The trial court decided for the SWRCB and this appeal followed.

The Court of Appeal affirmed. Reviewing the water quality claims under the "arbitrary and capricious" standard, the Court found that the SWRCB's conclusions were backed by numerous fish surveys. Further, the SWRCB properly noted that anadromous salmonids can occasionally stray into Deer Creek and protected such fish with a lower winter temperature standard.

The Alliance claimed that the RWQCB's CEQA equivalent document resembled a Negative Declaration, when a "fair argument" existed requiring a "full EIR." The Court disagreed: "when read in its entirety, the report demonstrates that the Regional Board considered all significant implications on the environment of the decision … in the nature of a full EIR, before finding that the project will not have a significant effect on Deer Creek water quality objectives…"

Citizens for Responsible and Open Government v. City of Grand Terrace (March 13, 2008) 160 Cal.App.4th 1323

The City approved a general plan amendment, rezoning, specific plan, and mitigated negative declaration for a 120-unit senior housing project. The project site was described as being 6 acres, including 4 acres that would be developed as a park in accordance with a prior City approval. The general plan amendment and rezoning were necessary to approve the proposed residential density of 20 dwellings per acre. During the process of considering the project, its design was revised from a three-story building to a building with two- and three-story sections that attempted to make the building more compatible with single-story development on surrounding parcels.

Citizens sued, alleging that the City failed to comply with CEQA. The trial court ordered the City to prepare an EIR.

The real party in interest countered on appeal that Citizens had not met the burden of proof to show that there was a fair argument for any significant effect to arise from the project's density, building height, or air conditioner noise. With regard to density, the Court concluded that the actual density of the proposed project is 60 dwellings per acre because the previously approved four-acre public park cannot be counted as part of the project site. The proposed density exceeds even the 20 dwellings per acre allowed by the general plan amendment. As a result, the Court concluded that there is substantial evidence in the record that the project may result in a substantial change in the environment despite mitigation.

With regard to building height, the Court similarly concluded that evidence in the record, including photos illustrating the predominantly single-story nature of the neighborhood, raised a fair argument that the height of the building would be uncharacteristic of the neighborhood and therefore interfere with the scenic views of the public in general.

Similarly, the Court found that testimony by a neighbor who had 30 years' experience in the HVAC business and who considered the types of units proposed to be extremely noisy ("they sound like airplanes") raised a fair argument that the proposed air conditioning units could result in a significant noise impact on nearby residences. The mitigation measures included in the mitigated negative declaration would have limited the number of units adjoining residential areas to not more than 20. Although the number was limited, the applicant did not propose use a different kind of unit. The Court noted that there was no evidence in the record as to the actual noise levels expected from the air conditioning units. Nonetheless, "there was enough evidence to support a fair argument." While one of the mitigation measures was to prohibit noise from exceeding the City's noise standard of 65 decibels, the Court noted that conformity with the noise standard "does not insulate a project from EIR review where it can be fairly argued that the project will generate significant environmental effects." In addition, the Court found "no evidence of any measures to be taken that would insure that the noise standards would be effectively monitored or enforced vigorously."

The Right Site Coalition v. Los Angeles Unified School District (Feb. 22, 2008) 160 Cal.App.4th 336

After initially being rebuffed for approving a new school in Echo Park on the basis of a mitigated negative declaration, the LAUSD prepared an EIR for the school. The Coalition filed suit, alleging a variety of inadequacies in the EIR. The Coalition also applied for a temporary restraining order and a preliminary injunction to prevent the LAUSD from demolishing nearly two city blocks (with 49 residences) to clear the school site. The trial court denied the preliminary injunction and the Coalition appealed.

The Court of Appeal reversed. The Court explained that in determining whether to issue a preliminary injunction, a court must consider two interrelated factors: (1) the likelihood that plaintiffs will prevail on the merits at trial, and (2) the comparative harm to be suffered by plaintiffs if the injunction does not issue against the harm to be suffered by defendants if it does. The Court noted that "the presence or absence of these interrelated factors 'is usually a matter of degree, *and if the party seeking the injunction can make a sufficiently strong showing of likelihood of success on the merits, the trial court has discretion to issue the injunction notwithstanding that party's inability to show that the balance of harms tips in his favor*. [Citation.]' (Common Cause v. Board of Supervisors 49 Cal.3d at p. 447, italics added.)"

The trial court erred in refusing to consider the likelihood that the Coalition would prevail on the merits. This is a test with two interrelated factors, not a two-part test that would hinge on compliance with the first part before the second part could be considered. By failing to consider both parts, the trial court did not properly apply the test. The Court of Appeal declined to address the potential merits or determine whether a preliminary injunction should issue. It remanded the case to the trial court to address those issues, based on consideration of the two interrelated factors.

Valley Advocates v. City of Fresno (Feb. 15, 2008) 160 Cal.App.4th 1039

The City approved the demolition of a 90-year-old fourplex on the basis of a categorical exemption. In a previous related action, the City Council had determined that the fourplex was not eligible for listing on the City's historic register. A categorical exemption cannot be applied to a project that may result in an adverse impact on a historical resource. On appeal of the categorical exemption to the City Council, the Council concluded that its prior determination that the fourplex did not qualify for the City's historic resources list was sufficient to support the use of the categorical exemption.

Valley Advocates sued the City, alleging that the City had failed to comply with Guidelines Section 15064.5 in determining that the fourplex was not historic for purposes of CEQA. The trial court held for the City. The Court of Appeal reversed.

Public Resources Code Section 21083.2 and Guidelines Section 150164.5 establish three categories by which a resource may qualify as historical. These are: mandatory resources (those on or eligible for the California Register of Historical Resources); presumptive resources (those on a local historic list or register); and discretionary resources (those determined by the lead agency to be worthy of historic preservation). The Court found no evidence that the fourplex qualified for either of the first two categories. Regarding the discretionary category, the Court held that the City had failed to determine whether it applied to the building when it denied the appeal of the categorical exemption.

A listing determination and a CEQA determination are not the same thing, according to the Court. Although the City had determined earlier that the building did not qualify for its historic register, it failed to determine whether the building might qualify under CEQA's discretionary category. The Court ordered the permit invalidated and directed that the City should consider whether the building qualifies as historic under CEQA.

Valley Advocates petitioned for a rehearing. The Court denied the petition and issued a modification of its opinion. The modification did not change the judgment, but clarified that the City had properly found that the building didn't qualify as a presumptive historical resource. The Court went on to find that the "fair argument" test did not apply to the City's determination of whether the building qualified as a presumptive historical resource. CEQA provides that a presumption of "historicity" may be rebutted by a preponderance of evidence (Public Resources Code Section 21084.1). In that case, it would not make sense for the fair argument to also apply – the two ideas are incompatible. The Court clarified that this only applied to the City's determination of historicity. Once a resource has been found to be historical, then the fair argument applies to the question of whether the project would cause “a substantial adverse change” in its significance.

Communities for a Better Environment v. South Coast Air Quality Management District (Jan. 16, 2008) 158 Cal.App.4th 1336

This case involves the question of whether air pollution credits under an adopted regional trading program can be considered the baseline for impact analysis. The case has since been accepted for review by the California Supreme Court. The Supreme Court will render the final decision on this case; in the meantime, the Appeals decision is not citeable as precedent.

Summary of Key 2008 CEQA Legislation

By Terry Rivasplata of ICF Jones & Stokes

The following are summaries of the CEQA-related bills that were signed into law in 2008. All the signed legislation will take effect January 1, 2009. However, SB 375's CEQA sections rely upon the adoption of an EIR and the Regional Transportation Plan/"sustainable communities strategy" by the applicable Metropolitan Planning Organization. None of those RTPs are expected to be adopted before 2011, so the CEQA streamlining will not take effect until sometime after then. The texts of these bills and any Legislative committee analyses can be found at http://www.leginfo.ca.gov/bilinfo.html.

AB 2650 (Carter). This bill effectively extends the operation of Caltrans' pilot program for undertaking NEPA responsibilities until January 1, 2012 by extending the State's acceptance of liability.

(Chapter 248, Statutes of 2008)

AB 2720 (Levine). AB 2720 makes non-substantive changes to the provisions regarding the location of schools near emitters of hazardous air emissions. It also defines "hazardous air emissions" and "extremely hazardous substances" for purposes of ensuring that schools are not located within ¼ mile of hazardous sites.

(Chapter 148, Statutes of 2008)

SB 375 (Steinberg). SB 375 is an ambitious bill intended to improve transportation planning by adding consideration of greenhouse gas (GHG) emissions and linking the Regional Transportation Plans (RTPs) to infill development and housing. SB 375 will require Metropolitan Planning Organizations (MPOs) to include a "sustainable communities strategy" (SCS) in their RTPs and details the contents of that strategy. The California Air Resources Board (ARB) will provide each region with GHG emissions reduction targets for the auto and light truck sector for 2020 and 2035 by June 30, 2010. The SCS will be required to set out a regional development pattern, transportation network, and other transportation measures that would reduce GHG from autos and light trucks to meet the ARB targets, if feasible.

Nothing in SB 375 will give MPOs authority to regulate land uses or supersede local planning authority. Nor is a local general plan required to be consistent with an SCS.

SB 375 makes extensive revisions to the housing element process, including requiring consistency with the RTP growth assumptions and placing some regions on an 8-year schedule for housing element updates. SB 375 also mandates that affordable housing sites be re-zoned accordingly within 3 years of adopting the revised housing element.

SB 375 will establish a complex new CEQA streamlining approach. This approach will apply if the project is a "transit priority project" that is consistent with the use provisions of an RTP/SCS or APS that ARB is satisfied would achieve the GHG emission reduction targets. Qualifying transit priority projects must meet strict environmental and land use criteria. SB 375 will also create two alternative methods of CEQA document streamlining where a transit priority project incorporates all of the feasible mitigation measures and performance standards adopted in the RTP/SCS or APS EIR. These include a new "sustainable communities environmental assessment" and a new type of focused EIR.

SB 375 further provides that a city or county may adopt standard traffic mitigation policies applicable to transit priority projects. The council or board will be required adopt or amend these measures at a public hearing and to review the measures and update them every 5 years.

SB 375 will also limit the need to analyze growth-inducement or any project-specific cumulative impact on GHG emissions or the regional transportation network from autos and light trucks in a CEQA document for residential and mixed-use residential projects where the project is consistent with the use provisions of an RTP/SCS or APS. This provision will authorize levying conditions, exactions, or fees to mitigate the project's impacts on the structure, safety, or operations of the regional network or local roads.

(Chapter 728, Statutes of 2008)

SB 732 (Steinberg). SB 732 is primarily intended to require State agencies to adopt guidelines for the competitive grants to be available under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006. It also establishes a Strategic Growth Council empowered to disburse up to $180 million in competitive grants for regional planning, local general and specific plans, and other planning activities that support AB 32 and sustainability. Public Resources Code Section 75070 requires every project funded by this bond act to comply with CEQA.

SB 732 will require the lead agency for a negative declaration or EIR being prepared for a planning project to notify the pertinent Native American tribe (as identified by the Native American Heritage Commission) if the tribe has traditional lands located within the area of the proposed planning project.

(Chapter 729, Statutes of 2008)

SB 947 (Hollingsworth). SB 947 will require notice of at least one scoping meeting to be provided to transportation planning agencies or public agencies required to be consulted concerning such a project, and will require the project's effect on overpasses, on-ramps, and off-ramps to be included in that consultation.

(Chapter 707, Statutes of 2008)

Changes made to CEQA in 2008

Section	Effect	Bill	Chapter	Effective
21151.10	Delete*	N/A	N/A	January 1, 2008
21061.3	Amend	SB 375	728	January 1, 2009
21083.9	Amend	SB 947	707	January 1, 2009
21085.7	Delete*	N/A	N/A	January 1, 2008
21092.4	Amend	SB 947	707	January 1, 2009
21151.4	Amend	AB 2720	148	January 1, 2009
21151.8	Amend	AB 2720	148	January 1, 2009
21151.10	Delete*	N/A	N/A	January 1, 2008
21155	Add	SB 375	728	January 1, 2009
21155.1	Add	SB 375	728	January 1, 2009
21155.2	Add	SB 375	728	January 1, 2009
21155.3	Add	SB 375	728	January 1, 2009
21159.25	Delete*	N/A	N/A	January 1, 2008
21159.28	Add	SB 375	728	January 1, 2009

Changes made to CEQA Guidelines in 2008

Appendix C**	Amend	N/A	N/A	January 1, 2009

*** Sunset clause effective 1-1-08.**

****PLEASE NOTE**

Changes to Public Resources Code section 21161 made pursuant to SB1046 in 2007 call for a notice of completion filed with the State Clearinghouse to identify the location of a project by latitude and longitude. In January 2008 the Office of Planning and Research revised the notice of completion form used to transmit documents to the State Clearinghouse. The new form is included in this publication and can also be accessed at http://www.opr.ca.gov/planning/publications/NOC_2008.pdf.

California Environmental Quality Act
California Public Resources Code
Division 13. Environmental Quality

Statute, as amended in 2008

[The 2008 amendments are shown in strikeout/underline.]

Chapter 1: Policy

§ 21000. LEGISLATIVE INTENT

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 activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.

§ 21001. ADDITIONAL LEGISLATIVE INTENT

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, consistent with the provision of a decent home and suitable living environment for every Californian, 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.

§ 21001.1. REVIEW OF PUBLIC AGENCY PROJECTS

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.

§ 21002. APPROVAL OF PROJECTS; FEASIBLE ALTERNATIVE OR MITIGATION MEASURES

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 or more significant effects thereof.

§ 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.

§ 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 decision makers 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.

§ 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.

§ 21004. MITIGATING OR AVOIDING A SIGNIFICANT EFFECT; POWERS OF PUBLIC AGENCY

In mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than this division. However, a public agency may use discretionary powers provided by such other law for the purpose of mitigating or avoiding a significant effect on the environment subject to the express or implied constraints or limitations that may be provided by law.

§ 21005. INFORMATION DISCLOSURE PROVISIONS; NONCOMPLIANCE; PRESUMPTION; FINDINGS

(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.

§ 21006. ISSUANCE OF PERMITS, LICENSES, CERTIFICATES OR OTHER ENTITLEMENTS; WAIVERS OF SOVEREIGN

The Legislature finds and declares that this division is an integral part of any public agency's decisionmaking process, including, but not limited to, the issuance of permits, licenses, certificates, or other entitlements required for activities undertaken pursuant to federal statutes containing specific waivers of sovereign immunity.

Chapter 2: Short Title

§ 21050. CITATION

This division shall be known and may be cited as the California Environmental Quality Act.

Chapter 2.5: Definitions

§ 21060. APPLICATION OF DEFINITIONS

Unless the context otherwise requires, the definitions in this chapter govern the construction of this division.

§ 21060.1. AGRICULTURAL LAND

(a) "Agricultural land" means prime farmland, farmland of statewide importance, or unique farmland, as defined by the United States Department of Agriculture land inventory and monitoring criteria, as modified for California.

(b) In those areas of the state where lands have not been surveyed for the classifications specified in subdivision (a), "agricultural land" means land that meets the requirements of "prime agricultural land" as defined in paragraph (1), (2), (3), or (4) of subdivision (c) of Section 51201 of the Government Code.

§ 21060.3. 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.

§ 21060.5. ENVIRONMENT

"Environment" means the physical conditions that exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, or objects of historic or aesthetic significance.

§ 21061. ENVIRONMENTAL IMPACT REPORT

"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.

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.

§ 21061.1. 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.

§ 21061.2. LAND EVALUATION AND SITE ASSESSMENT

"Land evaluation and site assessment" means a decision-making methodology for assessing the potential environmental impact of state and local projects on agricultural land.

§ 21061.3 INFILL SITE

"Infill site" means a site in an urbanized area that meets either of the following criteria:

(a) The site has not been previously developed for urban uses and both of the following apply:

(~~a~~1) The site is immediately adjacent to parcels that are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses and the remaining 25 percent of the site adjoins parcels that have previously been developed for qualified urban uses~~, and the site has not been developed for urban uses and no parcel within the site has been created within the past 10 years~~.

(2) No parcel within the site has been created within the past 10 years unless the parcel was created as a result of the plan of a redevelopment agency.

(b) The site has been previously developed for qualified urban uses.

§ 21062. LOCAL AGENCY

"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.

§ 21063. PUBLIC AGENCY

"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.

§ 21064. NEGATIVE DECLARATION

"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.

§ 21064.3. MAJOR TRANSIT STOP

"Major transit stop" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

§ 21064.5. 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.

§ 21065. PROJECT

"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.

§ 21065.3. PROJECT-SPECIFIC EFFECT

"Project-specific effect" means all the direct or indirect environmental effects of a project other than cumulative effects and growth-inducing effects.

§ 21065.5. GEOTHERMAL EXPLORATORY PROJECT

"Geothermal exploratory project" means a project as defined in Section 21065 composed of not more than six wells and associated drilling and testing equipment, whose chief and original purpose is to evaluate the presence and characteristics of geothermal resources prior to commencement of a geothermal field development project as defined in Section 65928.5 of the Government Code. Wells included within a geothermal exploratory project must be located at least one-half mile from geothermal development wells which are capable of producing geothermal resources in commercial quantities.

§ 21066. PERSON

"Person" includes any person, firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, county, city and county, city, town, the state, and any of the agencies and political subdivisions of those entities, and, to the extent permitted by federal law, the United States, or any of its agencies or political subdivisions.

§ 21067. 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 upon the environment.

§ 21068. SIGNIFICANT EFFECT ON THE ENVIRONMENT

"Significant effect on the environment" means a substantial, or potentially substantial, adverse change in the environment.

§ 21068.5. TIERING OR TIER

"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.

§ 21069. RESPONSIBLE AGENCY

"Responsible agency" means a public agency, other than the lead agency, which has responsibility for carrying out or approving a project.

§ 21070. TRUSTEE AGENCY

"Trustee agency" means 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.

§ 21071. URBANIZED AREA; DEFINITION

"Urbanized area" means either of the following:

(a) An incorporated city that meets either of the following criteria:

- (1) Has a population of at least 100,000 persons.
- (2) Has a population of less than 100,000 persons if the population of that city and not more than two contiguous incorporated cities combined equals at least 100,000 persons.

(b) An unincorporated area that satisfies the criteria in both paragraph (1) and (2) of the following criteria:

- (1) Is either of the following:
  - (A) Completely surrounded by one or more incorporated cities, and both of the following criteria are met:
    - (i) The population of the unincorporated area and the population of the surrounding incorporated city or cities equals not less than 100,000 persons.
    - (ii) The population density of the unincorporated area at least equals the population density of the surrounding city or cities.
  - (B) Located within an urban growth boundary and has an existing residential population of at least 5,000 persons per square mile. For purposes of this subparagraph, an "urban growth boundary" means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.
- (2) The board of supervisors with jurisdiction over the unincorporated area has previously taken both of the following actions:
  - (A) Issued a finding that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that encourage compact development in a manner that does both of the following:
    - (i) Promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing.
    - (ii) Protects the environment, open space, and agricultural areas.
  - (B) Submitted a draft finding to the Office of Planning and Research at least 30 days prior to issuing a final finding, and allowed the office 30 days to submit comments on the draft findings to the board of supervisors.

§ 21072. QUALIFIED URBAN USE; DEFINITION

"Qualified urban use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

Chapter 2.6: General

§ 21080. DIVISION APPLICATION TO DISCRETIONARY PROJECTS; NONAPPLICATION; NEGATIVE DECLARATIONS; ENVIRONMENTAL IMPACT REPORT PREPARATION

(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 assumption 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.

§ 21080.01. CALIFORNIA MEN'S COLONY WEST FACILITY IN SAN LUIS OBISPO COUNTY; INAPPLICABILITY OF DIVISION TO REOPENING AND OPERATION

This division shall not apply to any activity or approval necessary for the reopening and operation of the California Men's Colony West Facility in San Luis Obispo County.

§ 21080.02. KINGS COUNTY; VICINITY OF CORCORAN; NEW PRISON FACILITIES; APPLICATION OF DIVISION

This division shall not apply to any activity or approval necessary for or incidental to planning, design, site acquisition, construction, operation, or maintenance of the new prison facility at or in the vicinity of Corcoran in Kings County as authorized by the act that enacted this section.

§ 21080.03. KINGS AND AMADOR (IONE) COUNTIES; PRISONS; APPLICATION OF DIVISION

This division shall not apply to any activity or approval necessary for or incidental to the location, development, construction, operation, or maintenance of the prison in the County of Kings, authorized by Section 9 of Chapter 958 of the Statutes of 1983, as amended, and of the prison in the County of Amador (Ione), authorized by Chapter 957 of the Statutes of 1983, as amended.

§ 21080.04. ROCKTRAM-KRUG PASSENGER RAIL SERVICE PROJECT; APPLICATION OF DIVISION; LEAD AGENCY; LEGISLATIVE INTENT

(a) Notwithstanding paragraph (10) of subdivision (b) of Section 21080, this division applies to a project for the institution of passenger rail service on a line paralleling State Highway 29 and running from Rocktram to Krug in the Napa Valley. With respect to that project, and for the purposes of this division, the Public Utilities Commission is the lead agency.

(b) It is the intent of the Legislature in enacting this section to abrogate the decision of the California Supreme Court "that Section 21080, subdivision (b)(11), exempts Wine Train's institution of passenger service on the Rocktram-Krug line from the requirements of CEQA" in *Napa Valley Wine Train, Inc. v. Public Utilities Com.*, 50 Cal. 3d 370.

(c) Nothing in this section is intended to affect or apply to, or to confer jurisdiction upon the Public Utilities Commission with respect to, any other project involving rail service.

§ 21080.05. SAN FRANCISCO PENINSULA COMMUTE SERVICE PROJECT BETWEEN SAN FRANCISCO AND SAN JOSE; APPLICATION OF DIVISION

This division does not apply to a project by a public agency to lease or purchase the rail right-of-way used for the San Francisco Peninsula commute service between San Francisco and San Jose, together with all branch and spur lines, including the Dumbarton and Vasona lines.

§ 21080.07. RIVERSIDE AND DEL NORTE COUNTIES; PLANNING AND CONSTRUCTION OF NEW PRISON FACILITIES; APPLICATION OF DIVISION

This division shall not apply to any activity or approval necessary for or incidental to planning, design, site acquisition, construction, operation, or maintenance of the new prison facilities located in any of the following places:

(a) The County of Riverside.

(b) The County of Del Norte.

§ 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.

§ 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.

§ 21080.2. ISSUANCE OF LEASE, PERMIT, LICENSE, CERTIFICATE OR OTHER ENTITLEMENT; DETERMINATION BY LEAD AGENCY; TIME

In the case of a project described in subdivision (c) of Section 21065, the determination required by Section 21080.1 shall be made within 30 days from the date on which an application for a project has been received and accepted as complete by the lead agency. This period may be extended 15 days upon the consent of the lead agency and the project applicant.

§ 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 trustee agencies. Prior to that required consultation, the lead agency may informally contact any of those 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 the lead agency in determining the various responsible agencies and trustee 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.

§ 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.

§ 21080.5. PLAN OR OTHER WRITTEN DOCUMENTATION; SUBMISSION IN LIEU OF IMPACT REPORT; REGULATORY PROGRAMS; CRITERIA; CERTIFICATION; PROPOSED CHANGES; REVIEW; COMMENCEMENT OF ACTIONS; STATE AGENCIES

(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 decision making 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, a 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 may 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) An 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) An 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 an 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, a county agricultural commissioner is a state agency.

(j) For purposes of this section, an 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, 2004, 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.

§ 21080.8. APPLICATION OF DIVISION; CONVERSION OF EXISTING RENTAL MOBILEHOME PARK TO RESIDENT INITIATED SUBDIVISION, COOPERATIVE, CONDOMINIUM FOR MOBILEHOMES

This division does not apply to the conversion of an existing rental mobilehome park to a resident initiated subdivision, cooperative, or condominium for mobilehomes if the conversion will not result in an expansion of or change in existing use of the property.

§ 21080.9. LOCAL COASTAL PROGRAMS OR LONG-RANGE LAND USE DEVELOPMENT; UNIVERSITY OR GOVERNMENTAL ACTIVITIES AND APPROVALS; APPLICATION OF DIVISION

This division shall not apply to activities and approvals by any local government, as defined in Section 30109, or any state university or college, as defined in Section 30119, as necessary for the preparation and adoption of a local coastal program or long-range land use development plan pursuant to Division 20 (commencing with Section 30000); provided, however, that certification of a local coastal program or long-range land use development plan by the California Coastal

Commission pursuant to Chapter 6 (commencing with Section 30500) of Division 20 shall be subject to the requirements of this division. For the purpose of Section 21080.5, a certified local coastal program or long-range land use development plan constitutes a plan for use in the California Coastal Commission's regulatory program.

§ 21080.10. APPLICATION OF DIVISION; GENERAL PLANS; LOW- OR MODERATE- INCOME OR RESIDENTIAL HOUSING; AGRICULTURAL EMPLOYEE HOUSING

This division does not apply to any of the following:

(a) An extension of time, granted pursuant to Section 65361 of the Government Code, for the preparation and adoption of one or more elements of a city or county general plan.

(b) Actions taken by the Department of Housing and Community Development or the California Housing Finance Agency to provide financial assistance or insurance 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, if the project that is the subject of the application for financial assistance or insurance will be reviewed pursuant to this division by another public agency.

§ 21080.11. APPLICATION OF DIVISION; SETTLEMENTS BY STATE LANDS COMMISSION

This division shall not apply to settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection with those settlements.

§ 21080.12. APPLICATION OF DIVISION; REPAIR OF CRITICAL LEVEES

(a) This division does not apply to the repair of critical levees of the State Plan for Flood Control specified pursuant to Section 8361 of the Water Code within an existing levee footprint to meet standards of public health and safety funded pursuant to Section 5096.821, except as otherwise provided in Section 15300.2 of Title 14 of the California Code of Regulations.

(b) For purposes of undertaking urgent levee repairs, the lead agency shall do all of the following:

   (1) Conduct outreach efforts in the vicinity of the project to ensure public awareness of the proposed repair work prior to approval of the project.

   (2) To the extent feasible, comply with standard construction practices, including, but not limited to, any rules, guidelines, or regulations adopted by the applicable air district for construction equipment and for control of particulate matter emissions.

   (3) To the extent feasible, use equipment powered by emulsified diesel fuel, electricity, natural gas, or ultralow sulfur diesel as an alternative to conventional diesel-powered construction equipment.

(c) This section shall remain in effect only until July 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2016, deletes or extends that date.

§ 21080.13. RAILROAD GRADE SEPARATION PROJECTS; APPLICATION OF DIVISION

This division shall not apply to any railroad grade separation project which eliminates an existing grade crossing or which reconstructs an existing grade separation.

§ 21080.14. APPLICATION OF DIVISION TO SEISMIC RETROFIT PROJECTS FOR EXISTING HIGHWAY FACILITIES

(a) The following seismic retrofit projects, as defined by the Department of Transportation's directive dated May 4, 2006, for the structural modification of an existing highway structure or the replacement of a highway structure by a newly constructed highway structure, with substantially the same purpose and capacity as the existing structure, within an existing right-of-way, or immediately adjacent right-of-way, shall be exempt from this division:

(1) The I-880 Fifth Avenue Overhead in Alameda County.

(2) The I-880 High Street Separation Overhead in Alameda County.

(3) The SR 101 Hollister Avenue Overcrossing in Santa Barbara County.

(4) The Schuyler Heim Bridge in Los Angeles County.

(5) The Mojave River Bridge on SR 18 in San Bernardino County.

(b) For a project specified in subdivision (a), the Department of Transportation shall do all of the following:

(1) Conduct outreach efforts in the vicinity of the project to ensure public awareness of the proposed repair work prior to approval of the seismic retrofit project.

(2) To the extent feasible, comply with standard construction practices, including, but not limited to, any rules, guidelines, or regulations adopted by the applicable air district for construction equipment.

(3) Comply with measures for control of particulate matter emissions recommended by the applicable air district.

(4) To the extent feasible, use equipment powered by emulsified diesel fuel, electricity, natural gas, or ultralow sulfur diesel as an alternative to conventional diesel-powered construction equipment.

(c) This section shall remain in effect only until the date that the Director of Transportation certifies to the Secretary of Business, Transportation and Housing that all construction activities for the seismic retrofit projects specified in subdivision (a) are complete, or until June 30, 2010, whichever occurs first, and as of that date is repealed.

§ 21080.16. APPLICATION OF DIVISION TO SEISMIC RETROFIT PROJECTS FOR EXISTING LOCAL BRIDGES

(a) This division does not apply to a seismic retrofit project on an existing local bridge, except as otherwise provided in Section 15300.2 of Title 14 of the California Code of Regulations, that is identified pursuant to Section 179.1 of the Streets and Highways Code.

(b) For purposes of undertaking the seismic retrofit project, the lead agency shall do all of the following:

(1) Conduct outreach efforts in the vicinity of the project to ensure public awareness of the proposed project prior to approval of the project.

(2) To the extent feasible, comply with standard construction practices, including, but not limited to, any rules, guidelines, or regulations adopted by the applicable air district for construction equipment and for control of particulate matter emissions.

(3) To the extent feasible, use equipment powered by emulsified diesel fuel, electricity, natural gas, or ultralow sulfur diesel as an alternative to conventional diesel-powered construction equipment.

(c) For purposes of this section an "existing local bridge" means a bridge that is located on a local street or highway.

(d) For purposes of this section a "seismic retrofit project" means a project urgently needed to bring a dangerous and unsafe bridge up to contemporary seismic standards and retaining the same purposes, capacity, and location as the existing bridge.

(e) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, this is enacted before January 1, 2011, deletes or extends that date.

§ 21080.17. APPLICATION OF DIVISION TO ORDINANCES IMPLEMENTING LAW RELATING TO CONSTRUCTION OF DWELLING UNITS AND SECOND UNITS

This division does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code.

§ 21080.18. APPLICATION OF DIVISION TO CLOSING OF PUBLIC SCHOOL MAINTAINING KINDERGARTEN OR ANY OF GRADES 1 THROUGH 12

This division 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 Division 6 of Title 14 of the California Administrative Code.

§ 21080.19. RESTRIPING OF STREETS OR HIGHWAYS; APPLICATION OF DIVISION

This division does not apply to a project for restriping of streets or highways to relieve traffic congestion.

§ 21080.21. APPLICATION OF DIVISION TO PUBLIC RIGHT-OF-WAY PIPELINE PROJECTS LESS THAN ONE MILE IN LENGTH

This division does not apply to any project of less than one mile in length within a public street or highway or any other public right-of-way for the installation of a new pipeline or the maintenance, repair, restoration, reconditioning, relocation, replacement, removal, or demolition of an existing pipeline. For purposes of this section, "pipeline" includes subsurface facilities but does not include any surface facility related to the operation of the underground facility.

§ 21080.22. LOCAL GOVERNMENTS; PREPARATION OF GENERAL PLAN AMENDMENTS; APPLICATION OF DIVISION

(a) This division does not apply to activities and approvals by a local government necessary for the preparation of general plan amendments pursuant to Section 29763, except that the approval of general plan amendments by the Delta Protection Commission is subject to the requirements of this division.

(b) For purposes of Section 21080.5, a general plan amendment is a plan required by the regulatory program of the Delta Protection Commission.

§ 21080.23. PIPELINE PROJECTS; APPLICATION OF DIVISION

(a) This division does not apply to any project which consists of the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing pipeline, as defined in subdivision (a) of Section 51010.5 of the Government Code, or any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline, if the project meets all of the following conditions:

(1) (A) The project is less than eight miles in length.

(B) Notwithstanding subparagraph (A), actual construction and excavation activities undertaken to achieve the maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing pipeline are not undertaken over a length of more than one-half mile at any one time.

(2) The project consists of a section of pipeline that is not less than eight miles from any section of pipeline that has been subject to an exemption pursuant to this section in the past 12 months.

(3) The project is not solely for the purpose of excavating soil that is contaminated by hazardous materials, and, to the extent not otherwise expressly required by law, the party undertaking the project immediately informs the lead agency of the discovery of contaminated soil.

(4) To the extent not otherwise expressly 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 determined to be necessary, to provide for the emergency evacuation of members of the public who may be located in close proximity to the project.

(5) Project activities are undertaken within an existing right-of-way and the right-of-way is restored to its condition prior to the project.

(6) The project applicant agrees to comply with all conditions otherwise authorized by law, imposed by the city or county planning department as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and to otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and other applicable state laws, and with all applicable federal laws.

(b) If a project meets all of the requirements of subdivision (a), the person undertaking the project shall do all of the following:

(1) Notify, in writing, any affected public agency, including, but not limited to, any public agency having permit, land use, environmental, public health protection, or emergency response authority of the exemption of the project from this division by subdivision (a).

(2) Provide notice to the public in the affected area in a manner consistent with paragraph (3) of subdivision (b) of Section 21092.

(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) Comply with all conditions otherwise authorized by law, imposed by the city or county planning department as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and other applicable state laws, and with all applicable federal laws.

(c) Prior to January 1, 1999, this section shall not apply to ARCO Pipeline Company's crude oil pipelines designated as Crude Oil Line 1, from Tejon Station south to its terminus, and Crude Oil Line 90.

(d) This section does not apply to either of the following:

(1) A project in which the diameter of the pipeline is increased.

(2) A project undertaken within the boundaries of an oil refinery.

§ 21080.24. PERMITS; ISSUANCE, MODIFICATION, AMENDMENT, OR RENEWAL; APPLICATION OF LAW

(a) This division does not apply to the issuance, modification, amendment, or renewal of a 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 a district Title V program established pursuant to 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.

(b) Nothing in this section is intended to result in the application of this division to a physical or operational change that, prior to January 1, 1995, was not subject to this division.

§ 21080.26. FLUORIDATION; APPLICATION OF DIVISION; MINOR ALTERATIONS

This division does not apply to minor alterations to utilities made for the purposes of complying with Sections 4026.7 and 4026.8 of the Health and Safety Code or regulations adopted thereunder.

§ 21080.29. LA PLAYA PROJECT; APPLICATION OF DIVISION

(a) A project located in Los Angeles County that is approved by a public agency before the effective date of the act adding this section is not in violation of any requirement of this division by reason of the failure to construct a roadway across the property transferred to the state pursuant to subdivision (c) and to construct a bridge over the adjacent Ballona Channel in Los Angeles County, otherwise required as a mitigation measure pursuant to this division, if all of the following conditions apply:

(1) The improvements specified in this subdivision are not constructed, due in whole or in part, to the project owner's or developer's relinquishment of easement rights to construct those improvements.

(2) The easement rights in paragraph (1) are relinquished in connection with the State of California, acting by and through the Wildlife Conservation Board of the Department of Fish and Game, acquiring a wetlands project that is a minimum of 400 acres in size and located within the coastal zone.

(b) Where those easement rights have been relinquished, any municipal ordinance or regulation adopted by a charter city or a general law city shall be inapplicable to the extent that the ordinance or regulation requires construction of the transportation improvements specified in subdivision (a), or would otherwise require reprocessing or resubmittal of a permit or approval, including, but not limited to, a final recorded map, a vesting tentative map, or a tentative map, as a result of the transportation improvements specified in subdivision (a) not being constructed.

(c) (1) If the Wildlife Conservation Board of the Department of Fish and Game acquires property within the coastal zone that is a minimum of 400 acres in size pursuant to a purchase and sale agreement with Playa Capital Company, LLC, the Controller shall direct the trustee under the Amendment to Declaration of Trust entered into on or about December 11, 1984, by First Nationwide Savings, as trustee, Summa Corporation, as trustor, and the Controller, as beneficiary, known as the HRH Inheritance Tax Security Trust, to convey title to the trust estate of the trust, including real property commonly known as Playa Vista Area C, to the State of California acting by and through the Wildlife Conservation Board of the Department of Fish and Game for conservation, restoration, or recreation purposes only, with the right to transfer the property for those uses to any other agency of the State of California.

(2) This subdivision shall constitute the enabling legislation required by the Amendment to Declaration of Trust to empower the Controller to direct the trustee to convey title to the

trust estate under the HRH Inheritance Tax Security Trust to the State of California or an agency thereof.

(3) The conveyance of the trust estate to the Wildlife Conservation Board pursuant to this subdivision shall supersede any duty or obligation imposed upon the Controller under the Probate Code or the Revenue and Taxation Code with respect to the disposition or application of the net proceeds of the trust estate.

§ 21080.32. EXEMPTION OF SPECIFIED ACTIONS BY PUBLICLY OWNED TRANSIT AGENCIES; IMPLEMENTATION OF BUDGET REDUCTIONS

(a) This section shall only apply to publicly owned transit agencies, but shall not apply to any publicly owned transit agency created pursuant to Section 130050.2 of the Public Utilities Code.

(b) Except as provided in subdivision (c), and in accordance with subdivision (d), this division does not apply to actions taken on or after July 1, 1995, by a publicly owned transit agency to implement budget reductions caused by the failure of agency revenues to adequately fund agency programs and facilities.

(c) This section does not apply to any action to reduce or eliminate a transit service, facility, program, or activity that was approved or adopted as a mitigation measure in any environmental document authorized by this division or the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.) or to any state or federal requirement that is imposed for the protection of the environment.

(d) (1) This section applies only to actions taken after the publicly owned transit agency has made a finding that there is a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities, and after the publicly owned transit agency has held a public hearing to consider those actions. A publicly owned transit agency that has held such a hearing shall respond within 30 days at a regular public meeting to suggestions made by the public at the initial public hearing. Those actions shall be limited to projects defined in subdivision (a) or (b) of Section 21065 which initiate or increase fees, rates, or charges charged for any existing public service, program, or activity; or reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity.

(2) For purposes of this subdivision, "fiscal emergency," when applied to a publicly owned transit agency, means that the agency is projected to have negative working capital within one year from the date that the agency makes the finding that there is a fiscal emergency pursuant to this section. Working capital shall be determined by adding together all unrestricted cash, unrestricted short-term investments, and unrestricted short-term accounts receivable and then subtracting unrestricted accounts payable. Employee retirement funds, including Internal Revenue Code Section 457 deferred compensation plans and Section 401(k) plans, health insurance reserves, bond payment reserves, workers' compensation reserves, and insurance reserves, shall not be factored into the formula for working capital.

§ 21080.33. EMERGENCY PROJECTS TO MAINTAIN, REPAIR OR RESTORE EXISTING HIGHWAYS; APPLICATION OF DIVISION; EXCEPTIONS

This division does not apply to any emergency project undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. This section does not exempt from this division 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.

§ 21080.35. CARRYING OUT OR APPROVING A PROJECT; DEFINITION

For the purposes of Section 21069, the phrase "carrying out or approving a project" shall include the carrying out or approval of a plan for a project that expands or enlarges an existing publicly owned airport by any political subdivision, as described in Section 21661.6 of the Public Utilities Code.

§ 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.

§ 21081.2 EXCEPTION TO FINDINGS FOR INFILL RESIDENTIAL PROJECTS

(a) Except as provided in subdivision (c), if a residential project, not exceeding 100 units, with a minimum residential density of 20 units per acre and within one-half mile of a transit stop, on an infill site in an urbanized area is in compliance with the traffic, circulation, and transportation policies of the general plan, applicable community plan, applicable specific plan, and applicable ordinances of the city or county with jurisdiction over the area where the project is located, and the city or county requires that the mitigation measures approved in a previously certified project area environmental impact report applicable to the project be incorporated into the project, the city or county is not required to comply with subdivision (a) of Section 21081 with respect to the making of any findings regarding the impacts of the project on traffic at intersections, or on streets, highways, or freeways.

(b) Nothing in subdivision (a) restricts the authority of a city or county to adopt feasible mitigation measures with respect to the impacts of a project on pedestrian and bicycle safety.

(c) Subdivision (a) does not apply in any of the following circumstances:

  (1) The application for a proposed project is made more than five years after certification of the project area environmental impact report applicable to the project.

(2) A major change has occurred within the project area after certification of the project area environmental impact report applicable to the project.

(3) The project area environmental impact report applicable to the project was certified with overriding considerations pursuant to subdivision (b) of Section 21081 to the significant impacts on the environment with respect to traffic or transportation.

(4) The proposed project covers more than four acres.

(d) A project shall not be divided into smaller projects in order to qualify pursuant to this section.

(e) Nothing in this section relieves a city or county from the requirement to analyze the project's effects on traffic at intersections, or on streets, highways, or freeways, or from making a determination that the project may have a significant effect on traffic.

(f) For the purposes of this section, "project area environmental impact report" means an environmental impact report certified on any of the following:

(1) A general plan.

(2) A revision or update to the general plan that includes at least the land use and circulation elements.

(3) An applicable community plan.

(4) An applicable specific plan.

(5) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.

(6) A zoning ordinance.

§ 21081.5. FEASIBILITY OF MITIGATION MEASURES OR PROJECT ALTERNATIVES; BASIS FOR FINDINGS

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.

§ 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.

§ 21081.7. TRANSPORTATION INFORMATION; SUBMISSION OF REPORT TO TRANSPORTATION PLANNING AGENCY

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.

§ 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.

§ 21082.1. DRAFT ENVIRONMENTAL IMPACT REPORT, ENVIRONMENTAL IMPACT REPORT, OR 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.

§ 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.

§ 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 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.

§ 21083.05.

(a) On or before July 1, 2009, the Office of Planning and Research shall prepare, develop, and transmit to the Resources Agency guidelines for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions as required by this division, including, but not limited to, effects associated with transportation or energy consumption.

(b) On or before January 1, 2010, the Resources Agency shall certify and adopt guidelines prepared and developed by the Office of Planning and Research pursuant to subdivision (a).

(c) The Office of Planning and Research and the Resources Agency shall periodically update the guidelines to incorporate new information or criteria established by the State Air Resources Board pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code.

§ 21083.1. LEGISLATIVE INTENT; INTERPRETATION BY COURTS

It is the intent of the Legislature that courts, consistent with generally accepted rules of statutory interpretation, shall not interpret this division or the state guidelines adopted pursuant to Section 21083 in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines.

§ 21083.2. ARCHAEOLOGICAL RESOURCES; DETERMINATION OF EFFECT OF PROJECT; EIR OR NEGATIVE DECLARATION; MITIGATION MEASURES

(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.

§ 21083.3. APPLICATION OF DIVISION TO APPROVAL OF SUBDIVISION MAP OR OTHER PROJECT; LIMITATION; MITIGATION MEASURES UNDER PRIOR ENVIRONMENTAL IMPACT REPORT; PUBLIC HEARING; FINDING

(a) If a parcel has been zoned to accommodate a particular density of development or has been designated in a community plan to accommodate a particular density of development and an environmental impact report was certified for that zoning or planning action, the application of this division to the approval of any subdivision map or other project that is consistent with the zoning or community plan shall be limited to effects upon the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report.

(b) If a development project is consistent with the general plan of a local agency and an environmental impact report was certified with respect to that general plan, the application of this division to the approval of that development project shall be limited to effects on the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report.

(c) Nothing in this section affects any requirement to analyze potentially significant offsite impacts and cumulative impacts of the project not discussed in the prior environmental impact report with respect to the general plan. However, all public agencies with authority to mitigate the significant effects shall undertake or require the undertaking of any feasible mitigation measures specified in the prior environmental impact report relevant to a significant effect which the project will have on the environment or, if not, then the provisions of this section shall have no application to that effect. The lead agency shall make a finding, at a public hearing, as to whether those mitigation measures will be undertaken.

(d) An effect of a project upon the environment shall not be considered peculiar to the parcel or to the project, for purposes of this section, if uniformly applied development policies or standards have been previously adopted by the city or county, with a finding based upon substantial evidence, which need not include an environmental impact report, 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.

(e) Where a community plan is the basis for application of this section, any rezoning action consistent with the community plan shall be a project subject to exemption from this division in accordance with this section. As used in this section, "community plan" means a part of the general plan of a city or county which (1) applies to a defined geographic portion of the total area included in the general plan, (2) complies with Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code by including or referencing each of the mandatory elements specified in Section 65302 of the Government Code, and (3) contains specific development policies adopted for the area included in the community plan and identifies measures to implement those policies, so that the policies which will apply to each parcel can be determined.

(f) No person shall have standing to bring an action or proceeding to attack, review, set aside, void, or annul a finding of a public agency made at a public hearing pursuant to subdivision (a) with respect to the conformity of the project to the mitigation measures identified in the prior environmental impact report for the zoning or planning action, unless he or she has participated in that public hearing. However, this subdivision shall not be applicable if the local agency failed to give public notice of the hearing as required by law. For purposes of this subdivision, a person has participated in the public hearing if he or she has either submitted oral or written testimony regarding the proposed determination, finding, or decision prior to the close of the hearing.

(g) Any community plan adopted prior to January 1, 1982, which does not comply with the definitional criteria specified in subdivision (e) may be amended to comply with that criteria, in which case the plan shall be deemed a "community plan" within the meaning of subdivision (e) if (1) an environmental impact report was certified for adoption of the plan, and (2) at the time of the conforming amendment, the environmental impact report has not been held inadequate by a court of this state and is not the subject of pending litigation challenging its adequacy.

§ 21083.4. COUNTIES; CONVERSION OF OAK WOODLANDS; MITIGATION ALTERNATIVES; OAK WOODLANDS CONSERVATION ACT GRANT USE; EXEMPTIONS

(a) For purposes of this section, "oak" means a native tree species in the genus Quercus, not designated as Group A or Group B commercial species pursuant to regulations adopted by the State Board of Forestry and Fire Protection pursuant to Section 4526, and that is 5 inches or more in diameter at breast height.

(b) As part of the determination made pursuant to Section 21080.1, a county shall determine whether a project within its jurisdiction may result in a conversion of oak woodlands that will have a significant effect on the environment. If a county determines that there may be a significant effect to oak woodlands, the county shall require one or more of the following oak woodlands mitigation alternatives to mitigate the significant effect of the conversion of oak woodlands:

(1) Conserve oak woodlands, through the use of conservation easements.

(2) (A) Plant an appropriate number of trees, including maintaining plantings and replacing dead or diseased trees.

(B) The requirement to maintain trees pursuant to this paragraph terminates seven years after the trees are planted.

(C) Mitigation pursuant to this paragraph shall not fulfill more than one-half of the mitigation requirement for the project.

(D) The requirements imposed pursuant to this paragraph also may be used to restore former oak woodlands.

(3) Contribute funds to the Oak Woodlands Conservation Fund, as established under subdivision (a) of Section 1363 of the Fish and Game Code, for the purpose of purchasing

oak woodlands conservation easements, as specified under paragraph (1) of subdivision (d) of that section and the guidelines and criteria of the Wildlife Conservation Board. A project applicant that contributes funds under this paragraph shall not receive a grant from the Oak Woodlands Conservation Fund as part of the mitigation for the project.

(4) Other mitigation measures developed by the county.

(c) Notwithstanding subdivision (d) of Section 1363 of the Fish and Game Code, a county may use a grant awarded pursuant to the Oak Woodlands Conservation Act (Article 3.5 (commencing with Section 1360) of Chapter 4 of Division 2 of the Fish and Game Code) to prepare an oak conservation element for a general plan, an oak protection ordinance, or an oak woodlands management plan, or amendments thereto, that meets the requirements of this section.

(d) The following are exempt from this section:

(1) Projects undertaken pursuant to an approved Natural Community Conservation Plan or approved subarea plan within an approved Natural Community Conservation Plan that includes oaks as a covered species or that conserves oak habitat through natural community conservation preserve designation and implementation and mitigation measures that are consistent with this section.

(2) Affordable housing projects for lower income households, as defined pursuant to Section 50079.5 of the Health and Safety Code, that are located within an urbanized area, or within a sphere of influence as defined pursuant to Section 56076 of the Government Code.

(3) Conversion of oak woodlands on agricultural land that includes land that is used to produce or process plant and animal products for commercial purposes.

(4) Projects undertaken pursuant to Section 21080.5 of the Public Resources Code.

(e) (1) A lead agency that adopts, and a project that incorporates, one or more of the measures specified in this section to mitigate the significant effects to oaks and oak woodlands shall be deemed to be in compliance with this division only as it applies to effects on oaks and oak woodlands.

(2) The Legislature does not intend this section to modify requirements of this division, other than with regard to effects on oaks and oak woodlands.

(f) This section does not preclude the application of Section 21081 to a project.

(g) This section, and the regulations adopted pursuant to this section, shall not be construed as a limitation on the power of a public agency to comply with this division or any other provision of law.

§ 21083.5. ENVIRONMENTAL IMPACT STATEMENT OR REPORT; SUBMISSION IN LIEU OF IMPACT REPORT; COMPLIANCE BY ADOPTION OF TAHOE REGIONAL PLAN; PUBLIC REVIEW AND NOTICE REQUIREMENTS

(a) 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 (42 U.S.C. Sec. 4321 et seq.) and implementing regulations, or an environmental impact report has been, or will be, prepared for the same project pursuant to the requirements of the Tahoe Regional Planning Compact (Section 66801 of the Government Code) and implementing regulations, all or any part of that statement or report may be submitted in lieu of all or any part of an environmental impact report required by this division, if that statement or report, or the part which is used, complies with the requirements of this division and the guidelines adopted pursuant thereto.

(b) Notwithstanding subdivision (a), compliance with this division may be achieved for the adoption in a city or county general plan, without any additions or change, of all or any part of the regional plan prepared pursuant to the Tahoe Regional Planning Compact and implementing regulations by reviewing environmental documents prepared by the Tahoe Regional Planning Agency addressing the plan, providing an analysis pursuant to this division of any significant effect on the environment not addressed in the environmental documents, and proceeding in accordance with Section 21081. This subdivision does not exempt a city or county from complying with the public review and notice requirements of this division.

§ 21083.6. COMBINED ENVIRONMENTAL IMPACT REPORT AND STATEMENT; TIME LIMITS

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.

§ 21083.7. USE OF IMPACT STATEMENT AS THE IMPACT REPORT; CONSULTATIONS

(a) 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.

(b) In order to implement this section, each lead agency to which this section is applicable shall do both of the following, as soon as possible:

   (1) Consult with the federal agency required to prepare such environmental impact statement.

   (2) Notify the federal agency required to prepare the environmental impact statement regarding any scoping meeting for the proposed project.

§ 21083.8.1. REUSE PLANS

(a) (1) For purposes of this section, "reuse plan" for a military base means an initial plan for the reuse of a military base adopted by a local government or a redevelopment agency in the form of a general plan, general plan amendment, specific plan, redevelopment plan, or other planning document, except that the reuse plan shall also consist of a statement of development policies, include a diagram or diagrams illustrating its provisions, and make the designation required in paragraph (2). "Military base" or "base" means a military base or reservation either closed or realigned by, or scheduled for closure or realignment by, the federal government.

   (2) The reuse plan shall designate the proposed general distribution and general location of 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 public and private uses of land.

(b) (1) When preparing and certifying an environmental impact report for a reuse plan, including when utilizing an environmental impact statement pursuant to Section 21083.5, the determination of whether the reuse plan may have a significant effect on the environment may be made in the context of the physical conditions that were present at the time that the federal decision became final for the closure or realignment of the base. The no project alternative analyzed in the environmental impact report shall discuss the existing conditions on the base, as they exist at the time that the environmental impact report is prepared, 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.

(2) For purposes of this division, all public and private activities taken pursuant to, or in furtherance of, a reuse plan shall be deemed to be a single project. However, further environmental review of any such public or private activity shall be conducted if any of the events specified in Section 21166 have occurred.

(c) Prior to preparing an environmental impact report for which a lead agency chooses to utilize the provisions of this section, the lead agency shall do all of the following:

(A) Hold a public hearing at which is discussed the federal environmental impact statement prepared for, or in the process of being prepared for, the closure of the military base. The discussion shall include the significant effects on the environment examined in the environmental impact statement, 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 may specify the baseline conditions for the reuse plan environmental impact report prepared, or in the process of being prepared, for the closure of the base. The lead agency may specify particular physical conditions that it will examine in greater detail than were examined in the environmental impact statement. Notice of the hearing shall be given as provided in Section 21092. The hearing may be continued from time to time.

(B) Identify pertinent responsible agencies and trustee agencies and consult with those agencies prior to the public hearing as to the application of their regulatory policies and permitting standards to the proposed baseline for environmental analysis, as well as to the reuse plan and planned future nonmilitary land uses of the base. The affected agencies shall have not less than 30 days prior to the public hearing to review the proposed reuse plan and to submit their comments to the lead agency.

(C) At the close of the hearing, the lead agency shall state in writing how the lead agency intends to integrate the baseline for analysis with the reuse planning and environmental review process, taking into account the adopted environmental standards of the community, including, but not limited to, the applicable general plan, specific plan, and redevelopment plan, and including other applicable provisions of adopted congestion management plans, habitat conservation or natural communities conservation plans, integrated waste management plans, and county hazardous waste management plans.

(D) At the close of the hearing, the lead agency shall state, in writing, 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 the selection of the baseline.

(d) (1) Nothing in this section shall in any way limit the scope of a review or determination of significance of the presence of hazardous or toxic wastes, substances, or materials including, but not limited to, contaminated soils and groundwater, nor shall the regulation of hazardous or toxic wastes, substances, or materials be constrained by prior levels of activity that existed at the time that the federal agency decision to close the military base became final.

(2) This section does not apply to any project undertaken pursuant to Chapter 6.5 (commencing with Section 25100) of, 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 (Division 7 (commencing with Section 13000) of the Water Code).

(3) This section may apply to any reuse plan environmental impact report for which a notice of preparation pursuant to subdivision (a) of Section 21092 is issued within one year from the date that the federal record of decision was rendered for the military base closure or realignment and reuse, or prior to January 1, 1997, whichever is later, if the environmental impact report is completed and certified within five years from the date that the federal record of decision was rendered.

(e) All subsequent development at the military base 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.

§ 21083.9. SCOPING MEETINGS

(a) Notwithstanding Section 21080.4, 21104, or 21153, a lead agency shall call at least one scoping meeting for either 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) A~~ny~~ 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) A~~ny~~ responsible agency.

(3) A~~ny~~ public agency that has jurisdiction by law with respect to the project.

(4) An~~ny~~ organization or individual who has filed a written request for the notice.

(c) For an~~y~~ 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.

(d) A scoping meeting that is held in the city or county within which the project is located pursuant to the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.) and the regulations adopted pursuant to that act shall be deemed to satisfy the requirement that a scoping meeting be held for a project subject to paragraph (2) of subdivision (a) if the lead agency meets the notice requirements of subdivision (b) or subdivision (c).

§ 21084. LIST OF EXEMPT CLASSES OF PROJECTS; PROJECTS DAMAGING SCENIC RESOURCES

(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 Chapter 1212 of the Statutes of 1991 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.

(e) No project that may cause a substantial adverse change in the significance of an historical resource, as specified in Section 21084.1, shall be exempted from this division pursuant to subdivision (a).

§ 21084.1. HISTORICAL RESOURCE; SUBSTANTIAL ADVERSE CHANGE

A project 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. For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources. Historical resources included in a local register of historical resources, as defined in subdivision (k) of Section 5020.1, or deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1, are presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. The 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, or not deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1 shall not preclude a lead agency from determining whether the resource may be an historical resource for purposes of this section.

§ 21085.7. [DELETED]

§ 21086. ADDITION OR DELETION OF EXEMPT CLASSES OF PROJECTS; PROCEDURE

(a) 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. That request shall be made in writing to the Office of Planning and Research and shall include information supporting the public agency's position that the class of projects does, or does not, have a significant effect on the environment.

(b) The Office of Planning and Research shall review each request and, as soon as possible, shall submit its recommendation to the Secretary of the Resources Agency. Following the receipt of that 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 that are exempt from the requirements of this division.

(c) The addition or deletion of a class of projects, as provided in this 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 and 21084.

§ 21088. DISTRIBUTION OF GUIDELINES, AMENDMENTS AND CHANGES; NOTICE

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. FEES

(a) A lead agency may charge and collect a reasonable fee from any person proposing a project subject to this division in order to recover the estimated costs incurred by the lead agency in preparing a negative declaration or an environmental impact report for the project and for procedures necessary to comply with this division on the project. Litigation expenses, costs, and fees incurred in actions alleging noncompliance with this division under Section 21167 are not recoverable under this section.

(b) The Department of Fish and Game may charge and collect filing fees, as provided in Section 711.4 of the Fish and Game Code. Notwithstanding Section 21080.1, a finding required under Section 21081, or any project approved under a certified regulatory program authorized pursuant to Section 21080.5 is not operative, vested, or final until the filing fees required pursuant to Section 711.4 of the Fish and Game Code are paid.

§ 21090. REDEVELOPMENT PLAN DEEMED SINGLE PROJECT

(a) An environmental impact report for a redevelopment plan may be a master environmental impact report, program environmental impact report, or a project environmental impact report. Any environmental impact report for a redevelopment plan shall specify the type of environmental impact report that is prepared for the redevelopment plan.

(b) If the environmental impact report for a redevelopment plan is a project environmental impact report, 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 for which a project environmental impact report has been certified shall be conducted if any of the events specified in Section 21166 have occurred.

§ 21090.1. GEOTHERMAL EXPLORATORY PROJECT DEEMED SEPARATE AND DISTINCT FROM FIELD DEVELOPMENT PROJECT

For all purposes of this division, a geothermal exploratory project shall be deemed to be separate and distinct from any subsequent geothermal field development project as defined in Section 65928.5 of the Government Code.

§ 21091. DRAFT ENVIRONMENTAL IMPACT REPORTS AND NEGATIVE DECLARATIONS; REVIEW PERIODS

(a) The public review period for a draft environmental impact report may 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 may 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) (1) 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 and comment by state agencies as established by the State Clearinghouse.

(2) The public review period and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state agency review period shall be the date that the State Clearinghouse distributes the document to state agencies.

(3) If the submittal of a CEQA document is determined by the State Clearinghouse to be complete, the State Clearinghouse shall distribute the document within three working days from the date of receipt. The State Clearinghouse shall specify the information that will be required in order to determine the completeness of the submittal of a CEQA document.

(d) (1) The lead agency shall consider 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 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 each 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.

(3) (A) With respect to the consideration of comments received on a draft environmental impact report, proposed negative declaration, proposed mitigated negative declaration, or notice pursuant to Section 21080.4, the lead agency shall accept comments via e-mail and shall treat e-mail comments as equivalent to written comments.

(B) Any law or regulation relating to written comments received on a draft environmental impact report, proposed negative declaration, proposed mitigated negative declaration, or notice received pursuant to Section 21080.4, shall also apply to e-mail comments received for those reasons.

(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 may not be less than 30 days for a draft environmental impact report and 20 days for a negative declaration.

(3) A request for a shortened review period shall only be made in writing by the decision-making body of the lead agency to the Office of Planning and Research. The decision-making body may designate by resolution or ordinance a person authorized to request a shortened review period. A designated person shall notify the decision-making body of this request.

(4) A 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 may not be approved by the Office of Planning and Research for a proposed project of statewide, regional, or areawide environmental significance as determined pursuant to Section 21083.

(6) An 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 comments that were received and considered pursuant to paragraph (1) of subdivision (d).

§ 21091.5. PUBLIC REVIEW PERIOD FOR DRAFT ENVIRONMENTAL IMPACT REPORT; PUBLICLY OWNED AIRPORTS

Notwithstanding subdivision (a) of Section 21091, or any other provision of this division, the public review period for a draft environmental impact report prepared for a proposed project involving the expansion or enlargement of a publicly owned airport requiring the acquisition of any tide and submerged lands or other lands subject to the public trust for commerce, navigation, or fisheries, or any interest therein, shall be not less than 120 days.

§ 21092. PUBLIC NOTICE OF PREPARATION OF ENVIRONMENTAL IMPACT REPORT OR NEGATIVE DECLARATION; PUBLICATION

(a) Any lead agency that is preparing an environmental impact report or a negative declaration or making a determination pursuant to subdivision (c) of Section 21157.1 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, or making the determination pursuant to subdivision (c) of Section 21157.1.

(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 that 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.

§ 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.

§ 21092.2. REQUESTS FOR CERTAIN NOTICES

The notices required pursuant to Sections 21080.4, 21083.9, 21092, 21108, and 21152 shall be mailed to every 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. If the agency offers to provide the notices by e-mail, upon filing a written request for notices, a person may request that the notices be provided to him or her by e-mail. 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.

§ 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.

§ 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~~ that have transportation facilities within their jurisdictions ~~which~~ that 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, overpasses, on-ramps, off-ramps, and rail transit service within the jurisdiction of a transportation planning agency or a public agency ~~which~~ that is consulted by the lead agency. A transportation planning agency or public agency ~~which~~ that 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, overpasses, on-ramps, off-ramps, and rail transit service within 10 miles of the project site.

§ 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.

§ 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.

§ 21093. LEGISLATIVE FINDINGS AND DECLARATION; PUBLIC AGENCIES MAY TIER ENVIRONMENTAL IMPACT REPORTS

(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, environmental impact reports shall be tiered whenever feasible, as determined by the lead agency.

§ 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.

§ 21095. AMENDMENT TO STATE GUIDELINES TO PROVIDE OPTIONAL METHODOLOGY TO EVALUATE ENVIRONMENTAL EFFECTS OF AGRICULTURAL LAND CONVERSIONS

(a) The Resources Agency, in consultation with the Office of Planning and Research, shall develop an amendment to Appendix G of the state guidelines, for adoption pursuant to Section 21083, to provide lead agencies an optional methodology to ensure that significant effects on the environment of agricultural land conversions are quantitatively and consistently considered in the environmental review process.

(b) The Department of Conservation, in consultation with the United States Department of Agriculture pursuant to Section 658.6 of Title 7 of the Code of Federal Regulations, and in consultation with the Resources Agency and the Office of Planning and Research, shall develop a state model land evaluation and site assessment system, contingent upon the availability of funding from non-General Fund sources. The department shall seek funding for that purpose from non-General Fund sources, including, but not limited to, the United States Department of Agriculture.

(c) In lieu of developing an amendment to Appendix G of the state guidelines pursuant to subdivision (a), the Resources Agency may adopt the state model land evaluation and site assessment system developed pursuant to subdivision (b) as that amendment to Appendix G.

§ 21096. AIRPORT-RELATED SAFETY HAZARDS AND NOISE PROBLEMS; PROJECTS WITHIN AIRPORT COMPREHENSIVE LAND USE PLAN BOUNDARIES OR WITHIN TWO NAUTICAL MILES OF AIRPORT; PREPARATION OF ENVIRONMENTAL IMPACT REPORTS

(a) If a lead agency prepares an environmental impact report for a project situated within airport land use compatibility plan boundaries, or, if an airport land use compatibility plan has not been adopted, for a project within two nautical miles of a public airport or public use airport, the Airport Land Use Planning Handbook published by the Division of Aeronautics of the Department of Transportation, in compliance with Section 21674.5 of the Public Utilities Code and other documents, shall be utilized as technical resources to assist in the preparation of the environmental impact report as the report relates to airport-related safety hazards and noise problems.

(b) A lead agency shall not adopt a negative declaration for a project described in subdivision (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.

§ 21097. GREENHOUSE GAS EMISSIONS ANALYSIS

(a) The failure to analyze adequately the effects of greenhouse gas emissions otherwise required to be reduced pursuant to regulations adopted by the State Air Resources Board under Division 25.5 (commencing with Section 38500) of the Health and Safety Code in an environmental impact report, negative declaration, mitigated negative declaration, or other document required pursuant to this division for either a transportation project funded under the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2 of the Government Code), or a project funded under the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Chapter 1.699 (commencing with Section 5096.800) of Division 5), does not create a cause of action for a violation of this division.

(b) Nothing in this section shall be construed as a limitation to comply with any other requirement of this division or any other provision of law.

(c) This section shall apply retroactively to an environmental impact report, negative declaration, mitigated negative declaration, or other document required pursuant to this division that has not become final.

(d) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

21098. LOW-LEVEL FLIGHT PATH; MILITARY IMPACT ZONE; SPECIAL USE AIRSPACE

(a) For the purposes of this section, the following terms have the following meanings:

(1) "Low-level flight path" includes any flight path for any aircraft owned, maintained, or that is under the jurisdiction of the United States Department of Defense that flies lower than 1,500 feet above ground level, as indicated in the United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)" published by the United States National Imagery and Mapping Agency.

(2) "Military impact zone" includes any area, including airspace, that meets both of the following criteria:

(A) Is within two miles of a military installation, including, but not limited to, any base, military airport, camp, post, station, yard, center, homeport facility for a ship, or any other military activity center that is under the jurisdiction of the United States Department of Defense.

(B) Covers greater than 500 acres of unincorporated land, or greater than 100 acres of city incorporated land.

(3) "Military service" means any branch of the United States Armed Forces.

(4) "Special use airspace" means the land area underlying the airspace that is designated for training, research, development, or evaluation for a military service, as that land area is established by the United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)" published by the United States National Imagery and Mapping Agency.

(b) If the United States Department of Defense or a military service notifies a lead agency of the contact office and address for the military service and the specific boundaries of a low-level flight path, military impact zone, or special use airspace, the lead agency shall submit notices, as required pursuant to Sections 21080.4 and 21092, to the military service if the project is within those boundaries and any of the following apply:

(1) The project includes a general plan amendment.

(2) The project is of statewide, regional, or areawide significance.

(3) The project is required to be referred to the airport land use commission, or appropriately designated body, pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(c) The requirement to submit notices imposed by this section does not apply to any of the following:

(1) Response actions taken pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(2) Response actions taken pursuant to Chapter 6.85 (commencing with Section 25396) of Division 20 of the Health and Safety Code.

(3) Sites subject to corrective action orders issued pursuant to Section 25187 of the Health and Safety Code.

(d) (1) The effect or potential effect that a project may have on military activities does not itself constitute an adverse effect on the environment for the purposes of this division.

(2) Notwithstanding paragraph (1), a project's impact on military activities may cause, or be associated with, adverse effects on the environment that are subject to the requirements of this division, including, but not limited to, Section 21081.

Chapter 3: State Agencies, Boards and Commissions

§ 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.

§ 21100.1. INFORMATION REQUIRED IN CERTAIN ENVIRONMENTAL IMPACT REPORTS

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.

§ 21100.2. LEASES, PERMITS, LICENSES, CERTIFICATES AND OTHER ENTITLEMENTS; ESTABLISHMENT OF TIME LIMITS FOR IMPACT REPORTS AND NEGATIVE DECLARATIONS

(a) (1) For projects described in subdivision (c) of Section 21065, each state agency shall establish, by resolution or order, time limits that do not exceed the following:

(A) One year for completing and certifying environmental impact reports.

(B) One hundred eighty days for completing and adopting negative declarations.

(2) The time limits specified in paragraph (1) 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.

(3) No application for a project may be deemed incomplete for lack of a waiver of time periods prescribed in state regulations.

(4) 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, or focused environmental impact report 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 sends a notice of preparation pursuant to Section 21080.4. The state agency may take longer to execute the contract if the project applicant and the state agency mutually agree to an extension of the time limit provided by this subdivision.

§ 21101. ENVIRONMENTAL IMPACT REPORT ON PROPOSED FEDERAL PROJECTS

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. 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.

§ 21104. STATE LEAD AGENCY; CONSULTATIONS PRIOR TO COMPLETION OF IMPACT REPORT

(a) Prior to completing an environmental impact report, the state lead agency shall consult with, and obtain comments from, each responsible agency, trustee 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 state 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 state lead agency shall, upon the request of the 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 state lead agency may consult with persons identified by the applicant who the applicant believes will be concerned with the environmental effects of the project and may consult with members of the public who have made a written request to be consulted on the project. A request by the applicant for early consultation shall be made not later than 30 days after the determination required by Section 21080.1 with respect to the project.

(b) 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 the highway or freeway.

(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.

§ 21104.2. CONSULTATION AND FINDINGS; EFFECT OF PROJECTS ON THREATENED OR ENDANGERED SPECIES

The state lead agency shall consult with, and obtain written findings from, the Department of Fish and Game in preparing an environmental impact report on a project, as to the impact of the project on the continued existence of any endangered species or threatened species pursuant to Article 4 (commencing with Section 2090) of Chapter 1.5 of Division 3 of the Fish and Game Code.

§ 21105. ENVIRONMENTAL IMPACT REPORT AND COMMENTS AS PART OF REGULAR PROJECT REPORT; AVAILABILITY TO LEGISLATURE AND GENERAL PUBLIC

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.

§ 21106. REQUEST OF FUNDS TO PROTECT ENVIRONMENT

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.

§ 21108. STATE AGENCY, BOARD OR COMMISSION; APPROVAL OF DETERMINATION TO CARRY OUT PROJECT; NOTICE; CONTENTS; PUBLIC INSPECTION; POSTING

(a) Whenever a state agency approves or determines to carry out a project that is subject to this division, the state agency shall file notice of that approval or that determination with the Office of Planning and Research. The notice shall indicate the determination of the state 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.

(b) Whenever a state agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or Section 21172, and the state agency approves or determines to carry out the project, the state agency 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 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 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the state agency.

(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. The Office of Planning and Research shall retain each notice for not less than 12 months.

Chapter 4: Local Agencies

§ 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.

§ 21151. LOCAL AGENCIES; PREPARATION AND COMPLETION OF IMPACT REPORT; SUBMISSION AS PART OF GENERAL PLAN REPORT; SIGNIFICANT EFFECT

(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 decision-making 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 decision-making body, if any.

§ 21151.1. WASTE-BURNING PROJECTS; LAND DISPOSAL FACILITIES, AND OFFSITE LARGE TREATMENT FACILITIES; ENVIRONMENTAL IMPACT REPORTS; APPLICATION OF SECTION; EXEMPTIONS; OFFSITE FACILITY DEFINED

(a) Notwithstanding paragraph (6) of subdivision (b) of Section 21080, or Section 21080.5 or 21084, or any other provision of law, except as provided in this section, a lead agency shall prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report or, if appropriate, a modification, addendum, or supplement to an existing environmental impact report, for any project involving any of the following:

(1) (A) The burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, if the project is either of the following:

(i) The construction of a new facility.

(ii) The expansion of an existing facility that burns hazardous waste that would increase its permitted capacity by more than 10 percent.

(B) This paragraph does not apply to any project exclusively burning hazardous waste, for which a final determination under Section 21080.1 has been made prior to July 14, 1989.

(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.

(3) The initial issuance of a hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code to an offsite large treatment facility, as defined pursuant to subdivision (d) of Section 25205.1 of the Health and Safety Code.

(4) A base reuse plan as defined in Section 21083.8 or 21083.8.1. The Legislature hereby finds that no reimbursement is required pursuant to Section 6 of Article XIIIB of the California Constitution for an environmental impact report for a base reuse plan if an environmental impact report is otherwise required for that base reuse plan pursuant to any other provision of this division.

(b) For purposes of clause (ii) of subparagraph (A) of subparagraph (B) of paragraph (1) of subdivision (a), the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(1) The facility capacity authorized 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.

(2) 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.

(c) For purposes of paragraphs (2) and (3) of subdivision (a), the initial issuance of a hazardous waste facilities permit 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.

(d) Paragraph (1) of subdivision (a) does not apply to any project that does any of the following:

(1) Exclusively burns digester gas produced from manure or any other solid or semisolid animal waste.

(2) Exclusively burns methane gas produced from a disposal site, as defined in Section 40122, that is used only for the disposal of solid waste, as defined in Section 40191.

(3) Exclusively burns forest, agricultural, wood, or other biomass wastes.

(4) Exclusively burns hazardous waste in an incineration unit that is transportable and that is either at a site for not longer than three years or is part of a remedial or removal action. For purposes of this paragraph, "transportable" means any equipment that performs a "treatment" as defined in Section 66216 of Title 22 of the California Code of Regulations, and that is transported on a vehicle as defined in Section 66230 of Title 22 of the California Code of Regulations, as those sections read on June 1, 1991.

(5) Exclusively burns refinery waste in a flare on the site of generation.

(6) Exclusively burns in a flare methane gas produced at a municipal sewage treatment plant.

(7) Exclusively burns hazardous waste, or exclusively burns hazardous waste as a supplemental fuel, as part of a research, development, or demonstration project that, consistent with federal regulations implementing the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), has been determined to be innovative and experimental by the Department of Toxic Substances Control and that is limited in type and quantity of waste to that necessary to determine the efficacy and performance capabilities of the technology or process; provided, however, that any facility that operated as a research, development, or demonstration project and for which an application is thereafter submitted for a hazardous waste facility permit for operation other than as a research, development, or demonstration project shall be considered a new facility for the burning of hazardous waste and shall be subject to subdivision (a) of Section 21151.1.

(8) Exclusively burns soils contaminated only with petroleum fuels or the vapors from these soils.

(9) Exclusively treats less than 3,000 pounds of hazardous waste per day in a thermal processing unit operated in the absence of open flame, and submits a worst-case health risk assessment of the technology to the Department of Toxic Substances Control for review and distribution to the interested public. This assessment shall be prepared in accordance with guidelines set forth in the Air Toxics Assessment Manual of the California Air Pollution Control Officers Association.

(10) Exclusively burns less than 1,200 pounds per day of medical waste, as defined in Section 117690 of the Health and Safety Code, on hospital sites.

(11) Exclusively burns chemicals and fuels as part of firefighter training.

(12) Exclusively conducts open burns of explosives subject to the requirements of the air pollution control district or air quality management district and in compliance with OSHA and Cal-OSHA regulations.

(13) Exclusively conducts onsite burning of less than 3,000 pounds per day of fumes directly from a manufacturing or commercial process.

(14) Exclusively conducts onsite burning of hazardous waste in an industrial furnace that recovers hydrogen chloride from the flue gas if the hydrogen chloride is subsequently sold, distributed in commerce, or used in a manufacturing process at the site where the hydrogen chloride is recovered, and the burning is in compliance with the requirements of the air pollution control district or air quality management district and the Department of Toxic Substances Control.

(e) Paragraph (1) of subdivision (a) does not apply to any project for which the State Energy Resources Conservation and Development Commission has assumed jurisdiction under Chapter 6 (commencing with Section 25500) of Division 15.

(f) Paragraphs (2) and (3) of subdivision (a) do not apply if the facility only manages hazardous waste that is identified or listed pursuant to Section 25140 or 25141 of the Health and Safety Code on or after January 1, 1992, but not before that date, or only conducts activities that 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, but not before that date.

(g) This section does not exempt a project from any other requirement of this division.

(h) For purposes of this section, offsite facility means a facility that serves more than one generator of hazardous waste.

§ 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.

§ 21151.4. CONSTRUCTION OR ALTERATION OF FACILITY WITHIN ONE-FOURTH OF A MILE OF SCHOOL; REASONABLE ANTICIPATION OF AIR EMISSION OR HANDLING OF HAZARDOUS OR ACUTELY HAZARDOUS MATERIAL; APPROVAL OF ENVIRONMENTAL IMPACT REPORT OR NEGATIVE DECLARATION

(a) An environmental impact report shall not be certified ~~and~~ or a negative declaration shall not be approved for any project involving the construction or alteration of a facility within ~~1/4~~ one-fourth of a mile of a school that might reasonably be anticipated to emit hazardous air emissions, or that would handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the state threshold quantity specified pursuant to subdivision (j) of Section 25532 of the Health and Safety Code, that 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~~1) 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~~2) The school district has been given written notification of the project not less than 30 days prior to the proposed certification of the environmental impact report or approval of the negative declaration.

(b) As used in this section, the following definitions apply:

(1) "Extremely hazardous substance" means an extremely hazardous substance as defined pursuant to paragraph (2) of subdivision (g) of Section 25532 of the Health and Safety Code.

(2) <u>"Hazardous air emissions" means emissions into the ambient air of air contaminants that 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 of a substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.</u>

§ 21151.5. TIME LIMITS FOR PREPARATION OF ENVIRONMENTAL IMPACT REPORTS AND NEGATIVE DECLARATIONS

(a) (1) For projects described in subdivision (c) of Section 21065, each local agency shall establish, by ordinance or resolution, time limits that do not exceed the following:

(A) One year for completing and certifying environmental impact reports.

(B) One hundred eighty days for completing and adopting negative declarations.

(2) The time limits specified in paragraph (1) 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.

(3) No application for a project may be deemed incomplete for lack of a waiver of time periods prescribed by local ordinance or resolution.

(4) 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, or focused environmental impact report 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 sends a notice of preparation pursuant to Section 21080.4. The local agency may take longer to execute the contract if the project applicant and the local agency mutually agree to an extension of the time limit provided by this subdivision.

§ 21151.7. PREPARATION AND CERTIFICATION OF COMPLETION OF ENVIRONMENTAL IMPACT REPORT FOR OPEN-PIT MINING OPERATION BY LEAD AGENCY

Notwithstanding any other provision of law, a lead agency shall prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report for any open-pit mining operation which is subject to the permit requirements of the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2) and utilizes a cyanide heap-leaching process for the purpose of producing gold or other precious metals.

§ 21151.8. SCHOOLSITE ACQUISITION OR CONSTRUCTION; APPROVAL OF ENVIRONMENTAL IMPACT REPORT OR NEGATIVE DECLARATION; CONDITIONS

(a) An environmental impact report <u>shall not be certified</u> or <u>a</u> negative declaration ~~may~~ <u>shall</u> not be approved for a~~ny~~ 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 that 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 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) A site that contains one or more pipelines, situated underground or aboveground, that carries hazardous substances, ~~acutely~~ extremely hazardous ~~materials~~ substances, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.

(D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2) (A) The school district, as the lead agency, in 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, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify both permitted and nonpermitted facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous emissions or handle hazardous or extremely hazardous substances or waste. The notification by the school district, as the lead agency, shall include a list of the locations for which information is sought.

(B) Each administering agency, air pollution control district, or air quality management district receiving written notification from a lead agency to identify facilities pursuant to subparagraph (A) 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 subparagraph (A) as to the area of responsibility of an agency that does not respond within 30 days.

(C) If the school district, as a lead agency, has carried out the consultation required by subparagraph (A), the environmental impact report or the negative declaration shall be conclusively presumed to comply with subparagraph (A), notwithstanding any failure of the consultation to identify an existing facility or other pollution source specified in subparagraph (A).

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

(A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).

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

(i) The health risks from the facilities or other pollution sources 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 or other pollution sources 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 a finding pursuant to this clause, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(iii) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in paragraph (2) exist, but conditions in clause (i), (ii) or (iii) of subparagraph (B) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the governing board makes this finding, the governing board shall adopt a statement of Overriding Considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

~~(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 that does not respond within 30 days.~~

~~(b) If a school district, as 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 or other pollution source specified in paragraph (2) of subdivision (a).~~

(~~c~~b) 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) "Extremely hazardous substances" means an~~y~~ extremely hazardous substance as defined pursuant to paragraph (2) of 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 that 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 to implement and enforce Chapter 6.95 (commencing with Section 25500) of Division 20 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.

(8) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(9) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

§ 21151.9. PROJECTS SUBJECT TO THIS DIVISION; COMPLIANCE REQUIREMENT

Whenever a city or county determines that a project, as defined in Section 10912 of the Water Code, is subject to this division, it shall comply with Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code.

§ 21151.10. [DELETED]

§ 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 that is subject to this division, the local agency 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 21172, and the local agency approves or determines to carry out the project, the local agency 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. A 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 Section 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. A 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 12 months.

§ 21152.1. LOCAL AGENCY; EXEMPT HOUSING PROJECTS; NOTICE FILING AND POSTING

(a) When a local agency determines that a project is not subject to this division pursuant to Section 21159.22, 21159.23, or 21159.24, and it approves or determines to carry out that project, the local agency or the person specified in subdivision (b) or (c) of Section 21065, shall file notice of the determination with the Office of Planning and Research.

(b) 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.

(c) Failure to file the notice required by this section does not affect the validity of a project.

(d) Nothing in this section affects the time limitations contained in Section 21167.

§ 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, trustee 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 who 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.

§ 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.

Chapter 4.2: Implementation of the Sustainable Communities Strategy

§ 21155.

(a) This chapter applies only to a transit priority project that is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

(b) For purposes of this chapter, a transit priority project shall (1) contain at least 50 percent residential use, based on total building square footage and, if the project contains between 26 percent and 50 percent nonresidential uses, a floor area ratio of not less than 0.75; (2) provide a minimum net density of at least 20 dwelling units per acre; and (3) be within one-half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan. A major transit stop is as defined in Section 21064.3, except that, for purposes of this section, it also includes major transit stops that are included in the applicable regional transportation plan. For purposes of this section, a high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. A project shall be considered to be within one-half mile of a major transit stop or high-quality transit corridor if all parcels within the project have no more than 25 percent of their area farther than one-half mile from the stop or corridor and if not more than 10 percent of the residential units or 100 units, whichever is less, in the project are farther than one-half mile from the stop or corridor.

§ 21155. 1.

If the legislative body finds, after conducting a public hearing, that a transit priority project meets all of the requirements of subdivisions (a) and (b) and one of the requirements of subdivision (c), the transit priority project is declared to be a sustainable communities project and shall be exempt from this division.

(a) The transit priority project complies with all of the following environmental criteria:

(1) The transit priority project and other projects approved prior to the approval of the transit priority project but not yet built can be adequately served by existing utilities, and the transit priority project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(2) (A) The site of the transit priority project does not contain wetlands or riparian areas and does not have significant value as a wildlife habitat, and the transit priority project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(B) For the purposes of this paragraph, "wetlands" has the same meaning as in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) For the purposes of this paragraph:

(i) "Riparian areas" means those areas transitional between terrestrial and aquatic ecosystems and that are distinguished by gradients in biophysical conditions, ecological processes, and biota. A riparian area is an area through which surface and subsurface hydrology connect waterbodies with their adjacent uplands. A riparian area includes those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems. A riparian area is adjacent to perennial, intermittent, and ephemeral streams, lakes, and estuarine-marine shorelines.

(ii) "Wildlife habitat" means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(iii) Habitat of "significant value" includes wildlife habitat of national, statewide, regional, or local importance; habitat for species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531, et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code); habitat identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies; or habitat essential to the movement of resident or migratory wildlife.

(3) The site of the transit priority project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(4) The site of the transit priority project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.

(A) If a release of a hazardous substance is found to exist on the site, the release shall be removed or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(B) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(5) The transit priority project does not have a significant effect on historical resources pursuant to Section 21084.1.

(6) The transit priority project site is not subject to any of the following:

(A) A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(B) An unusually high risk of fire or explosion from materials stored or used on nearby properties.

(C) Risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(D) Seismic risk as a result of being within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.

(E) Landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(7) The transit priority project site is not located on developed open space.

(A) For the purposes of this paragraph, "developed open space" means land that meets all of the following criteria:

(i) Is publicly owned, or financed in whole or in part by public funds.

(ii) Is generally open to, and available for use by, the public.

(iii) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.

(B) For the purposes of this paragraph, "developed open space" includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired with public funds dedicated to the acquisition of land for housing purposes.

(8) The buildings in the transit priority project are 15 percent more energy efficient than required by Chapter 6 of Title 24 of the California Code of Regulations and the buildings and landscaping are designed to achieve 25 percent less water usage than the average household use in the region.

(b) The transit priority project meets all of the following land use criteria:

(1) The site of the transit priority project is not more than eight acres in total area.

(2) The transit priority project does not contain more than 200 residential units.

(3) The transit priority project does not result in any net loss in the number of affordable housing units within the project area.

(4) The transit priority project does not include any single level building that exceeds 75,000 square feet.

(5) Any applicable mitigation measures or performance standards or criteria set forth in the prior environmental impact reports, and adopted in findings, have been or will be incorporated into the transit priority project.

(6) The transit priority project is determined not to conflict with nearby operating industrial uses.

(7) The transit priority project is located within one-half mile of a rail transit station or a ferry terminal included in a regional transportation plan or within one-quarter mile of a high-quality transit corridor included in a regional transportation plan.

(c) The transit priority project meets at least one of the following three criteria:

(1) The transit priority project meets both of the following:

(A) At least 20 percent of the housing will be sold to families of moderate income, or not less than 10 percent of the housing will be rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.

(B) The transit priority project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs with an affordable housing cost or affordable rent, as defined in Section 50052.5 or 50053 of the Health and Safety Code, respectively, for the period required by the applicable financing. Rental units shall be affordable for at least 55 years. Ownership units shall be subject to resale restrictions or equity sharing requirements for at least 30 years.

(2) The transit priority project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to paragraph (1).

(3) The transit priority project provides public open space equal to or greater than five acres per 1,000 residents of the project.

21155.2.

(a) A transit priority project that has incorporated all feasible mitigation measures, performance standards, or criteria set forth in the prior applicable environmental impact reports and adopted in findings made pursuant to Section 21081, shall be eligible for either the provisions of subdivision (b) or (c).

(b) A transit priority project that satisfies the requirements of subdivision (a) may be reviewed through a sustainable communities environmental assessment as follows:

(1) An initial study shall be prepared to identify all significant or potentially significant impacts of the transit priority project, other than those which do not need to be reviewed pursuant to Section 21159.28 based on substantial evidence in light of the whole record. The initial study shall identify any cumulative effects that have been adequately addressed and mitigated pursuant to the requirements of this division in prior applicable certified environmental impact reports. Where the lead agency determines that a cumulative effect has been adequately addressed and mitigated, that cumulative effect shall not be treated as cumulatively considerable for the purposes of this subdivision.

(2) The sustainable communities environmental assessment shall contain measures that either avoid or mitigate to a level of insignificance all potentially significant or significant effects of the project required to be identified in the initial study.

(3) A draft of the sustainable communities environmental assessment shall be circulated for public comment for a period of not less than 30 days. Notice shall be provided in the same manner as required for an environmental impact report pursuant to Section 21092.

(4) Prior to acting on the sustainable communities environmental assessment, the lead agency shall consider all comments received.

(5) A sustainable communities environmental assessment may be approved by the lead agency after conducting a public hearing, reviewing the comments received, and finding that:

(A) All potentially significant or significant effects required to be identified in the initial study have been identified and analyzed.

(B) With respect to each significant effect on the environment required to be identified in the initial study, either of the following apply:

(i) Changes or alterations have been required in or incorporated into the project that avoid or mitigate the significant effects to a level of insignificance.

(ii) 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.

(6) The legislative body of the lead agency shall conduct the public hearing or a planning commission may conduct the public hearing if local ordinances allow a direct appeal of approval of a document prepared pursuant to this division to the legislative body subject to a fee not to exceed five hundred dollars ($500).

(7) The lead agency's decision to review and approve a transit priority project with a sustainable communities environmental assessment shall be reviewed under the substantial evidence standard.

(c) A transit priority project that satisfies the requirements of subdivision (a) may be reviewed by an environmental impact report that complies with all of the following:

(1) An initial study shall be prepared to identify all significant or potentially significant effects of the transit priority project other than those that do not need to be reviewed pursuant to Section 21159.28 based upon substantial evidence in light of the whole record. The initial study shall identify any cumulative effects that have been adequately addressed and mitigated pursuant to the requirements of this division in prior applicable certified environmental impact reports. Where the lead agency determines that a cumulative effect has been adequately addressed and mitigated, that cumulative effect shall not be treated as cumulatively considerable for the purposes of this subdivision.

(2) An environmental impact report prepared pursuant to this subdivision need only address the significant or potentially significant effects of the transit priority project on the environment identified pursuant to paragraph (1). It is not required to analyze off-site alternatives to the transit priority project. It shall otherwise comply with the requirements of this division.

§ 21155.3

(a) The legislative body of a local jurisdiction may adopt traffic mitigation measures that would apply to transit priority projects. These measures shall be adopted or amended after a public hearing and may include requirements for the installation of traffic control improvements, street or road improvements, and contributions to road improvement or transit funds, transit passes for future residents, or other measures that will avoid or mitigate the traffic impacts of those transit priority projects.

(b) (1) A transit priority project that is seeking a discretionary approval is not required to comply with any additional mitigation measures required by paragraph (1) or (2) of subdivision (a) of Section 21081, for the traffic impacts of that project on intersections, streets, highways, freeways, or mass transit, if the local jurisdiction issuing that discretionary approval has adopted traffic mitigation measures in accordance with this section.

(2) Paragraph (1) does not restrict the authority of a local jurisdiction to adopt feasible mitigation measures with respect to the effects of a project on public health or on pedestrian or bicycle safety.

(c) The legislative body shall review its traffic mitigation measures and update them as needed at least every five years.

Chapter 4.5: Streamlined Environmental Review

Article 1: Findings

§ 21156. LEGISLATIVE INTENT

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. 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 that will be carried out in phases.
- (3) A rule or regulation that will be implemented by subsequent projects.
- (4) A project that will be carried out or approved pursuant to a development agreement.
- (5) A public or private project that will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan.
- (6) A state highway project or mass transit project that 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.
- (10) A plan for district projects to be undertaken by a school district, that also complies with applicable school facilities requirements, including, but not limited to, the requirements of Chapter 12.5 (commencing with Section 17070.10) of Part 10 of, and Article 1 (commencing with Section 17210) of Chapter 1 of Part 10.5 of, Division 1 of Title 1 of the Education Code.

(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. 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.

§ 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.

§ 21157.6. LIMITATION PERIOD ON USE OF ENVIRONMENTAL IMPACT REPORT

(a) The master environmental impact report shall not be used for the purposes of this chapter if either of the following has occurred:

(1) The certification of the master environmental impact report occurred more than five years prior to the filing of an application for the subsequent project.

(2) The filing of an application for the subsequent project occurs following the certification of the master environmental impact report, and the approval of a project that was not described in the master environmental impact report, may affect the adequacy of the environmental review in the master environmental impact report for any subsequent project.

(b) A master environmental impact report that was certified more than five years prior to the filing of an application for the subsequent project may be used for purposes of this chapter to review a subsequent project that was described in the master environmental impact report if the lead agency reviews the adequacy of the master environmental impact report and does either of the following:

(1) 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.

(2) Prepares an initial study and, pursuant to the findings of the initial study, does either of the following:

(A) Certifies a subsequent or supplemental environmental impact report that 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.

(B) Approves a mitigated negative declaration that addresses substantial changes that have occurred with respect to the circumstances under which the master environmental impact report was certified or the new information that was not known and could not have been known at the time the master environmental impact report was certified.

§ 21157.7. IMPROVEMENTS TO ROADWAY SEGMENTS OF HIGHWAY 99; USE OF MASTER ENVIRONMENTAL IMPACT REPORT

(a) For purposes of this section, a master environmental impact report is a document prepared in accordance with subdivision (c) for the projects described in subdivision (b) that, upon certification, is followed by review of subsequent projects as provided in Sections 21157.1 and 21157.5.

(b) A master environmental impact report may be prepared for a plan adopted by the Department of Transportation for improvements to regional segments of Highway 99 funded pursuant to subdivision (b) of Section 8879.23 of the Government Code, to streamline, coordinate, and improve environmental review.

(c) The report shall include all of the following:

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

(2) A description of the anticipated highway improvements along Highway 99 that would be within the scope of the master environmental impact report, that contains sufficient information about all phases of the Highway 99 construction activities, including, but not limited to, all of the following:

(A) The specific types of improvements that will be undertaken.

(B) The anticipated location and alternative locations for any of the Highway 99 improvements, including overpasses, bridges, railroad crossings, and interchanges.

(C) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the construction activities associated with the Highway 99 improvements.

(d) The Department of Transportation may communicate, coordinate, and consult with the Resources Agency, Wildlife Conservation Board, Department of Fish and Game, Department of Conservation, and other appropriate federal, state, or local governments, including interested stakeholders, to consider and implement mitigation requirements on a regional basis for the projects described in subdivision (b). This may include both of the following:

(1) Identification of priority areas for mitigation, using information from these agencies and departments as well as from other sources.

(2) Utilization of existing conservation programs of the agencies or departments identified in this subdivision, if mitigation under those programs for improvements under this section does not supplant mitigation for a project.

(e) The Department of Transportation may execute an agreement, memorandum of understanding, or other similar instrument to memorialize its understanding of any communication, coordination, or implementation activities with other state agencies for the purposes of meeting mitigation requirements on a regional basis.

(f) Notwithstanding any other provision of law, nothing in this section is intended to interfere with or prevent the existing authority of an agency or department to carry out its programs, projects, or responsibilities to identify, review, approve, deny, or implement any mitigation requirements, and nothing in this section shall be construed as a limitation on mitigation requirements for the project, or a limitation on compliance with requirements under this division or any other provision of law.

(g) Notwithstanding Section 21157.6, the master environmental impact report shall not be used for the purposes of this section, if the certification of the master environmental impact report occurred more than seven years prior to the filing of an application for the subsequent project.

Article 3: Focused Environmental Impact Report

§ 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.

§ 21158.1. REGULATORY PROGRAMS CERTIFIED UNDER PUBLIC RESOURCES CODE § 21080.5; CERTAIN MASTER AND FOCUSED ENVIRONMENTAL IMPACT REPORTS

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.

§ 21158.5. MULTIPLE-FAMILY RESIDENTIAL DEVELOPMENT OF NOT MORE THAN 100 UNITS; RESIDENTIAL AND COMMERCIAL OR RETAIL MIXED-USE DEVELOPMENT OF NOT MORE THAN 100,000 SQUARE FEET; PREPARATION OF REPORT; LIMITATIONS

(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: Expedited Environmental Review for Environmentally Mandated Projects

§ 21159. RULE OR REGULATION ADOPTION; ENVIRONMENTAL ANALYSIS; CONTENT

(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.

§ 21159.1. UTILIZATION OF FOCUSED ENVIRONMENTAL IMPACT REPORT; REQUIREMENTS; LIMITATIONS

(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. NEGATIVE DECLARATION; MITIGATED NEGATIVE DECLARATION; ENVIRONMENTAL IMPACT REPORT ON COMPLIANCE PROJECT; PROJECT-SPECIFIC ISSUED; CONTENTS

(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. DEADLINES FOR PREPARATION OF REPORT

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. AGENCIES; ARTICLE APPLICATION

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.

Article 5: Public Assistance Program

§ 21159.9. IMPLEMENTATION OF PROGRAM

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.

Article 6: Special Review of Housing Projects

§ 21159.20. DEFINITIONS

For the purposes of this article, the following terms have the following meanings:

(a) "Census-defined place" means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

(b) "Community-level environmental review" means either of the following:

(1) An environmental impact report certified on any of the following:

(A) A general plan.

(B) A revision or update to the general plan that includes at least the land use and circulation elements.

(C) An applicable community plan.

(D) An applicable specific plan.

(E) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.

(2) Pursuant to this division and the implementing guidelines adopted pursuant to this division that govern subsequent review following a program environmental impact report, or pursuant to Section 21157.1, 21157.5, or 21166, a negative declaration or mitigated negative declaration was adopted as a subsequent environmental review document, following and based upon an environmental impact report on any of the projects listed in subparagraphs (A), (C), or (D) of paragraph (1).

(c) "Low-income households" means households of persons and families of very low and low income, as defined in Sections 50093 and 50105 of the Health and Safety Code.

(d) "Low- and moderate-income households" means households of persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

§ 21159.21. CRITERIA TO QUALIFY FOR HOUSING PROJECT EXEMPTIONS

A housing project qualifies for an exemption from this division pursuant to Section 21159.22, 21159.23, or 21159.24 if it meets the criteria in the applicable section and all of the following criteria:

(a) The project is consistent with any applicable general plan, specific plan, and local coastal program, including any mitigation measures required by a plan or program, as that plan or program existed on the date that the application was deemed complete and with any applicable zoning ordinance, as that zoning ordinance existed on the date that the application was deemed complete, except that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.

(b) Community-level environmental review has been adopted or certified.

(c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(d) The site of the project does not contain wetlands, does not have any value as a wildlife habitat, and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050), of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete. For the purposes of this subdivision, "wetlands" has the same meaning as in Section 328.3 of Title 33 of the Code of Federal Regulations and "wildlife habitat" means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1.

(h) The project site is not subject to any of the following:

(1) A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(2) An unusually high risk of fire or explosion from materials stored or used on nearby properties.

(3) Risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(4) Within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.

(5) Landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(i) (1) The project site is not located on developed open space.

(2) For the purposes of this subdivision, "developed open space" means land that meets all of the following criteria:

(A) Is publicly owned, or financed in whole or in part by public funds.

(B) Is generally open to, and available for use by, the public.

(C) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.

(3) For the purposes of this subdivision, "developed open space" includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(j) The project site is not located within the boundaries of a state conservancy.

§ 21159.22. AGRICULTURAL EMPLOYEE HOUSING EXEMPTION

(a) This division does not apply to any development project that meets the requirements of subdivision (b), and meets either of the following criteria:

(1) Consists of the construction, conversion, or use of residential housing for agricultural employees, and meets all of the following criteria:

(A) Is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Lacks public financial assistance.

(C) 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.

(2) Consists of the construction, conversion, or use of residential housing for agricultural employees and meets all of the following criteria:

(A) Is housing for very low, low-, or moderate-income households as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(B) Public financial assistance exists for the development project.

(C) 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 for a period of at least 15 years.

(b) (1) If the development project is proposed within incorporated city limits or within a census defined place with a minimum population density of at least 5,000 persons per square mile, it is located on a project site that is adjacent, on at least two sides, to land that has been developed, and consists of not more than 45 units, or is housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(2) If the development project is located on a project site zoned for general agricultural use, and consists of not more than 20 units, or is housing for a total of 20 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(3) The project satisfies the criteria in Section 21159.21.

(4) The development project is not more than five acres in area, except that a project site located in an area with a population density of at least 1,000 persons per square mile shall not be more than two acres in area.

(c) Notwithstanding subdivision (a), if a project satisfies the criteria described in subdivisions (a) and (b), but does not satisfy the criteria described in paragraph (1) of subdivision (b), this division does not apply to the project if the project meets all of the following criteria:

(1) Is located within either an incorporated city or a census-defined place.

(2) The population density of the incorporated city or census-defined place has a population density of at least 1,000 persons per square mile.

(3) The project site is adjacent on at least two sides to land that has been developed and the project consists of not more than 45 units, or the project consist of dormitories, barracks, or other group housing facilities for a total of 45 or fewer agricultural employees.

(d) Notwithstanding subdivision (c), this division shall apply to a project that meets the criteria described in subdivision (c) if a public agency that is carrying out or approving the project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impacts of successive projects of the same type in the same area, over time, would be significant.

For the purposes of this section, "agricultural employee" has the same meaning as defined by subdivision (b) of Section 1140.4 of the Labor Code.

§ 21159.23. LOW-INCOME HOUSING EXEMPTION

(a) This division does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of 100 or fewer that is affordable to low-income households if both of the following criteria are met:

(1) 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, as defined in Section 50079.5 of the Health and Safety Code, for a period of at least 30 years, at monthly housing costs, as determined pursuant to Section 50053 of the Health and Safety Code.

(2) The development project meets all of the following requirements:

(A) The project satisfies the criteria described in Section 21159.21.

(B) The project site meets one of the following conditions:

(i) Has been previously developed for qualified urban uses.

(ii) The parcels immediately adjacent to the site are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses and the remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses, and the site has not been developed for urban uses and no parcel within the site has been created within 10 years prior to the proposed development of the site.

(C) The project site is not more than five acres in area.

(D) The project site is located within an urbanized area or within a census-defined place with a population density of at least 5,000 persons per square mile or, if the project consists of 50 or fewer units, within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(b) Notwithstanding subdivision (a), if a project satisfies all of the criteria described in subdivision (a) except subparagraph (D) of paragraph (2) of that subdivision, this division does not apply to the project if the project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile.

(c) Notwithstanding subdivision (b), this division applies to a project that meets the criteria of subdivision (b), if there is a reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

(d) For the purposes of this section, "residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

§ 21159.24. INFILL HOUSING EXEMPTION

(a) Except as provided in subdivision (b), this division does not apply to a project if all of the following criteria are met:

(1) The project is a residential project on an infill site.

(2) The project is located within an urbanized area.

(3) The project satisfies the criteria of Section 21159.21.

(4) Within five years of the date that the application for the project is deemed complete pursuant to Section 65943 of the Government Code, community-level environmental review was certified or adopted.

(5) The site of the project is not more than four acres in total area.

(6) The project does not contain more than 100 residential units.

(7) Either of the following criteria are met:

(A) (i) At least 10 percent of the housing is sold to families of moderate income, or not less than 10 percent of the housing is rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.

(ii) The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

(B) The project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(8) The project is within one-half mile of a major transit stop.

(9) The project does not include any single level building that exceeds 100,000 square feet.

(10) The project promotes higher density infill housing. A project with a density of at least 20 units per acre shall be conclusively presumed to promote higher density infill housing. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density housing unless the preponderance of the evidence demonstrates otherwise.

(b) Notwithstanding subdivision (a), this division shall apply to a development project that meets the criteria described in subdivision (a), if any of the following occur:

(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.

(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.

(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project, that was not known, and could not have been known, at the time that community-level environmental review was certified or adopted.

(c) If a project satisfies the criteria described in subdivision (a), but is not exempt from this division as result of satisfying the criteria described in subdivision (b), the analysis of the environmental effects of the project in the environmental impact report or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to paragraph (2) or (3) of subdivision (b).

(d) For the purposes of this section, "residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

§ 21159.25. [DELETED]

§ 21159.26. REDUCTIONS IN HOUSING UNITS AS MITIGATION DISCOURAGED

With respect to a project that includes a housing development, a public agency may not reduce the proposed number of housing units as a mitigation measure or project alternative for a particular significant effect on the environment if it determines that there is another feasible specific mitigation measure or project alternative that would provide a comparable level of mitigation. This section does not affect any other requirement regarding the residential density of that project.

§ 21159.27. PROHIBITION AGAINST PIECEMEALING TO QUALIFY FOR EXEMPTIONS

A project may not be divided into smaller projects to qualify for one or more exemptions pursuant to this article.

§ 21159.28.

(a) If a residential or mixed-use residential project is consistent with the use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board pursuant to subparagraph (I) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code has accepted the metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets and if the project incorporates the mitigation measures required by an applicable prior environmental document, then any findings or other determinations for an exemption, a negative declaration, a mitigated negative declaration, a sustainable communities environmental assessment, an environmental impact report, or addenda prepared or adopted for the project pursuant to this division shall not be required to reference, describe, or discuss (1) growth inducing impacts; or (2) any project specific or cumulative impacts from cars and light-duty truck trips generated by the project on global warming or the regional transportation network.

(b) Any environmental impact report prepared for a project described in subdivision (a) shall not be required to reference, describe, or discuss a reduced residential density alternative to address the effects of car and light-duty truck trips generated by the project.

(c) "Regional transportation network," for purposes of this section, means all existing and proposed transportation system improvements, including the state transportation system, that were included in the transportation and air quality conformity modeling, including congestion modeling, for the final regional transportation plan adopted by the metropolitan planning organization, but shall not include local streets and roads. Nothing in the foregoing relieves any project from a requirement to comply with any conditions, exactions, or fees for the mitigation of the project's impacts on the structure, safety, or operations of the regional transportation network or local streets and roads.

(d) A residential or mixed-use residential project is a project where at least 75 percent of the total building square footage of the project consists of residential use or a project that is a transit priority project as defined in Section 21155.

Chapter 5: Submission of Information

§ 21160. APPLICATION FOR LEASE, PERMIT, LICENSE, ETC.; DATA AND INFORMATION; PURPOSE; TRADE SECRETS

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 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. 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. The notice of completion shall identify the project location by latitude and longitude. Failure to file the notice required by this section shall not affect the validity of a project.

§ 21162. NOTICE OF COMPLETION OF IMPACT REPORT

A copy of the notice of completion of an environmental impact report on a project shall be provided, by the State Clearinghouse, to any legislator in whose district the project has an environmental impact, if the legislator requests the notice and the State Clearinghouse has received it.

Chapter 6: Limitations

§ 21165. LEAD AGENCY; PREPARATION OF IMPACT REPORT

(a) 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 that agency shall prepare, or cause to be prepared by contract, the environmental impact report for the project, if a report is required by this division. In the event that a dispute arises as to which is the lead agency, any of the disputing public agencies, 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 the request, the lead agency, giving due consideration to the capacity of that agency to adequately fulfill the requirements of this division.

(b) For the purposes of this section, a "dispute" means a contested, active difference of opinion between two or more public agencies as to which of those agencies shall prepare any necessary environmental document. A dispute exists where each of those agencies claims that it either has or does not have the obligation to prepare that environmental document. The Office of Planning and Research shall not designate a lead agency in the absence of such a dispute.

§ 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.

§ 21166.1. EFFECT OF PREPARATION OF IMPACT REPORT BY LEAD AGENCY

The decision of a lead agency to prepare an environmental impact report with respect to environmental impacts within a geographic area or for a group of projects shall not be a basis for determining that an environmental document prepared for an individual project within that area or group is inadequate.

§ 21167. COMMENCEMENT OF ACTIONS OR PROCEEDINGS; TIME

An 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 that 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) An 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) An 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) An 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 Section 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) An action or proceeding alleging that another 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).

§ 21167.1. PREFERENTIAL HEARING OR OTHER CIVIL ACTIONS; DESIGNATION OF JUDGES TO DEVELOP EXPERTISE

(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 an 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.

§ 21167.2. FAILURE TO COMMENCE ACTION OR PROCEEDING WITHIN TIME LIMITS; PRESUMPTION THAT IMPACT REPORT COMPLIES WITH DIVISION

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.

§ 21167.3. ASSUMPTION THAT IMPACT REPORT OR NEGATIVE DECLARATION COMPLIES WITH DIVISION; CONDITIONAL APPROVAL OR DISAPPROVAL

(a) If an action or proceeding alleging that an environmental impact report or a negative declaration does not comply with the provisions of this division is commenced during the period described in subdivision (b) or (c) of Section 21167, and if an injunction or stay is issued prohibiting the project from being carried out or approved pending final determination of the issue of such compliance, responsible agencies shall assume that the environmental impact report or the negative declaration for the 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 or negative declaration does comply with the provisions of this division.

(b) In the event that an action or proceeding is commenced as described in subdivision (a) but no injunction or similar relief is sought and granted, responsible agencies shall assume that the environmental impact report or negative declaration for the project does comply with the provisions of this division and shall approve or disapprove the 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. Such approval shall constitute permission to proceed with the project at the applicant's risk pending final determination of such action or proceeding.

§ 21167.4. MANDATE PROCEEDING ALLEGING NONCOMPLIANCE WITH DIVISION; HEARING REQUEST; DISMISSAL; BRIEFING SCHEDULES AND HEARING DATES

(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.

§ 21167.5. PROOF OF SERVICE; FILING WITH INITIAL PLEADING

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.

§ 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 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 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 decision-making body whose decision was appealed to a superior administrative decision-making 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 8.124 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.

§ 21167.6.5. SERVICE OF REAL PARTY IN INTEREST; LISTING AND NOTICE TO RESPONSIBLE AND TRUSTEE AGENCIES; FAILURE TO NAME POTENTIAL PARTIES

(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 real parties in interest described in subdivision (a), 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.

§ 21167.7. COPY OF PLEADINGS TO ATTORNEY GENERAL; GRANTING OF RELIEF

Every person who brings an action pursuant to Section 21167 shall comply with the requirements of Section 388 of the Code of Civil Procedure. Every such person shall also furnish pursuant to Section 388 of the Code of Civil Procedure a copy of any amended or supplemental pleading filed by such person in such action to the Attorney General. No relief, temporary or permanent, shall be granted until a copy of the pleading has been furnished to the Attorney General in accordance with such requirements.

§ 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.

§ 21168. REVIEW OF DETERMINATION; FINDING OR DECISION OF PUBLIC AGENCY; LAW GOVERNING; SCOPE

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.

§ 21168.5. ABUSE OF DISCRETION

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.

§ 21168.6. MANDATE TO PUBLIC UTILITIES COMMISSION; SUPREME COURT JURISDICTION

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. DECLARATION OF EXISTING LAW

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.

§ 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.

§ 21169. VALIDATION OF PROJECTS.

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 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. JUDICIAL PROCEEDINGS IN PROGRESS; EFFECT

(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. MORATORIUM PROVISION FOR CERTAIN PROJECTS

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. DISASTERS; PROPERTY OR FACILITIES DAMAGED; EXEMPTION

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. EVALUATION OF PROJECTS AND STATUS OF IMPACT REPORTS DURING MORATORIUM PERIOD

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 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. SEVERABILITY

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. CONSTRUCTION OF DIVISION; ENFORCEMENT OF OTHER PROVISIONS; COASTAL ACT

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 Commission pursuant to Division 20 (commencing with Section 30000). To the extent of any inconsistency or conflict between the provisions of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000)) and the provisions of this division, the provisions of Division 20 (commencing with Section 30000) shall control.

§ 21175. LOCAL AGENCY FORMATION COMMISSION; CONFIRMATION, VALIDATION AND LEGALITY OF PROJECT APPROVALS

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.

§ 21176. JUDICIAL PROCEEDINGS PENDING OR DETERMINED; EFFECT ON OPERATION OF § 21175

(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.

§ 21177. PRESENTATION OF GROUNDS FOR NONCOMPLIANCE; OBJECTIONS TO APPROVAL OF PROJECT

(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.

Title 14. California Code of Regulations
Chapter 3. Guidelines for Implementation of the California Environmental Quality Act

As amended July 27, 2007

[Note that the Resources Agency has not amended the Guidelines in 2008. However, pursuant to revisions to §21161 of the Statute made in 2007, the Office of Planning and Research revised its Notice of Completion form (Guidelines Appendix C) in early 2008. The revised version of Appendix C is provided here. Also, the Resources Agency has discontinued use of the discussions following each Guidelines section, hence AEP no longer includes them in the Handbook.]

Note: The numbered sections have been adopted by the Secretary of Resources as part of the California Code of Regulations.

Article 1. General

SECTIONS 15000 TO 15007

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
1416 Ninth Street, Room 1311
Sacramento, CA 95814

These Guidelines are binding on all public agencies in California.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21082 and 21083, Public Resources Code; *City of Santa Ana v. City of Garden Grove*, (1979) 100 Cal. App. 3d 521.

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, Public Resources Code; Reference: Section 21083, Public Resources Code.

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 the 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 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 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 changing or altering the project is 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 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: Section 21083, Public Resources Code; Reference: Sections 21000-21177, 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.

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 Cal. 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 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: Section 21083, Public Resources Code; Reference: Sections 21000-21177, Public Resources Code.

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) 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: Section 21083, 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.

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: Section 21083, Public Resources Code; Reference: Sections 21082 and 21083, Public Resources Code.

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: Section 21083, Public Resources Code; Reference: Sections 21003 and 21083, Public Resources Code.

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 sent 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: Section 21083, Public Resources Code; Reference: Sections 21082-21086, Public Resources Code; *Stevens v. City of Glendale*, 125 Cal. App. 3d 986.

Article 2. General Responsibilities

SECTIONS 15020 TO 15025

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: Section 21083, Public Resources Code; Reference: Sections 21082 and 21082.1, Public Resources Code; *Russian Hill Improvement Association v. Board of Permit Appeals,* (1975) 44 Cal. App. 3d 158.

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: Section 21083, Public Resources Code; Reference: Public Resources Code Sections 21000, 21001, 21002, 21002.1, and 21081; *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: Section 21083, Public Resources Code; Reference: Sections 21091, 21092, 21092.2, 21092.3, 21092.6, 21104, 21152, 21153 and 21161, 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.

(h) OPR shall establish and maintain a database 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. This database of notice information shall be available through the Internet.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.4, 21083, 21086, 21087, 21108, 21159.9 and 21161, 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 required by certified state environmental regulatory programs.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080.5, 21083, 21084, 21086, 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 180 days.

(5) Preparing responses to comments on environmental documents.

(6) Filing of notices.

(b) 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.

(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 in draft or final form.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21082, 21100.2 and 21151.5, Public Resources Code; *Kleist v. City of Glendale*, (1976) 56 Cal. App. 3d 770.

Article 3. Authorities Granted to Public Agencies by CEQA

SECTIONS 15040 TO 15045

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: Section 21083, 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., District v. Muzzi*, (1978) 83 Cal. App. 3d 707; *E.D.F. v. Mathews*, 410 F. Supp. 366, 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.

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: Section 21083, Public Resources Code; Reference: Sections 21002, 21002.1, and 21159.26, 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: Section 21083, 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: Section 21083, 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: Section 21083, Public Resources Code; Reference: Sections 21000, 21001, 21002.1, 21104, and 21153, Public Resources Code.

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: Section 21083, Public Resources Code. Reference: Section 21089 and 21105, Public Resources Code.

Article 4. Lead Agency

SECTIONS 15050 TO 15053

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 subdivision (c), the decision-making 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 decision-making 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 changed as provided in Section 15162, or

(3) A Responsible Agency becomes a Lead Agency under Section 15052.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080.1, 21165, and 21167.2, Public Resources Code.

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 subdivision (b), the agency which will act first on the project in question shall be the Lead Agency.

(d) Where the provisions of subdivision (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: Section 21083, 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: Section 21083, Public Resources Code; Reference: Section 21165, Public Resources Code.

15053. DESIGNATION OF LEAD AGENCY BY THE 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 the Office of Planning and Research. If an agreement cannot be reached, any of the disputing public agencies, or the applicant if a private project is involved, may submit the dispute to the Office of Planning and Research for resolution.

(b) For purposes of this section, a "dispute" means a contested, active difference of opinion between two or more public agencies as to which of those agencies shall prepare any necessary environmental document. A dispute exists where each of those agencies claims that it either has or does not have the obligation to prepare that environmental document.

(c) The Office of Planning and Research shall designate a Lead Agency within 21 days after receiving a completed request to resolve a dispute. The Office of Planning and Research shall not designate a lead agency in the absence of a dispute.

(d) Regulations adopted by the Office of Planning and Research for resolving Lead Agency disputes may be found in Title 14, California Code of Regulations, Sections 16000 et seq.

(e) Designation of a Lead Agency by the Office of Planning and Research 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: Section 21083, Public Resources Code; Reference: Section 21165, Public Resources Code; California Code of Regulations, Title 14, Sections 16000-16041.

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

SECTIONS 15060 TO 15065

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.

Authority: Sections 21083, Public Resources Code; Reference: Sections 21080(b), 21080.2 and 21160, Public Resources Code.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 65944, Government Code; Section 21080.2, Public Resources Code.

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 Assistance in the Trade and Commerce Agency for help in identifying interested agencies.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080.1, Public Resources Code.

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)).

(5) The project is exempt pursuant to the provisions of Article 12.5 of this Chapter.

(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 Office of Planning and Research or the county clerk until the project has been approved.

(e) When a non-elected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, the decision that the project is exempt may be appealed to the local lead agency's elected decisionmaking body, if one exists. A local lead agency may establish procedures governing such appeals.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b), 21151, 21152(b), and 21159.21, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68.

15062. NOTICE OF EXEMPTION

(a) When a public agency decides that a project is exempt from CEQA pursuant to Section 15061, 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) The location of the project (either by street address and cross street for a project in an urbanized area or by attaching a specific map, preferably a copy of a U.S.G.S. 15' or 7-1/2' topographical map identified by quadrangle name).

(3) 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

(4) 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 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 the Office of Planning and Research. 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. The Office of Planning and Research shall retain each notice for not less than 12 months.

(2) When a local agency files this notice, the notice of exemption shall be filed with the county clerk of each county in which the project will be located. Copies of all such notices shall 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 12 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 the Office of Planning and Research. 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.

(e) When a local agency determines that a project is not subject to CEQA under sections 15193, 15194, or 15195, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file a notice with OPR identifying the section under which the exemption is claimed.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21108, 21152, and 21152.1, 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 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, approval of residential projects pursuant to a specific plans 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 a 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 in 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 the 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 subdivision (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: Section 21083, 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.

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) 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 environmental 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)(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) 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 significant 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. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project.

(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: Section 21083, 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.

15064.5. DETERMINING THE SIGNIFICANCE OF IMPACTS TO ARCHEOLOGICAL 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 subdivision (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 subdivision (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 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 Section 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: Section 21083, Public Resources Code. Reference: Sections 21083.2, 21084, and 21084.1, Public Resources Code; *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 490.

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: Section 21083, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

15065. MANDATORY FINDINGS OF SIGNIFICANCE

(a) 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 there is substantial evidence, in light of the whole record, that any of the following conditions may 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*;* substantially 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 that are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

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

(b) (1) Where, prior to the commencement of preliminary review of an environmental document, a project proponent agrees to mitigation measures or project modifications that would avoid any significant effect on the environment specified by subdivision (a) or would mitigate the significant effect to a point where clearly no significant effect on the environment would occur, a lead agency need not prepare an environmental impact report solely because, without mitigation, the environmental effects at issue would have been significant.

(2) Furthermore, where a proposed project has the potential to substantially reduce the number or restrict the range of an endangered, rare or threatened species, the lead agency need not prepare an EIR solely because of such an effect, if:

(A) the project proponent is bound to implement mitigation requirements relating to such species and habitat pursuant to an approved habitat conservation plan or natural community conservation plan;

(B) the state or federal agency approved the habitat conservation plan or natural community conservation plan in reliance on an environmental impact report or environmental impact statement; and

(C) 1. such requirements avoid any net loss of habitat and net reduction in number of the affected species, or

2. such requirements preserve, restore, or enhance sufficient habitat to mitigate the reduction in habitat and number of the affected species to below a level of significance.

(c) Following the decision to prepare an EIR, if a lead agency determines that any of the conditions specified by subdivision (a) will occur, such a determination shall apply to:

(1) the identification of effects to be analyzed in depth in the environmental impact report or the functional equivalent thereof,

(2) the requirement to make detailed findings on the feasibility of alternatives or mitigation measures to substantially lessen or avoid the significant effects on the environment,

(3) when found to be feasible, the making of changes in the project to substantially lessen or avoid the significant effects on the environment, and

(4) where necessary, the requirement to adopt a statement of overriding considerations.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21001(c), *21082.2,* and 21083, Public Resources Code; *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th *608; Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1024; and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

Article 6. Negative Declaration Process

SECTIONS 15070 TO 15075

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: Section 21083, 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.

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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: Section 21083, 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 contiguous property shown on the latest equalized assessment roll.

(c) The alternatives for providing notice specified in subdivision (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) If the United States Department of Defense or any branch of the United States Armed Forces has given a lead agency written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the military contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of intent to adopt a negative declaration or a mitigated negative declaration pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section 15190.5. The lead agency shall send the specified military contact office such notice of intent sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the military service the review period provided under Section 15105.

(g) 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 subdivision (f) of that section.

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

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21091, 21092, 21092.2, 21092.4, 21092.3, 21092.6, 21098 and 21151.8, Public Resources Code.

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. The public review period and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies.

(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 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: Section 21083, Public Resources Code; References: 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.

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: Section 21083, 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; *Long Beach Savings and Loan Assn. v. Long Beach Redevelopment Agency* (1986) 188 Cal.App.3d 249.

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 decision-making body shall consider the proposed negative declaration or mitigated negative declaration before making its recommendation.

(b) Prior to approving a project, the decision-making 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 decision-making 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.

(f) When a non-elected official or decisionmaking body of a local lead agency adopts a negative declaration or mitigated negative declaration, that adoption may be appealed to the agency's elected decisionmaking body, if one exists. For example, adoption of a negative declaration for a project by a city's planning commission may be appealed to the city council. A local lead agency may establish procedures governing such appeals.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080(c), 21081.6, 21082.1, 21096, and 21151, Public Resources Code; *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988.

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: Section 21083, Public Resources Code; Reference: Section 21080(f), Public Resources Code.

15075. NOTICE OF DETERMINATION ON A PROJECT FOR WHICH A PROPOSED NEGATIVE OR MITIGATED NEGATIVE DECLARATION HAS BEEN APPROVED.

(a) The lead agency shall file a notice of determination within five working days after deciding to carry out or approve the project. For projects with more than one phase, the lead agency shall file a notice of determination for each phase requiring a discretionary approval.

(b) The notice of determination shall include:

(1) An identification of the project including the project title as identified on the proposed negative declaration, its location, and the State Clearinghouse identification number for the proposed negative declaration if the notice of determination is filed with the State Clearinghouse.

(2) A brief description of the project.

(3) The agency's name and 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 was adopted pursuant to the provisions of CEQA.

(6) The statement indicating whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted.

(7) 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 the Office of Planning and Research within five working days after approval of the project by the lead agency.

(d) If the lead agency is a local agency, the local lead 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 discretionary approval from any state agency, the local lead agency shall also, within five working days of this approval, file a copy of the notice of determination with the Office of Planning and Research.

(e) A notice of determination filed with the county clerk shall be available for public inspection and shall be posted by the county clerk 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 12 months.

(f) A notice of determination filed with the Office of Planning and Research shall be available for public inspection and shall be posted for a period of at least 30 days. The Office of Planning and Research shall retain each notice for not less than 12 moths.

(g) The filing of the notice of determination pursuant to subdivision (c) above for state agencies and the filing and posting of the notice of determination pursuant to subdivisions (d) and (e) above for local agencies, start a 30-day statute of limitations on court challenges to the approval under CEQA.

(h) A sample notice of determination is provided in Appendix D. Each public agency may devise its own form, but the minimum content requirements of subdivision (b) above shall be met. 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: Section 21083, 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 7. EIR Process

SECTIONS 15080 TO 15097

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: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, 21100, and 21151, Public Resources Code.

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: Section 21083, 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) Subdivision (1) of this 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 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.

(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: Section 21083, Public Resources Code; References: Sections 21080.09, 21083.8.1, 21151.1, and 21151.7, Public Resources Code.

15082. NOTICE OF PREPARATION AND 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 the Office of Planning and Research and each responsible and trustee 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. If the United States Department of Defense or any branch of the United States Armed Forces has given the lead agency written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the military contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of preparation of an EIR pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section 15190.5.

(1) The notice of preparation shall provide the responsible and trustee agencies and the Office of Planning and Research 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 (either by street address and cross street, for a project in an urbanized area, or by attaching a specific map, preferably a copy of a U.S.G.S. 15' or 7-1/2' topographical map identified by quadrangle name), and

(C) Probable environmental effects of the project.

(2) A sample 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 that 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 subdivision (a), each responsible and trustee agency and the Office of Planning and Research shall provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible or trustee agency's area of statutory responsibility that 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 that the responsible or trustee agency, or the Office of Planning and Research, 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 or trustee agency or the Office of Planning and Research 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 none of those entities have a 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, the Office of Planning and Research 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 that the responsible or trustee 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 that involve state agencies.

(1) For projects of statewide, regional or areawide significance pursuant to Section 15206, the lead agency shall conduct at least one scoping meeting. A scoping meeting held pursuant to the National Environmental Policy Act, 42 USC 4321 et seq. (NEPA) in the city or county within which the project is located satisfies this requirement if the lead agency meets the notice requirements of subsection (c)(2) below.

(2) The lead agency shall provide notice of the scoping meeting to all of the following:

(A) 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;

(B) any responsible agency

(C) any public agency that has jurisdiction by law with respect to the project;

(D) any organization or individual who has filed a written request for the notice.

(3) A lead agency shall 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. 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.

(d) Office of Planning and Research. The Office of Planning and Research will ensure that the state responsible and trustee agencies reply to the lead agency within 30 days of receipt of the notice of preparation by the state responsible and trustee agencies.

(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: Section 21083, Public Resources Code. Reference: Sections 21083.9, 21080.4, and 21098, 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: Section 21083, 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. [DELETED]

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: Section 21083, 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 Office of Planning and Research 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 (either by street address and cross street, for a project in an urbanized area, or by attaching a specific map, preferably a copy of a U.S.G.S. 15' or 7-1/2' topographical map identified by quadrangle name).

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

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

(c) A sample form for the notice of completion is included in Appendix L

(d) Where the EIR will be reviewed through the state review process handled by the State Clearinghouse, the notice of completion cover form required by the State Clearinghouse will serve as the notice of completion (see Appendix C).

(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: Section 21083, 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) 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: Section 21083, Public Resources Code; Reference: Sections 21081.6, 21092.4, 21092.5, 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 it sends a notice of completion to the Office of Planning and Research. If the United States Department of Defense or any branch of the United States Armed Forces has given the lead agency written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of availability of a draft EIR pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section 15190.5. Theis public notice shall be given as provided under Section 15105 (a sample form is provided in Appendix L). 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 subdivision (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 subdivision (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 State Clearinghouse. The public review period and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies.

(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: Section 21083, Public Resources Code. Reference: Sections 21091, 21092, 21092.2, 21092.3, 21092.6, 21098, 21104, 21152, 21153 and 21161, Public Resources 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 lead agency shall provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report.

(c) 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.

(d) 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: Section 21083, Public Resources Code. Reference: Sections 21092.5, 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 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 and 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. The 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 an EIR is substantially revised and the entire document is recirculated, the lead agency may require reviewers to submit new comments and**,** in such cases, need not respond to those comments received during the earlier circulation period. The lead agency shall advise reviewers, either in 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.

(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 of the recirculated EIR. 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.

(3) As part of providing notice of recirculation as required by Public Resources Code Section 21092.1, the lead agency shall send a notice of recirculation to every agency, person, or organization that commented on the prior EIR. The notice shall indicate, at a minimum, whether new comments may be submitted only on the recirculated portions of the EIR or on the entire EIR in order to be considered by the agency.

(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: Section 21083, 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.

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: Section 21083, 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.

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 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.

(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: Section 21083, 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.

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 subdivision (a) shall be supported by substantial evidence in the record.

(c) The finding in subdivision (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 subdivision (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

(d) When making the findings required in subdivision (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: Section 21083, 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.

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: Section 21083, 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.

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 proposed 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: Section 21083, 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.

15094. NOTICE OF DETERMINATION

(a) The lead agency shall file a notice of determination within five working days after deciding to carry out or approve the project.

(b) The notice of determination shall include:

  (1) An identification of the project including the project title as identified on the draft EIR, and the location of the project (either by street address and cross street for a project in an urbanized area or by attaching a specific map, preferably a copy of a U.S.G.S. 15' or 7-1/2' topographical map identified by quadrangle name). If the notice of determination is filed with the State Clearinghouse, the State Clearinghouse identification number for the draft EIR shall be provided.

  (2) A brief description of the project.

  (3) The lead agency's name and the date on which the agency approved the project. If a responsible agency files the notice of determination pursuant to Section 15096(i), the responsible agency's name and date of approval shall also be identified.

  (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, and whether a mitigation monitoring plan/program was adopted.

  (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.

(c) If the lead agency is a state agency, the lead agency shall file the notice of determination with the Office of Planning and Research within five working days after approval of the project by the lead agency.

(d) If the lead agency is a local agency, the local lead 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 discretionary approval from any state agency, the local lead agency shall also, within five working days of this approval, file a copy of the notice of determination with the Office of Planning and Research.

(e) A notice of determination filed with the county clerk shall be 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 12 months.

(f) A notice of determination filed with the Office of Planning and Research shall be available for public inspection and shall be posted for a period of at least 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.

(g) The filing of the notice of determination pursuant to subdivision (c) above for state agencies and the filing and posting of the notice of determination pursuant to subdivisions (d) and (e) above for local agencies, start a 30-day statute of limitations on court challenges to the approval under CEQA.

(h) A sample notice of determination is provided in Appendix D. Each public agency may devise its own form, but any such form shall include, at a minimum, the information required by subdivision (b). 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 the Guidelines and the Public Resources Code.

Note: Authority cited: Section 21083, 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: Section 21083, 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: Section 21083, Public Resources Code; Reference: Sections 21165, 21080.1, 21080.3, 21080.4, 21082.1, and 21002.1(b) and (d), Public Resources Code.

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 and to the California Department of Transportation. Each transportation planning agency and the California Department of Transportation shall adopt guidelines for the submittal of such information.

Note: Authority cited: Section 21083, Public Resources Code. References: Sections 21081.6 and 21081.7, Public Resources Code.

Article 8. Time Limits

SECTIONS 15100 TO 15112

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: Section 21083, Public Resources Code; Reference: Sections 21000-21176, Public Resources Code.

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: Section 21083, Public Resources Code; Reference: Section 21083, Public Resources Code; 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: Section 21083, Public Resources Code; Reference: Section 21080.2, Public Resources Code.

15103. RESPONSE TO NOTICE OF PREPARATION

Responsible and Trustee Agencies, and the Office of Planning and Research shall provide a response to a Notice of Preparation to the Lead Agency within 30 days after receipt of the notice. If they fail to reply within the 30 days with either a response or a well justified request for additional time, the Lead Agency may assume that none of those entitles have a response to make and may ignore a late response.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 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, the Office of Planning and Research, or by the project applicant.

Note: Authority cited: Section 21083, 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 under 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. The public review period and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies.

(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.

(e) The State Clearinghouse shall distribute a draft EIR or proposed negative declaration or mitigated negative declaration within three working days after the date of receipt if the submittal is determined by the State Clearinghouse to be complete.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21091 and 21092, Public Resources Code; *People v. County of Kern* (1974) 39 Cal.App.3d 830.

15106. [DELETED]

15107. COMPLETION OF NEGATIVE DECLARATION

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: Section 21083, 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: Section 21083, Public Resources Code; Reference: Sections 21100.2 and 21151.5, Public Resources Code; 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: Section 21083, 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: Section 21083, 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 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 and 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: Section 21083, 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.

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: Section 21083, 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

SECTIONS 15120 TO 15132

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: Section 21083, Public Resources Code; Reference: Sections 21100, 21105 and 21160, Public Resources Code.

15121. INFORMATIONAL DOCUMENT

(a) An EIR is an informational document which will inform public agency decision makers 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 consideration 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: Section 21083, 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: Section 21083, 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: Section 21083, 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 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 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: Section 21083, 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.

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: Section 21083, 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.

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: Section 21083, 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.

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: Section 21083, 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; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; *Goleta Union School Dist. v. Regents of the Univ. of Calif* (1995) 37 Cal. App.4th 1025.

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 provisions 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. Archeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code. If an artifact must be removed during project excavation or testing, curation may be an appropriate mitigation.

(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 cited: Section 21083, Public Resources Code. Reference: Sections 5020.5, 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.

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 decision making 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 decision makers 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: Section 21083, 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.

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: Section 21083, Public Resources Code; Reference: Section 21100.1, Public Resources Code.

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: Section 21083, 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: Section 21083, 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(a)(3). 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 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 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 Section 15183(j).

Note: Authority cited: Section 21083, 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.

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: Section 21083, 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: Section 21083, Public Resources Code; Reference: Section 21100, Public Resources Code.

Article 10. Considerations in Preparing EIRs and Negative Declarations

SECTIONS 15140 TO 15155

15140. WRITING

EIRs shall be written in plain language and may use appropriate graphics so that decision makers and the public can rapidly understand the documents.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003 and 21100, Public Resources Code.

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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code. Formerly Section 15147.

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: Section 21083, 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: Section 21083, 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: Section 21083, 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 subdivision (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: Section 21083, 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 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, 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: Section 21083, Public Resources Code; Reference: Sections 21061 and 21100, Public Resources Code; *San Francisco Ecology Center v. City and County of San Francisco*, (1975) 48 Cal. App. 3d 584.

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; 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) Projects consistent with community plan, general plan, or zoning (Section 15183).

Note: Authority: Section 21083, 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.

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 subdivision (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 decision maker 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: Section 21083, Public Resources Code; Reference: Sections 21100, 21151, and 21165, 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 subdivision (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: Section 21083, Public Resources Code; Reference: Section 21096, Public Resources Code.

15155. CITY OR COUNTY CONSULTATION WITH WATER AGENCIES.

(a) The following definitions are applicable to this section.

(1) A "water-demand project" means:

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

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

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

(D) A hotel or motel, or both, having more than 500 rooms.

(E) An industrial, manufacturing, or processing plant, or industrial park planned 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) A mixed-use project that includes one or more of the projects specified in subdivisions (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(D), (a)(1)(E), and (a)(1)(G) of this section.

(G) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

(H) For public water systems with fewer than 5,000 service connections, a project that meets the following criteria:

1. A proposed residential, business, commercial, hotel or motel, or industrial development that would account for an increase of 10 percent or more in the number of a public water system's existing service connections; or

2. A mixed-use project that would demand an amount of water equivalent to, or greater than, the amount of water required by residential development that would represent an increase of 10 percent or more in the number of the public water system's existing service connections.

(2) "Public water system" means a system for the provision of piped water to the public for human consumption that has 3000 or more service connections. A public water system includes all of the following:

(A) Any collection, treatment, storage, and distribution facility under control of the operator of the system which is used primarily in connection with the system.

(B) Any collection or pretreatment storage facility not under the control of the operator that is used primarily in connection with the system.

(C) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

(3) "Water acquisition plans" means any plans for acquiring additional water supplies prepared by the public water system or a city or county lead agency pursuant to subdivision (a) of section 10911 of the Water Code.

(4) "Water assessment" means the water supply assessment that must be prepared by the governing body of a public water system, or the city or county lead agency, pursuant to and in compliance with sections 10910 to 10915 of the Water Code, and that includes, without limitation, the elements of the assessment required to comply with subdivisions (d), (e), (f), and (g) of section 10910 of the Water Code.

(5) "City or county lead agency" means a city or county, acting as lead agency, for purposes of certifying or approving an environmental impact report, a negative declaration, or a mitigated negative declaration for a water-demand project.

(b) Subject to section 15155, subdivision (d) below, at the time a city or county lead agency determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration, or any supplement thereto, is required for the water-demand project, the city or county lead agency shall take the following steps:

(1) The city or county lead agency shall identify any water system that either: (A) is a public water system that may supply water to the water-demand project, or (B) that may become such a public water system as a result of supplying water to the water-demand project. The city or county lead agency shall request the governing body of each such public water system to determine whether the projected water demand associated with a water-demand project was included in the most recently adopted urban water management plan adopted pursuant to Part 2.6 (commencing with section 10610) of the Water Code, and to prepare a water assessment approved at a regular or special meeting of that governing body.

(2) If the city or county lead agency is not able to identify any public water system that may supply water for the water-demand project, the city or county lead agency shall prepare a water assessment after consulting with any entity serving domestic water supplies whose service area includes the site of the water-demand project, the local agency formation commission, and the governing body of any public water system adjacent to the site of the water-demand project. The governing body of the city or county lead agency must approve the water assessment prepared pursuant to this section at a regular or special meeting.

(c) The city or county lead agency shall grant any reasonable request for an extension of time that is made by the governing body of a public water system preparing the water assessment, provided that the request for an extension of time is made within 90 days after the date on which the governing body of the public water system received the request to prepare a water assessment. If the governing body of the public water system fails to request and receive an extension of time, or fails to submit the water assessment notwithstanding the 30-day extension, the city or county lead agency may seek a writ of mandamus to compel the governing body of the public water system to comply with the requirements of Part 2.10 of Division 6 (commencing with section 10910) of the Water Code relating to the submission of the water assessment.

(d) If a water-demand project has been the subject of a water assessment, no additional water assessment shall be required for subsequent water-demand projects that were included in such larger water-demand project if all of the following criteria are met:

(1) The entity completing the water assessment had concluded that its water supplies are sufficient to meet the projected water demand associated with the larger water-demand project, in addition to the existing and planned future uses, including, but not limited to, agricultural and industrial uses; and

(2) None of the following changes has occurred since the completion of the water assessment for the larger water-demand project:

(A) Changes in the larger water-demand project that result in a substantial increase in water demand for the water-demand project.

(B) Changes in the circumstances or conditions substantially affecting the ability of the public water system or the water supplying city or county identified in the water assessment to provide a sufficient supply of water for the water demand project.

(C) Significant new information becomes available which was not known and could not have been known at the time when the entity had reached the conclusion in subdivision (d)(1).

(e) The city or county lead agency shall include the water assessment, and any water acquisition plan in the EIR, negative declaration, or mitigated negative declaration, or any supplement thereto, prepared for the water-demand project, and may include an evaluation of the water assessment and water acquisition plan information within such environmental document. The city or county lead agency shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If a city or county lead agency determines that water supplies will not be sufficient, the city or county lead agency shall include that determination in its findings for the water-demand project.

Note: Authority Cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code, Sections 10910-10915 of the Water Code.

Article 11. Types of EIRs

SECTIONS 15160 TO 15170

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: Section 21083, Public Resources Code; Reference: Sections 21061, 21100, and 21151, Public Resources Code.

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: Section 21083, 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 subdivision (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 subdivision (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: Section 21083, 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.

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: Section 21083, Public Resources Code; Reference: Section 21166, Public Resources Code.

15164. ADDENDUM TO AN EIR OR NEGATIVE DECLARATION

(a) The lead agency or 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 findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

Note: Authority cited: Section 21083, 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.

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: Section 21083, Public Resources Code; Reference: Sections 21061, 21100, and 21151, Public Resources Code; *Whitman v. Board of Supervisors*, (1979) 88 Cal. App. 3d 397.

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: Section 21083, 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: Section 21083, 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) A 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 programwide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts, and

(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: Section 21083, Public Resources Code; Reference: Section 21003, Public Resources Code; *County of Inyo v. Yorty*, (1973) 32 Cal. App. 3d 795.

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: Section 21083, 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: Section 21083, Public Resources Code; Reference: Sections 21083.5 and 21083.7, Public Resources Code.

Article 11.5 Master Environmental Impact Report

SECTIONS 15175 TO 15179.5

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: Section 21083, Public Resources Code; Reference: Sections 21156, 21157, and 21089, Public Resources Code.

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: Section 21083, Public Resources Code; Reference: Section 21157, Public Resources Code.

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 subdivision (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 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: Section 21083, Public Resources Code; References: Sections 21157, 21157.6 and 21158, Public Resources Code.

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 than 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: Section 21083, Public Resources Code; References: Sections 21081(a)(2), 21157.5 and 21158, Public Resources Code.

15179. LIMITATIONS ON THE USE OF THE MASTER EIR

(a) The certified Master EIR shall not be used for a subsequent project described in the Master EIR in accordance with this article if either:

(1) The Master EIR was certified more than five years prior to the filing of an application for a subsequent project except as set forth in subsection (b) below, or

(2) After the certification of the Master EIR, a project not described in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR for any subsequent project that was described in the Master EIR.

(b) A Master EIR that was certified more than five years prior to the filing of an application for a subsequent project described in the Master EIR may be used in accordance with this article to review such a subsequent project if the lead agency reviews the adequacy of the Master EIR and takes either of the following steps:

(1) 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

(2) Prepares an initial study, and, pursuant to the findings of the initial study, does either (A) or (B) below:

(A) certifies a subsequent or supplemental EIR that updates or revises the Master EIR and which either:

1. is incorporated into the previously certified Master EIR, or

2. references any deletions, additions or other modifications to the previously certified Master EIR.;

(B) approves a mitigated negative declaration that addresses substantial changes that have occurred with respect to the circumstances under which the Master EIR was certified or the new information that was not known and could not have been known at the time the Master EIR was certified.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21157.6, Public Resources Code.

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: Section 21083, Public Resources Code; Reference: Section 21158.5, Public Resources Code.

Article 12. Special Situations

SECTIONS 15180 TO 15190

15180. REDEVELOPMENT PROJECTS

(a) An EIR for a redevelopment plan may be a Master EIR, a program EIR, or a project EIR. An EIR for a redevelopment plan must specify whether it is a Master EIR, a program EIR, or a project EIR.

(b) If the EIR for a redevelopment plan is a project EIR, all public and private activities or undertakings pursuant to or in furtherance of the redevelopment plan shall 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.

If a project EIR has been certified for the redevelopment plan, no subsequent EIRs are 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.

(c) If the EIR for a redevelopment plan is a Master EIR, subsequent projects which the lead agency determines as being within the scope of the Master EIR will be subject to the review required by Section 15177. If the EIR for a redevelopment plan is a program EIR, subsequent activities in the program will be subject to the review required by Section 15168.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21090 and 21166, Public Resources Code.

15181. [DELETED]

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) 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.

(e) 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: Section 21083, Public Resources Code; Reference: Section 65453, Government Code.

15183. PROJECTS CONSISTENT WITH A COMMUNITY 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 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 decision-making 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: Section 21083, 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: Section 21083, 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 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.

Note: Authority cited: Section 21083, 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) Before certifying an EIR or adopting a negative declaration for a project located within one-fourth mile of a school that involves the construction or alteration of a facility that might reasonably be anticipated to emit hazardous air emissions, or that would handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the state threshold quantity specified in subdivision (j) of Section 25532 of the Health and Safety code, that may impose a health or safety hazard to persons who would attend or would be employed at the school, the lead agency must do both of the following:

(1) Consult with the affected school district or districts regarding the potential impact of the project on the school; and

(2) Notify the affected school district or districts of the project, in writing, not less than 30 days prior to approval or certification of the negative declaration or EIR.

(c) When the project involves the purchase of a school site or the construction of a secondary or elementary school by a school district, the negative declaration or EIR prepared for the project shall not be adopted or certified unless:

(1) The negative declaration, mitigated 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.

(D) Within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(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 district 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.

3. For a school site with boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the school district determines, through a health risk assessment pursuant to subdivision (b)(2) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in subsection (c)(2) exist, but conditions in subdivisions (c)(3)(B)(1), (2) or (3) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the school district makes this finding, the school board shall prepare an EIR and adopt a statement of overriding considerations.

(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) "Extremely hazardous substance," is as defined in subdivision (g)(2)(B) of Section 25532 of the Health and Safety Code and listed in Section 2770.5, Table 3, of Title 19 of the California Code of Regulations.

(4) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(5) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

(6) "Handle" means to use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous material in any fashion.

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

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

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

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

Note: Authority cited: Sections Section 21083, Public Resources Code. References: Sections 21151.4 and 21151.8, 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: Section 21083, Public Resources Code; References: Sections 21159 and 21159.4, Public Resources Code.

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: Section 21083, Public Resources Code; Reference: Section 21159.1, Public Resources Code.

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: Section 21083, Public Resources Code; Reference: Section 21159.2, Public Resources Code.

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: Section 21083, Public Resources Code; Reference: Section 21159.3, Public Resources Code.

15190.5. DEPARTMENT OF DEFENSE NOTIFICATION REQUIREMENT.

(a) For purposes of this section, the following definitions are applicable.

(1) "Low-level flight path" means any flight path for any aircraft owned, maintained, or that is under the jurisdiction of the United States Department of Defense that flies lower than 1,500 feet above ground level, as indicated in the United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)" published by the United States National Imagery and Mapping Agency, or its successor, as of the date the military service gives written notification to a lead agency pursuant to subdivision (b).

(2) "Military impact zone" means any area, including airspace, that meets both of the following criteria:

(A) Is within two miles of a military installation, including, but not limited to, any base, military airport, camp, post, station, yard, center, homeport facility for a ship, or any other military activity center that is under the jurisdiction of the United States Department of Defense; and

(B) Covers greater than 500 acres of unincorporated land, or greater than 100 acres of city incorporated land.

(3) "Military service" means the United States Department of Defense or any branch of the United States Armed Forces.

(4) "Special use airspace" means the land area underlying the airspace that is designated for training, research, development, or evaluation for a military service, as that land area is established by the United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)" published by the United States National Imagery and Mapping Agency, or its successor, as of the date the military service gives written notification to a lead agency pursuant to subdivision (b).

(b) A military service may give written notification to a lead agency of the specific boundaries of a low-level flight path, military impact zone, or special use airspace, and provide the lead agency, in writing, the military contact office and address for the military service. If the notice references the specific boundaries of a low-level flight path, such notification must include a copy of the applicable United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)." If the notice references the specific boundaries of a special use airspace, such notification must include a copy of the applicable United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)."

(c) If a military service provides the written notification specified in subdivision (b) of this section, a lead agency must include the specified military contact office in the list of organizations and individuals receiving a notice of intent to adopt a negative declaration or a mitigated negative declaration pursuant to Section 15072, in the list of organizations and individuals receiving a notice of preparation of an EIR pursuant to Section 15082, and in the list of organizations and individuals receiving a notice of availability of a draft EIR pursuant to Section 15087 for any project that meets all of the criteria specified below:

(1) The project to be carried out or approved by the lead agency is within the boundaries specified in subdivision (b).

(2) The project is one of the following:

(A) a project that includes a general plan amendment; or

(B) a project that is of statewide, regional, or areawide significance; or

(C) a project that relates to a public use airport and the area surrounding such airport which is required to be referred to the airport land use commission, or appropriately designated body, pursuant to Sections 21670-21679.5 of the Public Utilities Code.

(3) The project is not one of the actions described below. A lead agency does not need to send to the specified military contact office a notice of intent to adopt a negative declaration or a mitigated negative declaration, a notice of preparation of an EIR, or a notice of availability of a draft EIR for such actions.

(A) a response action taken pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(B) a response action taken pursuant to Chapter 6.85 (commencing with Section 25396) of Division 20 of the Health and Safety Code.

(C) a project undertaken at a site in response to a corrective action order issued pursuant to Section 25187 of the Health and Safety Code.

The lead agency shall send the specified military contact office a notice of intent or a notice of availability sufficiently prior to adoption or certification of the environmental documents by the lead agency to allow the military service the review period provided under Section 15105.

(d) The effect or potential effect that a project may have on military activities does not itself constitute an adverse effect on the environment for the purposes of CEQA.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21098, Public Resources Code. § 15190.5.

Article 12.5 Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects

SECTIONS 15191 TO 15196

15191. DEFINITIONS

For purposes of this Article 12.5 only, the following words shall have the following meanings:

(a) "Agricultural employee" means a person engaged in agriculture, including: farming in all its branches, and, among other things, includes: (1) the cultivation and tillage of the soil, (2) dairying, (3) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), (4) the raising of livestock, bees, furbearing animals, or poultry, and (5) any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market. This definition is subject to the following limitations:

This definition shall not be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code), and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code).

This definition shall not apply, or be construed to apply, to any employee who performs work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management

Relations Act, 29 U.S.C. Sec. 158(e)) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above. As used in this definition, "land leveling" shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage or preparation of land for cultivation.

(b) "Census-defined place" means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

(c) "Community-level environmental review" means either of the following:

(1) An EIR certified on any of the following:

(A) A general plan.

(B) A revision or update to the general plan that includes at least the land use and circulation elements.

(C) An applicable community plan.

(D) An applicable specific plan.

(E) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.

(2) A negative declaration or mitigated negative declaration adopted as a subsequent environmental review document, following and based upon an EIR on a general plan, an applicable community plan, or an applicable specific plan, provided that the subsequent environmental review document is allowed by CEQA following a master EIR or a program EIR, or is required pursuant to Section 21166.

(d) "Developed open space" means land that meets all of the following criteria:

(1) land that is publicly owned, or financed in whole or in part by public funds,

(2) is generally open to, and available for use by, the public, and

(3) is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ball fields, enclosed child play areas, and picnic facilities.

Developed open space may include land that has been designated for acquisition by a public agency for developed open space but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(e) "Infill site" means a site in an urbanized area that meets one of the following criteria:

(1) The site has been previously developed for qualified urban uses; or

(2) The site has not been developed for qualified urban uses but all immediately adjacent parcels are developed with existing qualified urban uses; or

(3) The site has not been developed for qualified urban uses, no parcel within the site has been created within the past 10 years, and the site is situated so that:

(A) at least 75 percent of the perimeter of the site is adjacent to parcels that are developed with existing qualified urban uses at the time the lead agency receives an application for an approval; and

(B) the remaining 25 percent of the perimeter of the site adjoins parcels that had been previously developed for qualified urban uses.

(f) "Low- and moderate-income households" means "persons and families of low or moderate income" as defined in Section 50093 of the Health and Safety Code to mean persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the Department of Housing and Community Development, in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

(g) "Low-income households" means households of persons and families of very low and low income, which are defined in Sections 50093 and 50105 of the Health and Safety Code as follows:

(1) "Persons and families of low income" or "persons of low income" is defined in Section 50093 of the Health & Safety Code to mean persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to this division.

(2) "Very low income households" is defined in Section 50105 of the Health & Safety Code to mean persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. "Very low income households" includes extremely low income households, as defined in Section 50106 of the Health & Safety Code.

(h) "Lower income households" is defined in Section 50079.5 of the Health and Safety Code to mean any of the following:

(1) "Lower income households," which means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(2) "Very low income households," which means persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(3) "Extremely low income households," which means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as established and amended from time to time by the Secretary of Housing and Urban Development and defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations.

(i) "Major transit stop" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(j) "Project-specific effect" means all the direct or indirect environmental effects of a project other than cumulative effects and growth-inducing effects.

(k) "Qualified urban use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(l) "Residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

(m) "Urbanized area" means either of the following:

(1) An incorporated city that either by itself or in combination with two contiguous incorporated cities has a population of at least 100,000 persons; or

(2) An unincorporated area that meets the requirements set forth in subdivision (m)(2)(A) and subdivision (m)(2)(B) below.

(A) The unincorporated area must meet one of the following location or density requirements:

1. The unincorporated area must be: (i) completely surrounded by one or more incorporated cities, (ii) have a population of at least 100,000 persons either by itself or in combination with the surrounding incorporated city or cities, and (iii) have a population density that at least equals the population density of the surrounding city or cities; or

2. The unincorporated area must be located within an urban growth boundary and have an existing residential population of at least 5,000 persons per square mile. For purposes of this subparagraph, an "urban growth boundary" means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.

(B) The board of supervisors with jurisdiction over the unincorporated area must have taken the following steps:

1. The board has prepared a draft document by which the board would find that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that: (i) encourage compact development in a manner that promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing, and (ii) protects the environment, open space, and agricultural areas.

2. The board has submitted the draft document to OPR and allowed OPR thirty days to submit comments on the draft findings to the board.

3. No earlier than thirty days after submitting the draft document to OPR, the board has adopted a final finding in substantial conformity with the draft finding described in the draft document referenced in subdivision (m)(2)(B)(1) above.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21159.20, 21159.21, 21159.22, 21159.23, 21159.24, Public Resources Code.

15192. THRESHOLD REQUIREMENTS FOR EXEMPTIONS FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS

In order to qualify for an exemption set forth in sections 15193, 15194 or 15195, a housing project must meet all of the threshold criteria set forth below.

(a) The project must be consistent with:

(1) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete; and

(2) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete, unless the zoning of project property is inconsistent with the general plan because the project property has not been rezoned to conform to the general plan.

(b) Community-level environmental review has been adopted or certified.

(c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(d) The site of the project:

(1) Does not contain wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations.

(2) Does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(3) Does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(4) Does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps have been taken in response to the results of this assessment:

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code.

(h) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(i) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project site is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

(l) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(m) The project site is not located on developed open space.

(n) The project site is not located within the boundaries of a state conservancy.

(o) The project has not been divided into smaller projects to qualify for one or more of the exemptions set forth in sections 15193 to 15195.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.21, 21159.27, Public Resources Code.

15193. AGRICULTURAL HOUSING EXEMPTION

CEQA does not apply to any development project that meets the following criteria.

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project site meets the following size criteria:

(1) The project site is located in an area with a population density of at least 1,000 persons per square mile and is two acres or less in area; or

(2) The project site is located in an area with a population density of less than 1,000 persons per square mile and is five acres or less in area.

(c) The project meets the following requirements regarding location and number of units.

(1) If the proposed development project is located on a project site within city limits or in a census-defined place, it must meet the following requirements:

(A) The proposed project location must be within one of the following:

1. Incorporated city limits; or

2. A census defined place with a minimum population density of at least 5,000 persons per square mile; or

3. A census-defined place with a minimum population density of at least 1,000 persons per square mile, unless a public agency that is carrying out or approving the project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impacts of successive projects of the same type in the same area, over time, would be significant.

(B) The proposed development project must be located on a project site that is adjacent, on at least two sides, to land that has been developed.

(C) The proposed development project must meet either of the following requirements:

1. Consist of not more than 45 units, or

2. Consist of housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(2) If the proposed development project is located on a project site zoned for general agricultural use, it must meet either of the following requirements:

(A) Consist of not more than 20 units, or

(B) Consist of housing for a total of 20 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(d) The project meets the following requirements regarding provision of housing for agricultural employees:

(1) The project must consist of the construction, conversion, or use of residential housing for agricultural employees.

(2) If the project lacks public financial assistance, then:

(A) The project must be affordable to lower income households; and

(B) The developer of the development project must provide 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.

(3) If public financial assistance exists for the project, then:

(A) The project must be housing for very low, low-, or moderate-income households; and

(B) The developer of the development project must provide 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 for a period of at least 15 years.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.22, Public Resources Code.

15194. AFFORDABLE HOUSING EXEMPTION

CEQA does not apply to any development project that meets the following criteria:

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project meets the following size criteria: the project site is not more than five acres in area.

(c) The project meets both of the following requirements regarding location:

(1) The project meets one of the following location requirements relating to population density:

(A) The project site is located within an urbanized area or within a census-defined place with a population density of at least 5,000 persons per square mile.

(B) If the project consists of 50 or fewer units, the project site is located within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(C) The project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile and there is no reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

(2) The project meets one of the following site-specific location requirements:

(A) The project site has been previously developed for qualified urban uses; or

(B) The parcels immediately adjacent to the project site are developed with qualified urban uses.

(C) The project site has not been developed for urban uses and all of the following conditions are met:

1. No parcel within the site has been created within 10 years prior to the proposed development of the site.

2. At least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses.

3. The existing remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses.

(d) The project meets both of the following requirements regarding provision of affordable housing.

(1) The project consists of the construction, conversion, or use of residential housing consisting of 100 or fewer units that are affordable to low-income households.

(2) The developer of the 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 30 years, at monthly housing costs deemed to be "affordable rent" for lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.23, Public Resources Code.

15195. RESIDENTIAL INFILL EXEMPTION

(a) Except as set forth in subdivision (b), CEQA does not apply to any development project that meets the following criteria:

(1) The project meets the threshold criteria set forth in section 15192; provided that with respect to the requirement in section 15192(b) regarding community-level environmental review, such review must be certified or adopted within five years of the date that the lead agency deems the application for the project to be complete pursuant to Section 65943 of the Government Code.

(2) The project meets both of the following size criteria:

(A) The site of the project is not more than four acres in total area.

(B) The project does not include any single level building that exceeds 100,000 square feet.

(3) The project meets both of the following requirements regarding location:

(A) The project is a residential project on an infill site.

(B) The project is within one-half mile of a major transit stop.

(4) The project meets both of the following requirements regarding number of units:

(A) The project does not contain more than 100 residential units.

(B) The project promotes higher density infill housing. The lead agency may establish its own criteria for determining whether the project promotes higher density infill housing except in either of the following two circumstances:

1. A project with a density of at least 20 units per acre is conclusively presumed to promote higher density infill housing.

2. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density infill housing unless the preponderance of the evidence demonstrates otherwise.

(5) The project meets the following requirements regarding availability of affordable housing: The project would result in housing units being made available to moderate, low or very low income families as set forth in either A or B below:

(A) The project meets one of the following criteria, and the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units as set forth below at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

1. At least 10 percent of the housing is sold to families of moderate income, or

2. Not less than 10 percent of the housing is rented to families of low income, or

3. Not less than 5 percent of the housing is rented to families of very low income.

(B) If the project does not result in housing units being available as set forth in subdivision (A) above, then the project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(b) A project that otherwise meets the criteria set forth in subdivision (a) is not exempt from CEQA if any of the following occur:

(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.

(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.

(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project that was not known, and could not have been known at the time that community-level environmental review was certified or adopted.

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

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.24, Public Resources Code.

15196. NOTICE OF EXEMPTION FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS

(a) When a local agency determines that a project is not subject to CEQA under Section 15193, 15194, or 15195, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file the notice required by Section 21152.1 of the Public Resources Code, pursuant to Section 15062.

(b) Failure to file the notice required by this section does not affect the validity of a project.

(c) Nothing in this section affects the time limitations contained in Section 21167.

Note: Authority cited: Section 21083, Public Resources Code. Reference: 21152.1, Public Resources Code.

Article 13. Review and Evaluation of EIRs and Negative Declarations

SECTIONS 15200 TO 15209

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: Section 21083, Public Resources Code; Reference: Sections 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.

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: Section 21083, 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 communication.

(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: Section 21083, 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: Section 21083, Public Resources Code; Reference: Sections 21082, 21108 and 21152, Public Resources Code.

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: Section 21083, Public Resources Code. Reference: Sections 21080, 21081.6, and 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.

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 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. 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) A sufficient number of copies of an EIR, negative declaration, or mitigated negative declaration, shall be submitted to the State Clearinghouse for review and comment by state agencies. The notice of completion form required by the State Clearinghouse must be submitted together with the copies of the EIR and may be submitted together with the copies of the negative declaration or mitigated negative declaration. The notice of completion form required by the State Clearinghouse is included in Appendix C. If the lead agency uses the on-line process for submittal of the notice of completion form to the State Clearinghouse, the form generated from the Internet shall satisfy this requirement (refer to www.ceqanet.ca.gov.).

(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: Section 21083, Public Resources Code. Reference: Section 21083, 21091, 21104, and 21153, Public Resources Code.

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. The notice of completion form required by the State Clearinghouse must be submitted together with the copies of the EIR and may be submitted together with the copies of the negative declaration. The notice of completion form required by the State Clearinghouse is included in Appendix C. If the lead agency uses the on-line process for submittal of the notice of completion form to the State Clearinghouse, the form generated from the Internet shall satisfy this requirement (refer to www.ceqanet.ca.gov).

(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 subdivision 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: Section 21083, 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, 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, the Lead Agency may choose to respond to them.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21104 and 21153, Public Resources Code; *Cleary v. County of Stanislaus*, (1981) 118 Cal. App. 3d 348.

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: Section 21083, 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. Formerly Section 15166.

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: Section 21083, Public Resources Code; Reference: Sections 21002, 21104, and 21153, Public Resources Code.

Article 14. Projects Also Subject to the National Environmental Policy Act (NEPA)

SECTIONS 15220 TO 15229

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: Section 21083, 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.

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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, Public Resources Code; References: 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: Section 21083, Public Resources Code; Reference: Sections 21083.5 and 21083.7, Public Resources Code; 40 C.F.R. Part 1506.2. Formerly Section 15063(h).

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: Section 21083, 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: Section 21083, 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, 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: Section 21083, Public Resources Code; Reference: Section 21083.1, Public Resources Code.

Article 15. Litigation

SECTIONS 15230 TO 15233

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: Section 21083, Public Resources Code; Reference: Sections 21167 et seq., Public Resources Code.

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: Section 21083, 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: Section 21083, 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 21167.3(a)).

(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 21167.3(b)).

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21167.3, Public Resources Code; *Kriebel v. City Council* (1980) 112 Cal. App. 3d 693.

Article 16. EIR Monitor

SECTION 15240

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: Section 21083, Public Resources Code; Reference: Section 21088, Public Resources Code.

Article 17. Exemption for Certified State Regulatory Programs

SECTIONS 15250 TO 15253

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: Section 21083, Public Resources Code; Reference: Section 21080.5, Public Resources Code.

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 planning program of the San Francisco Bay Conservation and Development Commission under 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 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.

(k) The regulatory program of the State Water Resources Control Board to establish instream beneficial use protection programs.

(l) 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.

(m) The Program of the Delta Protection Commission involving the preparation and adoption of a Resources 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).

(n) The program of the Department of Fish and Game for the adoption of regulations under the Fish and Game Code.

(o) 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).

(p) 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.

15252. SUBSTITUTE DOCUMENT

(a) The document used as a substitute for an EIR or Negative Declaration in a certified program shall include at least the following items:

(1) A description of the proposed activity, and

(2) Either:

(A) 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

(B) 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.

(b) The notice of the decision on the proposed activity shall be filed with the Secretary for Resources.

Note: Authority cited: Section 21083, 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 subdivision (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 subdivision (b). Where a certified agency does not meet the criteria in subdivision (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: Section 21083, Public Resources Code; Reference: Sections 21002.1(d), 21080.5, and 21165, Public Resources Code.

Article 18. Statutory Exemptions

SECTIONS 15260 TO 15285

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: Section 21083, Public Resources Code; Reference: Section 21080(b), Public Resources Code.

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 exist:

  (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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, Public Resources Code; Reference: Government Code 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: Section 21083, Public Resources Code; Reference: Sections 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: Section 21083, Public Resources CodeCode; 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 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: Section 21083, 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: Section 21083, 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 Section 180.2 of the Streets and Highways Code, Section 180 et seq.

Note: Authority: Section 21083, 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.

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: Section 21083, 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: Section 21083, 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: Section 21083, 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, 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) 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: Section 21083, 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: Section 21083, Public Resources Code; Reference: Section 21083, 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: Section 21083, 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: Section 21083, Public Resources Code; Reference: Section 21080(b)(13), 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: Section 21083, 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: Section 21083, Public Resources Code; Reference: Chapter 1131, Statutes of 1993, Section 1.

15279. [DELETED]

15280. [DELETED]

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: Section 21083, Public Resources Code; Reference: Section 21080.24, Public Resources Code.

15282. OTHER STATUTORY EXEMPTIONS

The following is a list of existing statutory exemptions. Each subdivision 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 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) A project for restriping streets or highways to relieve traffic congestion as set forth in Section 21080.19 of the Public Resources Code.

(k) 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.

(l) 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.

(m) Minor alterations to utilities made for the purposes of complying with Sections 116410 and 116415 of the Health and Safety Code as set forth in Section 21080.26 of the Public Resources Code.

(n) 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.

(o) 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.

(p) The adoption or amendment of a nondisposal facility element as set forth in Section 41735 of the Public Resources Code.

(q) 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.

(r) Determinations made regarding a city or county's regional housing needs as set forth in Section 65584 of the Government Code.

(s) 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.

(t) Industrial Development Authority activities as set forth in Section 91543 of the Government Code.

(u) 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.

(v) The preparation and adoption of Urban Water Management Plans pursuant to the provisions of Section 10652 of the Water Code.

Note: Authority: Section 21083, Public Resources Code; References: Sections 5097.98(c), 21080.01, 21080.02, 21080.03, 21080.05, 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.

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: Section 21083, Public Resources Code; Reference: Section 65584, Government Code.

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: Section 21083, Public Resources Code; Reference: Section 21080.23, Public Resources Code.

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, workers’ 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 Section 21083, Public Resources Code; References: Sections 21080 and 21080.32, Public Resources Code.

Article 19. Categorical Exemptions

SECTIONS 15300 TO 15332

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: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

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: Section 21083, 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 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: Section 21083, Public Resources Code; References: Sections 21084 and 21084.1, Public Resources Code; *Wildlife Alive v. Chickering* (1977) 18 Cal.3d 190; *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

15300.3. REVISIONS TO LIST OF CATEGORICAL EXEMPTIONS

A 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: Section 21083, 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: Section 21083, 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 subdivision:

  (1) One single-family residence. In urbanized areas, up to three single-family residences may be demolished under this exemption.

  (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, or 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: Section 21083, Public Resources Code; References: Sections 21084, Public Resources Code; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307.

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: Section 21083, 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: Section 21083, Public Resources Code; Reference: Sections 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 healthy, mature, scenic trees except for forestry or 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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, Public Resources Codee; 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 environ- mental degradation are not included in this exemption.

Note: Authority cited: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, 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 (a) preservation of fish and wildlife habitat, (b) establishing ecological reserves under Fish and Game Code Section 1580, and (c) 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: Section 21083, 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 Section 21083, 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: Section 21083, Public Resources Code; Reference: Sections 21084, 21083.2, and 21084.1, 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: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15318. DESIGNATION OF WILDERNESS AREAS

Class 18 consists of the designation of wilderness areas under the California Wilderness System.

Note: Authority cited: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

15325. TRANSFERS OF OWNERSHIP OF INTEREST 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.

(f) Acquisition, sale, or other transfer to preserve open space or lands for park purposes.

Note: Authority cited: Section 21083, 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: Section 21083, 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: Section 21083, 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: 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 institutional facilities, the installation of cogeneration facilities will be exempt if the installation will:

  (1) Meet all the criteria described in subdivision (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: Section 21083, 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.

(a) 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 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, off-site disposal, 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.

  (1) 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;

  (2) Maintenance or stabilization of berms, dikes, or surface impoundments;

  (3) Construction or maintenance or interim of temporary surface caps;

  (4) Onsite treatment of contaminated soils or sludges provided treatment system meets Title 22 requirements and local air district requirements;

(5) Excavation and/or offsite disposal of contaminated soils or sludges in regulated units;

(6) Application of dust suppressants or dust binders to surface soils;

(7) Controls for surface water run-on and run-off that meets seismic safety standards;

(8) Pumping of leaking ponds into an enclosed container;

(9) Construction of interim or emergency ground water treatment systems;

(10) Posting of warning signs and fencing for a hazardous waste or substance site that meets legal requirements for protection of wildlife.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

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: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

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.

15333. SMALL HABITAT RESTORATION PROJECTS.

Class 33 consists of projects not to exceed five acres in size to assure the maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife provided that:

(a) There would be no significant adverse impact on endangered, rare or threatened species or their habitat pursuant to section 15065,

(b) There are no hazardous materials at or around the project site that may be disturbed or removed, and

(c) The project will not result in impacts that are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(d) Examples of small restoration projects may include, but are not limited to:

(1) revegetation of disturbed areas with native plant species;

(2) wetland restoration, the primary purpose of which is to improve conditions for waterfowl or other species that rely on wetland habitat;

(3) stream or river bank revegetation, the primary purpose of which is to improve habitat for amphibians or native fish;

(4) projects to restore or enhance habitat that are carried out principally with hand labor and not mechanized equipment.

(5) stream or river bank stabilization with native vegetation or other bioengineering techniques, the primary purpose of which is to reduce or eliminate erosion and sedimentation; and

(6) culvert replacement conducted in accordance with published guidelines of the Department of Fish and Game or NOAA Fisheries, the primary purpose of which is to improve habitat or reduce sedimentation.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code.

Article 20. Definitions

SECTIONS 15350 TO 15387

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: Section 21083, Public Resources Code; Reference: Section 21083, Public Resources Code.

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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, Public Resources Code; Reference: Sections 21080(b)(10) and 21084, Public Resources Code.

15355. CUMULATIVE IMPACTS

"Cumulative impacts" refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

(a) The individual effects may be changes resulting from a single project or a number of separate projects.

(b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21083(b), Public Resources Code; *Whitman v. Board of Supervisors*, 88 Cal. App. 3d 397, *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal. App. 3d 61, Formerly Section 15023.5.

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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, 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 historical 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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, 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.

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: Section 21083, 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: Section 21083, Public Resources Code; Reference: Section 21080(c), Public Resources Code.

15372. NOTICE OF COMPLETION

"Notice of Completion" means a brief notice filed with the Office of Planning and Research 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: Section 21083, 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: Section 21083, 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: Section 21083, 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, the Office of Planning and Research, 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: Section 21083, 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 and political subdivisions of such entities, and to the extent permitted by federal law, the United States, or any of its agencies or political subdivisions.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21066, 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: Section 21083, 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 contacts, 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 that does not involve a public agency sponsored initiative. (*Stein v. City of Santa Monica* (1980) 110 Cal.App.3d 458; *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165);

   (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 that will not result in direct or indirect physical changes in 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 subdivision (a)(1) or as a development proposal which will be subject to several governmental approvals under subdivision (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: Section 21083, 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; *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; and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98.

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: Section 21083, 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 Section 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 subdivision (c) shall nevertheless be considered to be endangered, rare or threatened, if the species can be shown to meet the criteria in subdivision (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: Section 21083, Public Resources Code; Reference: Section 21001(c), Public Resources 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: Section 21083, 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: Section 21083, 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: Section 21083, 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: Section 21083, Public Resources Code; References: 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.

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 Section 21083, 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: Section 21083, 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 and 21083, and 21084, Public Resources Code.

CEQA Guidelines Appendices

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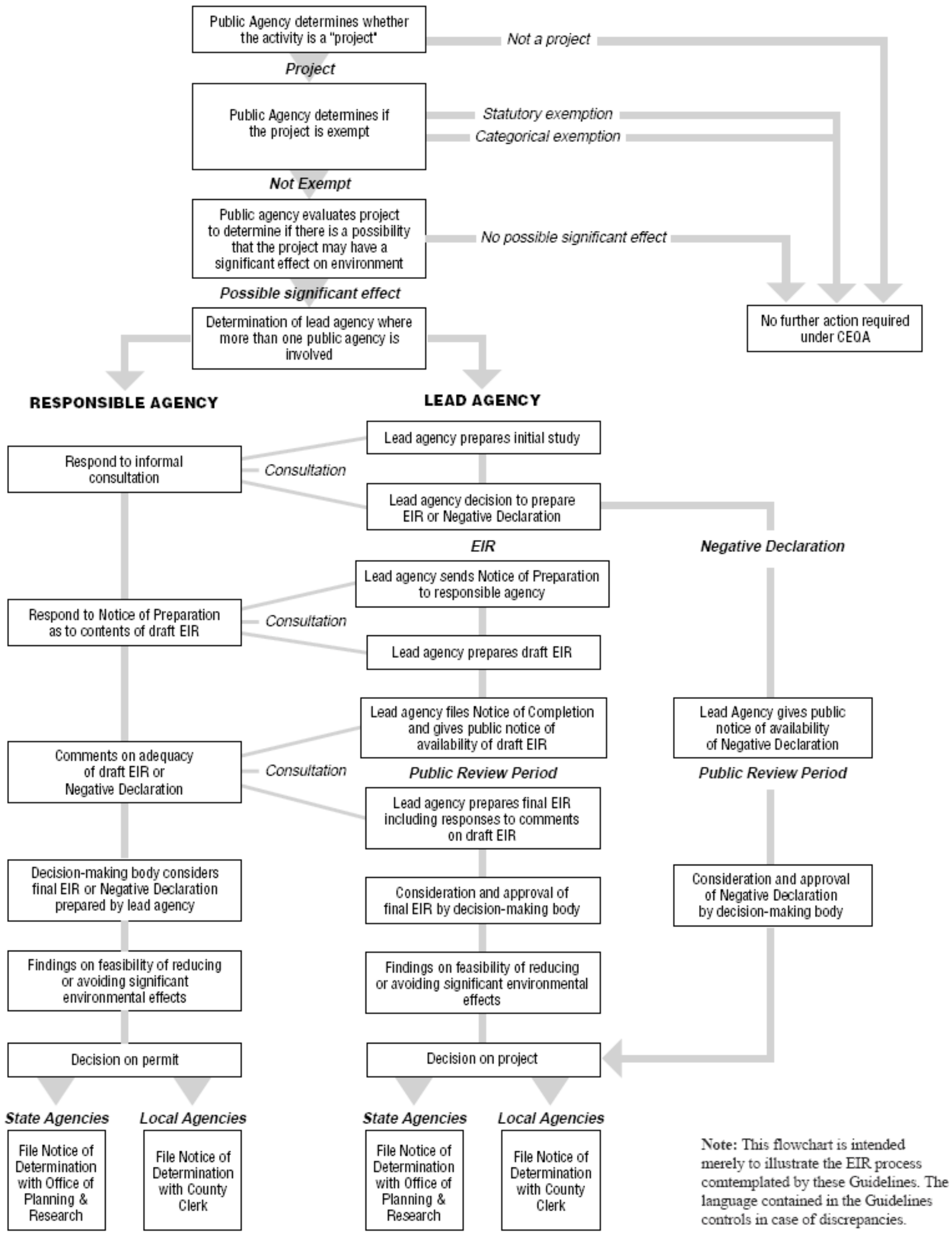
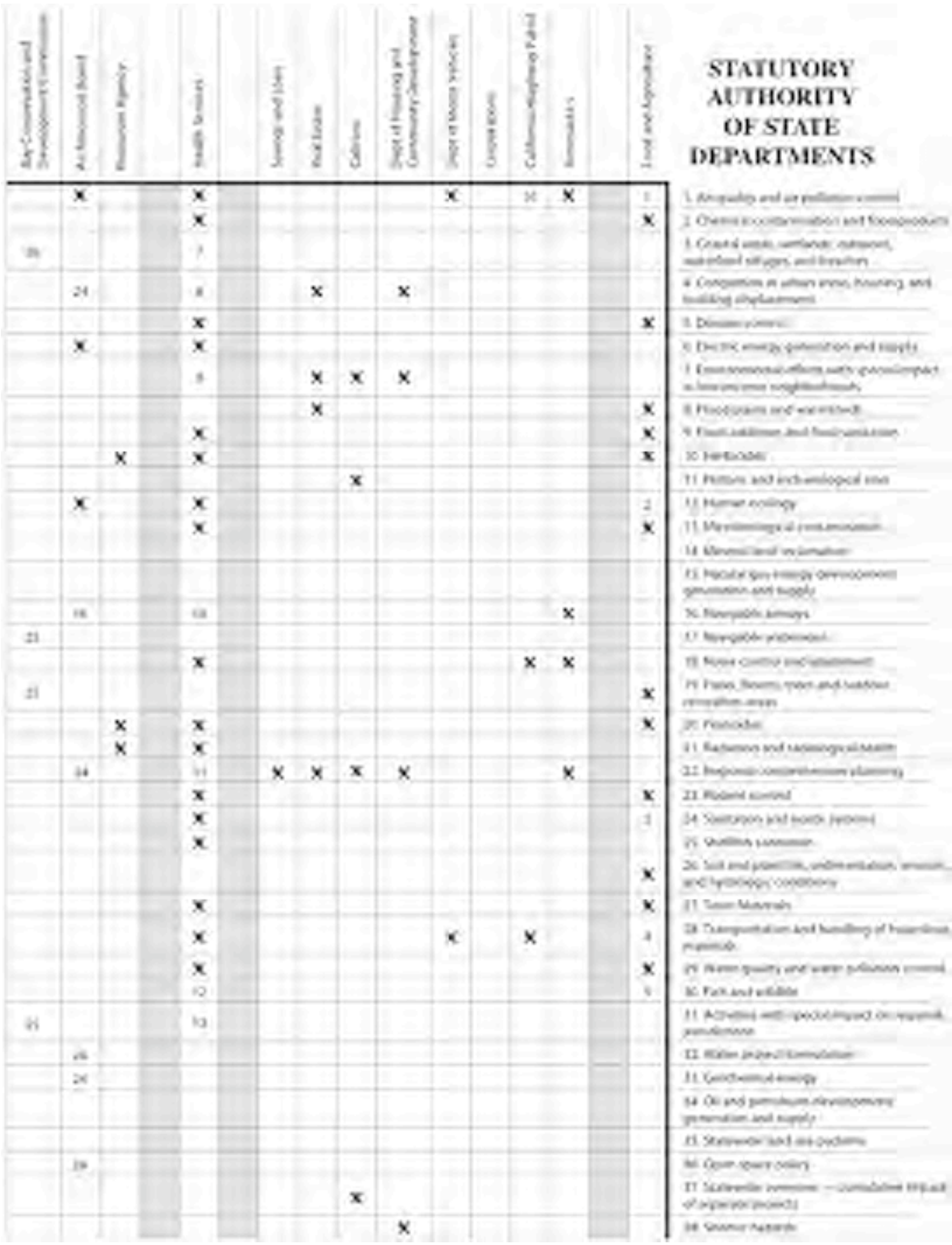
CEQA APPENDIX A:
CEQA PROCESS FLOW CHART



CEQA APPENDIX B:
STATUTORY AUTHORITY OF STATE DEPARTMENTS


STATUTORY AUTHORITY OF STATE DEPARTMENTS

APPENDIX B
continued

Office of Planning & Research	Native American Heritage Commission	Water Resources	State Water Resources Control Board	State Reclamation Board	State Lands Commission	Solid Waste Mgmt Board	Parks and Recreation	Forestry	Fish and Game	Energy Commission	Conservation	Colorado River Board	CTRPA	Coastal Commission	Boating and Waterways	
			X								X		27			1. Air quality and air pollution control
			X						X							2. Chemical contamination and food products
		X	X		X		X		X		X	14	27	26	X	3. Coastal areas, wetlands, estuaries, waterfowl refuges, and beaches
			21										27	26		4. Congestion in urban areas, housing, and building displacement
			X					22	X			14				5. Disease control
		X					X	23	X	X		14		26	X	6. Electric energy generation and supply
							19									7. Environmental effects with special impact in low-income neighborhoods
		X		20	X		X		X		X	14	27	26		8. Flood plains and watersheds
																9. Food additives and food sanitation
			X				X	22	X			14				10. Herbicides
	X				X		X						27	26		11. Historic and archaeological sites
X							X		X				27	26		12. Human ecology
			X						X			14				13. Microbiological contamination
					X		X		X		X		27	26		14. Mineral land reclamation
					X				15	X	X			26		15. Natural gas energy development generation and supply
									16							16. Navigable airways
				20	X				X			14	27	26	X	17. Navigable waterways
									17							18. Noise control and abatement
	X				X		X		X		X	14	27	26	X	19. Parks, forests, trees and outdoor recreation areas
		X	X				X	22	X							20. Pesticides
									X	X		14				21. Radiation and radiological health
X		X	X		X		X		X	X	X	14	27	26	X	22. Regional comprehensive planning
							X	22	X							23. Rodent control
		X	X			X			18		X	14		26		24. Sanitation and waste systems
			X						X							25. Shellfish sanitation
		X	X		X		X		X		X	14	27	26		26. Soil and plant life, sedimentation, erosion, and hydrologic conditions
			X			X	X		X			14				27. Toxic Materials
			X							X	X					28. Transportation and handling of hazardous materials
		X	X						X		X	14	27	26	X	29. Water quality and water pollution control
			21				X		X			14	27	26		30. Fish and wildlife
		X		20			X					14	27	26		31. Activities with special impact on regional jurisdictions
		X	X	20			X	23	X			14			X	32. Water project formulation
		X	21		X				X	X	X	14				33. Geothermal energy
			21		X				X	X	X			26		34. Oil and petroleum development, generation and supply
X					X				X	X	X		27	26		35. Statewide land use patterns
X	X				X				X		X		27	26		36. Open space policy
X										X						37. Statewide overview — cumulative impact of separate projects
		X								X	X		27	26		38. Seismic hazards

APPENDIX B FOOTNOTES

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 if 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 theTahoe 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.

CEQA APPENDIX C:
NOTICE OF COMPLETION & ENVIRONMENTAL DOCUMENT TRANSMITTAL

CEQA Appendix D:
Notice of Determination

TO:
☐ Office of Planning and Research
For U.S. Mail:
P.O. Box Box 3044
Sacramento, CA 95812-3044
Street Address:
1400 Tenth Street
Sacramento, CA 95814

☐ County Clerk
County of:________________________
Address:________________________

FROM:
Public Agency:____________________
Address:____________________
Contact:____________________
Phone:____________________
Lead Agency (if different from above):
____
Address:____________________
Contact:____________________
Phone:____________________

SUBJECT: ***Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.***

State Clearinghouse Number (if submitted to State Clearinghouse): ____________________

Project Title:____

Project Location (include county):______________________________

Project Description:____

This is to advise that the ______________________________ has approved the above described
(☐ Lead Agency or ☐ Responsible Agency)
project on ______________ and has made the following determinations regarding the above
(Date)
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.
3. Mitigation measures [☐ were ☐ were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [☐ was ☐ was not] adopted for this project.
5. A statement of Overriding Considerations [☐ was ☐ was not] adopted for this project.
6. 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, or the Negative Declaration, is available to the General Public at:
____

Signature (Public Agency)________________________ Title:____________________
Date:__________________ Date Received for filing at OPR__________________

Authority cited: Section 21083, Public Resources Code.
Reference: Sections 21000-21174, Public Resources Code.
Revised 2005

CEQA APPENDIX E:
NOTICE OF EXEMPTION

To: ☐ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

☐ County Clerk
County of ____________________

____

____

From: (Public Agency) ____________________

____
(Address)
____

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. 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 Date received for filing at OPR:

☐ Signed by Applicant

Revised October 1989

CEQA 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.

CEQA APPENDIX G:
ENVIRONMENTAL CHECKLIST FORM

participation agreement.)

CEQA 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. Proposed 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, 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 plant– 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 in formation presented are true and correct to the best of my knowledge and belief.

Date ____________________ Signature ____________________

For ____________________

CEQA APPENDIX I:
NOTICE OF PREPARATION

To: ______________________ From: ______________________

______________________ ______________________
(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 potential 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.

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 Code of Regulations, Title 14, (CEQA Guidelines) Sections 15082(a), 15103, 15375.

CEQA APPENDIX J:
EXAMPLES OF TIERING EIRS

CEQA 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.

CEQA APPENDIX L:
NOTICE OF COMPLETION OF DRAFT EIR

INDEX

Note: The keyword index (pages 264 t0 270) has been removed. You can use the Acrobat "Find" facility to search for any word or group of words in this PDF version of the CEQA Statute and Guidelines.

CEQA Guidelines
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EXHIBIT 404

Carolyn Martus
3685 Harding St
Carlsbad CA, 92008
(760) 434-5033(o)
(760) 521-9071(c)
carolynmartus@sbcglobal.net

Education

California State University, San Marcos, CA
M.S. Biology
May 2008

- Thesis Title: The establishment and impact of non-native Mexican fan palms (*Washingtonia robusta*) on native riparian habitats in San Diego

Rutgers University, New Brunswick, NJ
B.S. Biology
May 1995

Work History

Carolyn Martus Inc. Biological Consulting — May 2003 - Present
Owner, Principal Biologist

Camp Pendleton, CA Marine Corps Base — Jan 2001 - May 2003
Biologist/Botanist

Monitored populations of invasive non-native plant species, managed work crews to ensure invasive weed populations were strategically controlled. Surveyed rare and endangered plant communities to ensure conservation. Developed and published informational brochures about the natural resources on base for the general public.

Twenty-nine Palms, CA Marine Corps Base — Jan 2000 – December 2000
Biologist

Monitored, with telemetry, Desert Tortoise (*Gopherus agassizii*). Conducted plant surveys. Administered and supervised invasive species eradication projects. Coordinated with base game warden to capture and transport injured wildlife to rehabilitation center. Participated in interagency conservation groups such as the Desert Lands Restoration Task Force and the Desert Tortoise Council.

Field Experience

Restoration of the San Luis Rey and Santa Margarita River watersheds – The Mission Resource Conservation District – Assisted with the removal of *Arundo donax* (giant reed) and riparian restoration of over 150 acres. Surveyed, mapped and identified invasive plants within both watersheds. Supervised the work of sub-contractors including the herbicide spraying, biomass removal, and native plant restoration. Assisted with public outreach by communicating the project goals with the property owners.
May 2003-present

Monitoring breeding populations of *Sternula antillarum brownii* (California least tern) and *Charadrius alexandrinus nivosus* (western snowy plover) -Camp Pendleton, CA- Conducted nest surveys for both species and assessed potential impacts from predators and humans. Instructed team members on survey techniques and banding protocol. Monitored nests until they hatched and then assessed health of newly born chicks including attaching bird bands. Assisted the principal scientist with the re-capturing of chicks to assess their health and development.
May 2003-present

Complete Floristic Survey of Fallbrook Public Utility District open space lands in Fallbrook, CA – The Environment Company (TEC) Solana Beach CA – Surveyed approximately 1600 acres and documented all plant species with voucher specimens. Monitored and mapped with GPS populations of sensitive plants included *Arctostaphylos rainbowensis* (rainbow manzanita), *Lilium humboldtii* ssp. *ocellatum* (humboldt lily) and *Abronia villosa* var. *villosa* (chaparral sand-verbena).
Spring/Summer 2008

Rare Plant Surveys on Camp Pendleton – The Environment Company, Solana Beach CA – Surveyed various habitat types for all threatened and endangered plant species and CNPS listed species. Identified and mapped populations of *Brodiaea filifolia* (thread-leaf brodiaea), *Eryngium pendletonensis* (pendleton button-celery), and *Arctostaphylos rainbowensis* (rainbow manzanita).
Spring/Summer 2006-2008

Restoration of the Carlsbad Watershed – San Elijo Lagoon Conservancy – Assisted with the removal of *Cortaderia selloana* (pampas grass), *Arundo donax* (giant reed) and the riparian restoration of the Carlsbad Watershed. Surveyed, mapped and identified invasive plants. Supervised the work of sub-contractors including the herbicide spraying, biomass removal, and native plant restoration. Assisted with public outreach by communicating the project goals with the property owners.
May 2004-May 2006

Rare Plant Survey on 29 Palms Marine Corps Base – Surveyed and maped populations of rare plant species on the base. Identified and recorded with GPS populations of *Penstemon albomarginatus* (white-margined beardtongue), *Castella emoryi* (crucifixon thorn), and *Wislizenia refracta* ssp. *refracta* (jackass clover).
Spring 2005

Invasive Plant Survey on 29 Palms Marine Corps Base – Worked with a team to survey and map infestations of *Brassica tournefortii* (Saharan mustard), *Tamarix* spp. (tamarisk) and *Salsola tragus* (Russian thistle) on the base.
Spring 2005

Teaching Experience

Teaching Assistant-CSU- San Marcos - Instructed General Biology Lab for major undergraduates and General Education Science Lab non-major undergraduates. Taught brief introductory lectures and then supervised the lab exercises and dissections. Wrote lesson plans, class syllabus, quizzes and lab practical exams.
Sep 2006-May 2007

Batiquitos Lagoon Foundation Docent Training Program - Instruct docents about our local native and non-native plants through classroom instruction and hands-on field identification.
2006 - present

Publications

- outreach documents where I have worked as part of a small team to research, write and publish them

"*Don't Plant a Pest Brochure*" Southern California Edition – published by the Mission Resource Conservation District and the California Invasive Plant Council

"*San Diego County Invasive Ornamental Plant Guide*" – published in partnership with CNPS San Diego and the American Society of Landscape Architects, San Diego chapter

"*Los Angeles Regional Invasive Plant Guide*" – published by the Los Angeles and San Gabriel Rivers Watershed Council

Specialized Skills and Abilities:

- Communicate well with team members
- Able to work independently and be self-directed
- Able to lead and supervise a field crew
- Capable of writing clearly and concisely
- Proficient in using taxonomic keys and knowledgeable of botanical families from a variety of ecosystems
- Skilled in preparing herbarium voucher specimens
- Adept in reading topographic maps and aerial photos and navigating in field with compass
- Able to work in physically challenging and harsh field conditions
- Skilled in using Pathfinder software and a GPS unit to collect location data
- Familiar with an array of software, such as Microsoft Excel and Word, Access, ArcView and ArcMap

Volunteer Experience:

- California Native Plant Society, San Diego Chapter, Board Member since 2003, president 2004-2008

- Plant sale co-chair, 2003-present, coordinate and execute the annual native plant sale of 6,000 species which raises over $15,000

- San Diego Natural History Museum Plant Atlas Project, volunteer para-botanist since 2004, collected and pressed over 500 specimens

EXHIBIT 405

March 30th, 2010

3685 Harding St
Carlsbad CA, 92008

Subject: Inadequate Botanical Surveys for SES Solar 2 Project (Project)

To Whom It May Concern:

This letter is to document the inadequate botanical surveys for the Project. Historically, the plants of Imperial County have not been surveyed and documented with voucher specimens, so scientists do not know what plant species, rare or common, potentially occur in this area. This is supported by data from the California Consortium of Herbaria showing that less than 10,000 voucher specimens exist for Imperial County compared to more than 117,000 for San Diego County. This paucity of data leads to a lack of information on both the botanical diversity and distribution for Imperial County. The plants of San Diego County are documented so a physical plant specimen exists for each of the 2,143 species that occurs in San Diego County. This vouchered plant collection allows scientists to estimate the diversity and distribution of plants and to conduct focus surveys in certain areas. In order to accurately survey in Imperial County, a vouchered plant collection should first exist before focus surveys can begin. The surveyors for the Project, who are not experts for these deserts, are not collecting and documenting the plant diversity. How do we know that the species of *Chorizanthe* or *Cryptantha* found are not new or rare species?

In addition, the Project occurs in an area where 50% of the diversity is only seen during years of above average rainfall. Given the number of surveyors, hours in the field and size of the project, it is humanly and statistically impossible to accurately survey the entire area in one blooming season which generally lasts four weeks at the most.

Carolyn Martus
Botanist,
California Native Plant Society
Boardmember