



## 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 insystematically 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 decisionmakers and to the public.
- (c) Environmental impact reports omit unnecessary descriptions of projects and emphasize feasible mitigation measures and feasible alternatives to projects.
- (d) Information developed in individual environmental impact reports be incorporated into a data base which can be used to reduce delay and duplication in preparation of subsequent environmental impact reports.
- (e) Information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations.
- (f) All persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment.

### **§ 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.

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## **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 which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance.

#### **§ 21061. Environmental impact report**

"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.

### **§ 21061.0.5. Infill site**

"Infill site" means a site in an urbanized area that meets either of the following criteria:

(a) The immediately adjacent parcels 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.

(b) The site has been previously developed for qualified urban uses.

### **§ 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 decisionmaking methodology for assessing the potential environmental impact of state and local projects on agricultural land.

### **§ 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.



The California Environmental Quality Act

## 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 (lone) 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 (lone), 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.

### **§ 21080.08. Funding by Rural Economic Development Infrastructure Panel; application of division**

This division shall not apply to any activity or approval necessary for or incidental to project funding, or the authorization for the expenditure of funds for the project, by the Rural Economic Development Infrastructure Panel pursuant to Article 5 (commencing with Section 15373.6) of Chapter 2.5 of Part 6.7 of Division 3 of

Title 2 of the Government Code.

### **§ 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 and trustee 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 an activity listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section.

(b) This section applies only to regulatory programs or portions thereof that involve either of the following:

(1) The issuance to a person of a lease, permit, license, certificate, or other entitlement for use.

(2) The adoption or approval of standards, rules, regulations, or plans for use in the regulatory program.

(c) A regulatory program certified pursuant to this section is exempt from Chapter 3 (commencing with Section 21100), Chapter 4 (commencing with Section 21150), and Section 21167, except as provided in Article 2 (commencing with Section 21157) of Chapter 4.5.

(d) To qualify for certification pursuant to this section, a regulatory program shall require the utilization of an interdisciplinary approach that will ensure the integrated use of the natural and social sciences in decisionmaking and that shall meet all of the following criteria:

(1) The enabling legislation of the regulatory program does both of the following:

(A) Includes protection of the environment among its principal purposes.

(B) Contains authority for the administering agency to adopt rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation.

(2) The rules and regulations adopted by the administering agency for the regulatory program do all of the following:

(A) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen a 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 a person who requests, in writing, notification. The notification shall be made in a manner that will provide the public or a 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 may 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 a 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.

**§ 21080.13. 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.

**§ 21080.17. 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**

This division 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 a 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.

(b) Nothing in this section is intended to result in the application of this division to any physical or operational change which, 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. Ballona Wetlands**

(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.

### **§ 21081.5. 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, development and review of Guidelines**

(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.

### **§ 21083.1. 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. Oak woodlands conservation**

(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) Any county or city that borders on a county or city within

which the project is located, unless otherwise designated annually by agreement between the lead agency and the county or city.

(2) Any responsible agency.

(3) Any public agency that has jurisdiction by law with respect to the project.

(4) Any organization or individual who has filed a written request for the notice.

(c) For any entity, organization, or individual that is required to be provided notice of a lead agency public meeting, the requirement for notice of a scoping meeting pursuant to subdivision (b) may be met by including the notice of a scoping meeting in the public meeting notice.

(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. Airport projects at specified airport; environmental impact reports; mitigation measures relating to salt ponds**

(a) (1) If an environmental impact report for a project at an airport that is owned by a city and county and that is located in another county identifies as a proposed mitigation measure the acquisition, enhancement, and restoration of salt ponds and the lead agency proposes the payment of funds to one or more public agencies to mitigate the impacts of the proposed project and the public agency or agencies propose to use those funds to acquire, enhance, and restore land, the lead agency shall include in the environmental impact report on the proposed project a detailed statement of the mitigation measure, including all of the following:

(A) An analysis of the relationship between the impacts of the proposed project and the benefits of the proposed acquisition, enhancement, and restoration of land that the payment of funds would allow.

(B) An analysis of the feasibility of the proposed acquisition, enhancement, and restoration.

(C) A discussion of the expected impacts of the proposed acquisition, enhancement, and restoration.

(2) The detailed statement of the mitigation measure shall consist

of the following:

(A) Information in existence at the time the environmental impact report is prepared, including the restoration goals specific to salt ponds as identified in the San Francisco Estuary Baylands Ecosystem Goals Report published in 1999.

(B) Information that is reasonably obtainable, including, but not limited to, a hydrodynamic analysis of potential flood impacts, and analyses regarding the potential for the following:

(i) Changes to the waters and tidal currents of the southern portions of the San Francisco Bay.

(ii) Potential alterations to the San Francisco Bay floor.

(iii) Related impacts on water quality.

(3) If, at the time of the publication of the draft environmental impact report, a restoration plan has not been adopted by a public agency with jurisdiction to carry out the restoration project, the lead agency for the airport project need not prepare a detailed restoration plan or analyze the impacts of a restoration plan for the lands proposed for acquisition, enhancement, and restoration; however, the lead agency shall evaluate a conceptual restoration plan, and shall fully evaluate a potentially feasible alternate mitigation measure that does not depend on the salt ponds.

(b) If the lead agency for the airport project approves the proposed project and approves the payment of funds for the acquisition, enhancement, and restoration of land as a mitigation measure, it shall make both such approvals contingent upon an agreement between the lead agency and the public agency or agencies wherein the public agency or agencies agree to use the funds solely for the following purposes:

(1) The acquisition, enhancement, and restoration of the lands identified by the lead agency in its detailed statement of the mitigation measure.

(2) The preparation and implementation of a restoration plan that, at a minimum, mitigates the significant impact that would be substantially lessened or avoided by implementation of the mitigation measure as identified in the final environmental impact report certified by the lead agency.

(c) The agreement described in subdivision (b) shall identify a feasible alternative mitigation measure to be implemented if the restoration of all or a portion of the salt ponds proves to be infeasible, as determined by the lead agency.

(d) Nothing in this section shall be interpreted to assess or assign liability with respect to the salt ponds.

(e) Funds for the costs of mitigation shall include the costs of the environmental reviews conducted by a state agency of the restoration plan prepared by a state agency.

(f) This section shall only apply to the acquisition, enhancement, and restoration of salt ponds located in the southerly portion of the San Francisco Bay.

g) As used in this section, "acquisition, enhancement, and restoration" also includes acquisition, enhancement, or restoration.

(h) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

### **§ 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) Notwithstanding subdivisions (a) and (b), if a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration is submitted to the State Clearinghouse for review and the period of review by the State Clearinghouse is longer than the public review period established pursuant to subdivision (a) or (b), whichever is applicable, the public review period shall be at least as long as the period of review by the State Clearinghouse.

(d) (1) The lead agency shall consider 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 decisionmaking body of the lead agency to the Office of Planning and Research. The decisionmaking body may designate by resolution or ordinance a person authorized to request a shortened review period. A designated person shall notify the decisionmaking 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, 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 have transportation facilities within their jurisdictions which could be affected by the project. Consultation shall be conducted in the same manner as for responsible agencies pursuant to this division, and shall be for the purpose of the lead agency obtaining information concerning the project's effect on major local arterials, public transit, freeways, highways, and rail transit service within the jurisdiction of a transportation planning agency or a public agency which is consulted by the lead agency. A transportation planning agency or public agency which provides information to the lead agency shall be notified of, and provided with copies of, environmental documents pertaining to the project.

(b) As used in this section, "transportation facilities" includes major local arterials and public transit within five miles of the project site and freeways, highways, and rail transit service within 10 miles of the project site.

### **§ 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.

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The California Environmental Quality Act

## **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.

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The California Environmental Quality Act

## **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 decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any.

**§ 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 XIII B 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.

(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) shall not apply if the facility only manages hazardous waste that is identified or listed pursuant to Section 25140 or 25141 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 any 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 1/4 mile of school; reasonable anticipation of air emission or handling of hazardous or extremely hazardous material; approval of environmental impact report or negative declaration**

An environmental impact report shall not be certified and a negative declaration shall not be approved for any project involving the construction or alteration of a facility within 1/4 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) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(b) The school district has been given written notification of the project not less than 30 days prior to the proposed certification of the environmental impact report or approval of the negative declaration.

**§ 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 or negative declaration may not be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or

secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information 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 hazardous materials, 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) 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 acutely hazardous materials, 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.

(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) As used in this section and Section 21151.4, the following definitions shall apply:

(1) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code.

(2) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code.

(3) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code.

(4) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code.

(5) "Hazardous air emissions" means emissions into the ambient air

of air contaminants 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.

(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. Environmental impact reports for projects at specified airport; joint management alternative**

(a) If an environmental impact report is prepared for a project at an airport that is owned by a city and county and that is located in another county that includes more than one acre of fill in the San Francisco Bay, the environmental impact report shall analyze, as an alternative to the project, a form of joint management of that airport owned by the city and county and the Oakland International Airport. This joint management alternative shall separately analyze an underground high-speed rail transit connection and a high-speed ferry connection between the two airports and shall utilize in both analyses all technological enhancements reasonably expected to be available. The analysis of the joint management

alternative shall include a meaningful evaluation, analysis, and comparison of the alternative with the proposed project, and shall assess the feasibility of the alternative notwithstanding that changes in state law may be required for its implementation. The environmental impact report shall identify any changes in state law that would be required in order to implement this alternative.

(b) Nothing in this section or in Section 21085.7 shall be interpreted in a manner that alters the lead agency's obligation to comply with this division in connection with proposed mitigation measures other than the mitigation measure described in Section 21085.7.

(c) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

**§ 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 filing; notice of determination**

(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.

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## **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 which will be carried out in phases.

(3) A rule or regulation which will be implemented by subsequent projects.

(4) Projects which will be carried out or approved pursuant to a development agreement.

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

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

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

(8) A plan proposed by a local agency for the reuse of a federal military base or reservation that has been closed or that is proposed for closure.

(9) Regulations adopted by the Fish and Game Commission for the

regulation of hunting and fishing.

(b) When a lead agency prepares a master environmental impact report, the document shall include all of the following:

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

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

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

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

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

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

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

(c) Lead agencies may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a master environmental impact report.

### **§ 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.

### **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 Multiple-family residential development, or mixed-use development in the City of Oakland; use of focused environmental impact report**

(a) For a project in the City of Oakland that consists of multiple-family residential development, or a residential and commercial or retail mixed-use development with not more than 25 percent of the total floor area of the project utilized as retail space, a focused environmental impact report may be prepared, notwithstanding that the project was not identified in a master

environmental impact report, if all of the following conditions are met:

(1) The Oakland City Council does both of the following:

(A) Authorizes the implementation of this section. The city council may authorize the implementation of this section only by voting to approve the practice of preparing focused environmental impact reports for projects in the central business district housing target areas specified in paragraph (11).

(B) Determines that the general plan, zoning ordinance, and related policies and programs 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.

(2) The city submits a draft determination to the Office of Planning and Research that the applicable general plan, zoning ordinance, and any related policies and programs are consistent with the principles described in subparagraph (B) of paragraph (1) prior to the city council making its determination regarding that consistency. The office may submit comments on the draft findings to the city council within 30 days from the date that the city submits the draft determination to the office.

(3) The city has an average population density of at least 5,000 persons per square mile.

(4) The project is consistent with the general plan, any applicable specific plan and community plan, and zoning ordinance, including any variance that is properly granted pursuant to that zoning ordinance, an environmental impact report was prepared for the general plan, and the application for the project is deemed complete pursuant to Section 65943 of the Government Code within three years of the date this section is effective.

(5) 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.

(6) The project meets one or both 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 is, or has been previously, developed with urban uses.

(7) The density of the project is at least 40 units per net acre.

(8) The parcel on which the project is to be developed is within one-half mile of an existing rail transit station.

(9) The project can be adequately served by existing utilities and municipal services, and there will be adequate capacity for infrastructure, utilities, and services to serve other projects

approved and proposed in the service area.

(10) The project does not include a single level building that exceeds 100,000 square feet.

(11) The project is located in one of the following central business district housing target areas:

(A) The Valdez cluster, which is bounded on the west by Telegraph Avenue, on the south by 23rd Street, on the east by Harrison Street, and on the north by 27th Street. A project located in this cluster that meets the condition described in paragraph (8) may include a portion up to one acre that does not meet that condition.

(B) The Uptown cluster, which is bounded on the west by Castro Street, on the south by 14th Street from Castro Street to Jefferson Street and 16th Street and Broadway from 16th Street to 22nd Street, and on the north by 22nd Street.

(C) The 11th Street cluster, which is bounded by Franklin Street from 12th Street to 15th Street, by Webster Street from 11th Street to 12th Street, by Alice Street from 11th Street to 13th Street, by 12th Street from Franklin Street to Webster Street, by 11th Street from Webster Street to Alice Street and 13th Street from Alice Street to Madison Street, and on the east by Madison Street from 13th Street to 15th Street, and on the north by 15th Street from Franklin Street to Madison Street.

(D) The Old Oakland cluster, which is bounded on the west by Castro Street, on the south by 7th Street, on the east by Broadway, and on the north by 11th Street.

(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. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

(c) (1) On or before July 1, 2004, the city shall submit a report to the Office of Planning and Research that includes, but that is not necessarily limited to, all of the following information:

(A) The number of focused environmental impact reports prepared pursuant to this section.

(B) The types of projects for which focused environmental impact reports were prepared pursuant to this section.

(C) The time periods for preparing each of the focused environmental impact reports prepared pursuant to this section, and for acting on each project from the date that the application was deemed complete.

(D) A description of any alternatives to a project, cumulative impacts of a project, growth inducing impacts of a project, or other issues that may have been identified and analyzed if an environmental document, other than a focused environmental impact report, had been prepared for the project.

(2) Prior to submitting the report to the office pursuant to paragraph (1), the city shall hold at least one public hearing and shall respond to oral and written comments regarding the draft

report. The city shall include the comments and responses in the final report.

(d) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

### **§ 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.

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The California Environmental Quality Act

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## **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. 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.

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The California Environmental Quality Act

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## **Chapter 6: Limitations**

### **§ 21165. Lead agency; preparation of impact report**

When a project is to be carried out or approved by two or more public agencies, the determination of whether the project may have a significant effect on the environment shall be made by the lead agency; and such agency shall prepare, or cause to be prepared by contract, the environmental impact report for the project, if such a report is required by this division. In the event that a dispute arises as to which is the lead agency, any public agency, or in the case of a project described in subdivision (c) of Section 21065 the applicant for such project, may submit the question to the Office of Planning and Research, and the Office of Planning and Research shall designate, within 21 days of receiving such request, the lead agency, giving due consideration to the capacity of such agency to adequately fulfill the requirements of this division.

### **§ 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 any action or proceeding filed pursuant to this chapter that is joined with any other cause of action, the court, upon a motion by any party, may grant severance of the actions. In determining whether to grant severance, the court shall consider such as matters judicial economy, administrative economy, and prejudice to any party.

### **§ 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 decisionmaking body of the respondent public agency heard

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

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

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

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

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

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

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

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

(f) In preparing the record of proceedings, the party preparing the record shall strive to do so at reasonable cost in light of the scope of the record.

(g) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days from the date that the notice designating the papers or records to be included in the clerk's transcript was filed with the superior court, if the party or parties pay any costs or fees for the preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this subdivision precludes an election to proceed by appendix, as provided in

Rule 5.1 of the California Rules of Court.

(h) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions for the filing of a brief on appeal shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(i) At the completion of the filing of briefs on appeal, the appellant shall notify the court of the completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

### **§ 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.

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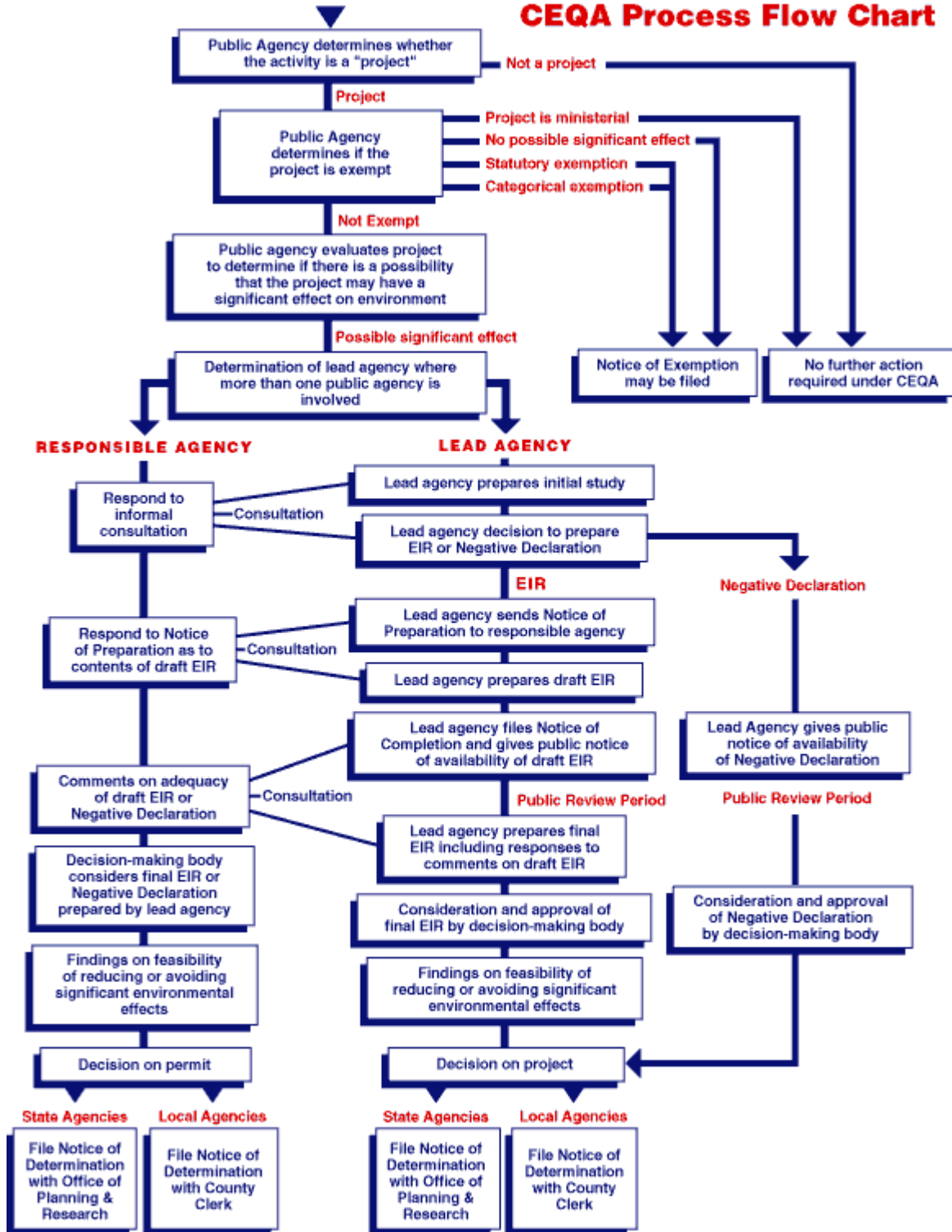
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### CEQA Process Flow Chart





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