

Memorandum 98-21

Environment Code: Division 3 (California Environmental Quality Act)

Note: The proposed Environment Code is intended to reorganize and continue existing environmental statutory law without substantive change.
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A key environmental statute is the California Environmental Quality Act (CEQA). CEQA requires environmental assessment and feasible mitigation measures for any project carried out or approved by a public entity.

CEQA is currently found at Public Resources Code Section 21100-21177. Because of its central role in environmental law, and the frequency of referral to it, **the staff believes that we should try to preserve the existing numbering of the CEQA to the extent practicable.** Thus, Public Resources Code Sections 21100-21177 would become Environment Code Sections 21100-21177.

The CEQA redraft is attached to this memorandum. We will supplement this memorandum with a draft of conforming revisions in other statutes to reflect relocation of CEQA from the Public Resources Code to the Environment Code.

One problem with the structure and organization of CEQA is that it has grown piecemeal over the years and many sections have been squeezed into a relatively confined space. The result is that the statute's organization and numbering are inconsistent. For example, the definitions are not alphabetical, some decimal numbers are treated in a sequential rather than decimal manner, some sections are unduly lengthy and are the equivalent of articles, the great mass of "general" provisions is undifferentiated, and unrelated provisions are intermingled. The statute would benefit from a substantial reorganization and overhaul.

It is a shame not to take this opportunity to clean up the statute. However, the staff suspects that people who work with it all the time would prefer to keep existing numbers even though the consequence is an unwieldy statute. When we circulate the Environment Code draft for comment, we would make a specific request for feedback on the question whether it is preferable to preserve the existing structure and numbering of CEQA over a clean reorganization of it.

In the current draft we have done some very modest organizational work on CEQA. For example, we have inserted a few chapter and article headings in appropriate spots to help differentiate the statutory mass. We have omitted three provisions in reliance on general Environment Code provisions. See Sections 70 (“person” defined), 75 (“public agency” defined), and 12 (severability of provisions).

We have also relocated a handful of provisions for organizational integrity. Specifically, Section 21177 (exhaustion of administrative remedies) has been relocated from the end of the statute to the judicial review provisions, and Sections 21083.2-21085 (miscellaneous special project requirements) have been moved from the CEQA guidelines provisions with which they were interspersed.

Staff notes in the draft highlight a couple of areas for possible organizational improvement. For example, the general definitions of “agricultural land” (Section 21060.1) and “land evaluation and site assessment” (Section 21061.2) are only used in one section — Section 21095 (agricultural land conversions). They could easily be consolidated in one place without loss.

Likewise, the general definition of “geothermal exploratory project” (Section 21065.5) is used only in Section 21090.1 (geothermal exploratory project). The two probably ought to be combined.

There may be obsolete provisions in CEQA that can be cleaned out without loss. There may be provisions that are not obsolete but that contain obsolete cross-references that should be corrected. The staff has not researched these. We plan to request commentators to identify any such provisions of which they may be aware when the CEQA draft is circulated for comment.

Respectfully submitted,

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Executive Secretary

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DIVISION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT

CHAPTER 1. POLICY

§ 21000. Legislative findings and declarations

21000. The Legislature finds and declares as follows:

(a) The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.

(b) It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man.

(c) There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.

(d) The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.

(e) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(f) The interrelationship of policies and practices in the management of natural resources and waste disposal requires systematic and concerted efforts by public and private interests to enhance environmental quality and to control environmental pollution.

(g) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.

Comment. Section 21000 continues former Public Resources Code Section 21000 without change.

§ 21001. Policy of state

21001. The Legislature further finds and declares that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.

1 (c) Prevent the elimination of fish or wildlife species due to man's activities,
2 insure that fish and wildlife populations do not drop below self-perpetuating
3 levels, and preserve for future generations representations of all plant and animal
4 communities and examples of the major periods of California history.

5 (d) Ensure that the long-term protection of the environment, consistent with the
6 provision of a decent home and suitable living environment for every Californian,
7 shall be the guiding criterion in public decisions.

8 (e) Create and maintain conditions under which man and nature can exist in
9 productive harmony to fulfill the social and economic requirements of present and
10 future generations.

11 (f) Require governmental agencies at all levels to develop standards and
12 procedures necessary to protect environmental quality.

13 (g) Require governmental agencies at all levels to consider qualitative factors as
14 well as economic and technical factors and long-term benefits and costs, in
15 addition to short-term benefits and costs and to consider alternatives to proposed
16 actions affecting the environment.

17 **Comment.** Section 21001 continues former Public Resources Code Section 21001 without
18 change.

19 **§ 21001.1. Public projects**

20 21001.1. The Legislature further finds and declares that it is the policy of the
21 state that projects to be carried out by public agencies be subject to the same
22 level of review and consideration under this division as that of private projects
23 required to be approved by public agencies.

24 **Comment.** Section 21001.1 continues former Public Resources Code Section 21001.1
25 without change.

26 **§ 21002. Feasible alternatives and mitigation measures**

27 21002. The Legislature finds and declares that it is the policy of the state that
28 public agencies should not approve projects as proposed if there are feasible
29 alternatives or feasible mitigation measures available which would substantially
30 lessen the significant environmental effects of such projects, and that the
31 procedures required by this division are intended to assist public agencies in
32 systematically identifying both the significant effects of proposed projects and
33 the feasible alternatives or feasible mitigation measures which will avoid or
34 substantially lessen such significant effects. The Legislature further finds and
35 declares that in the event specific economic, social, or other conditions make
36 infeasible such project alternatives or such mitigation measures, individual
37 projects may be approved in spite of one or more significant effects thereof.

38 **Comment.** Section 21002 continues former Public Resources Code Section 21002 without
39 change.

40 Uncodified statutory provisions applicable to former Public Resources Section 21002 now
41 apply to Section 21002 of the Environment Code. See 1976 Cal. Stat. ch. 1312, § 21:

1 The Legislature declares that it makes no finding whether Sections 21002, 21002.1,
2 and 21082.1, as added to the Public Resources Code by this act, are, or are not,
3 declaratory of existing law.

4 **§ 21002.1. Use of environmental impact reports**

5 21002.1. In order to achieve the objectives set forth in Section 21002, the
6 Legislature hereby finds and declares that the following policy shall apply to the
7 use of environmental impact reports prepared pursuant to this division:

8 (a) The purpose of an environmental impact report is to identify the significant
9 effects on the environment of a project, to identify alternatives to the project, and
10 to indicate the manner in which those significant effects can be mitigated or
11 avoided.

12 (b) Each public agency shall mitigate or avoid the significant effects on the
13 environment of projects that it carries out or approves whenever it is feasible to
14 do so.

15 (c) If economic, social, or other conditions make it infeasible to mitigate one or
16 more significant effects on the environment of a project, the project may
17 nonetheless be carried out or approved at the discretion of a public agency if the
18 project is otherwise permissible under applicable laws and regulations.

19 (d) In applying the policies of subdivisions (b) and (c) to individual projects, the
20 responsibility of the lead agency shall differ from that of a responsible agency.
21 The lead agency shall be responsible for considering the effects, both individual
22 and collective, of all activities involved in a project. A responsible agency shall be
23 responsible for considering only the effects of those activities involved in a
24 project which it is required by law to carry out or approve. This subdivision
25 applies only to decisions by a public agency to carry out or approve a project and
26 does not otherwise affect the scope of the comments that the public agency may
27 wish to make pursuant to Section 21104 or 21153.

28 (e) To provide more meaningful public disclosure, reduce the time and cost
29 required to prepare an environmental impact report, and focus on potentially
30 significant effects on the environment of a proposed project, lead agencies shall,
31 in accordance with Section 21100, focus the discussion in the environmental
32 impact report on those potential effects on the environment of a proposed project
33 which the lead agency has determined are or may be significant. Lead agencies
34 may limit discussion on other effects to a brief explanation as to why those effects
35 are not potentially significant.

36 **Comment.** Section 21002.1 continues former Public Resources Code Section 21002.1
37 without change.

38 Uncodified statutory provisions applicable to former Public Resources Section 21002.1
39 now apply to Section 21002.1 of the Environment Code. See 1976 Cal. Stat. ch. 1312, § 21:

40 The Legislature declares that it makes no finding whether Sections 21002, 21002.1,
41 and 21082.1, as added to the Public Resources Code by this act, are, or are not,
42 declaratory of existing law.

1 **§ 21003. Efficiency considerations**

2 21003. The Legislature further finds and declares that it is the policy of the state
3 that:

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

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

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

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

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

18 (f) All persons and public agencies involved in the environmental review
19 process be responsible for carrying out the process in the most efficient,
20 expeditious manner in order to conserve the available financial, governmental,
21 physical, and social resources with the objective that those resources may be
22 better applied toward the mitigation of actual significant effects on the
23 environment.

24 **Comment.** Section 21003 continues former Public Resources Code Section 21003 without
25 change.

26 **§ 21003.1. Public comment**

27 21003.1. The Legislature further finds and declares it is the policy of the state
28 that:

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

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

40 (c) Nothing in subdivisions (a) or (b) reduces or otherwise limits public review
41 or comment periods currently prescribed either by statute or in guidelines
42 prepared and adopted pursuant to Section 21083 for environmental documents,

1 including, but not limited to, draft environmental impact reports and negative
2 declarations.

3 **Comment.** Section 21003.1 continues former Public Resources Code Section 21003.1
4 without change.

5 **§ 21004. Agency powers**

6 21004. In mitigating or avoiding a significant effect of a project on the
7 environment, a public agency may exercise only those express or implied powers
8 provided by law other than this division. However, a public agency may use
9 discretionary powers provided by such other law for the purpose of mitigating or
10 avoiding a significant effect on the environment subject to the express or implied
11 constraints or limitations that may be provided by law.

12 **Comment.** Section 21004 continues former Public Resources Code Section 21004 without
13 change.

14 Uncodified statutory provisions applicable to former Public Resources Section 21004 now
15 apply to Section 21004 of the Environment Code. See 1982 Cal. Stat. ch. 1438, § 4:

16 The Legislature finds and declares as follows:

17 (a) The enactment of Section 21004 of the Public Resources Code by this act is
18 intended to clarify the scope and meaning of various provisions of Division 13
19 (commencing with Section 21000) of the Public Resources Code.

20 Such clarification is necessary because of contentions that the provisions of Division
21 13 (commencing with Section 21000) of the Public Resources Code, by themselves,
22 confer on public agencies independent authority to levy fees, impose exactions, and
23 take other actions in order to comply with the general requirement of that division
24 that significant effects on the environment be mitigated or avoided whenever it is
25 feasible to do so.

26 The provisions of Division 13 (commencing with Section 21000) of the Public
27 Resources Code confer no such independent authority. Rather, the provisions of that
28 division are intended to be used in conjunction with discretionary powers granted to a
29 public agency by other law in order to achieve the objective of mitigating or avoiding
30 significant effects on the environment when it is feasible to do so. Compliance with
31 the requirements of that division identifies the manner in which significant effects of a
32 project can be mitigated or avoided, and imposes an additional requirement that these
33 mitigating or avoiding actions be taken whenever it is feasible to do so. In order to
34 fulfill that latter requirement, a public agency is required to select from the various
35 powers which have been conferred upon it by other law, those which it determines
36 may be appropriately and legally exercised to avoid or mitigate the significant effects
37 of the project as required by that division.

38 Thus, for example, if the California Constitution, a charter, a statute, or some other
39 law generally confers upon a public agency the authority to levy a fee or to impose
40 another type of exaction for public welfare purposes, that public agency may, to the
41 extent expressly or impliedly permitted by such other law, choose to impose that fee
42 or exaction for the purpose of mitigating or avoiding a significant effect on the
43 environment which has been identified pursuant to Division 13 (commencing with
44 Section 21000) of the Public Resources Code. Or, if a public agency is generally
45 authorized to exercise the power of condemnation, it may, to the extent expressly or
46 impliedly permitted by such other law, choose to do so in order to mitigate or avoid a
47 significant effect on the environment which has been identified pursuant to that
48 division.

49 The provisions of Section 21004 of the Public Resources Code do not modify the
50 holdings expressed in *Golden Gate Bridge etc. Dist. v. Muzzi* (1978) 83 Cal.App.3d
51 707; and *San Diego Trust & Savings Bank v. Friends of Gill* (1981) 121 Cal.App.3d
52 203.

(b) There is currently in litigation the question of whether or not Division 13 (commencing with Section 21000) of the Public Resources Code, prior to its amendment by this act, does, or does not, confer on public agencies an authorization to impose fees and other exactions, which is wholly separate and independent from any authorization conferred on such agencies by other law. The Legislature, therefore, declares that, by adding Section 21004 to Division 13 (commencing with Section 21000) of the Public Resources Code, it makes no statement, either directly or by indirection, as to whether that division, prior to its amendment by this act, did or did not confer on public agencies independent authority to impose fees or other exactions.

§ 21005. Judicial review

21005. (a) The Legislature finds and declares that it is the policy of the state that noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented to the public agency, or noncompliance with substantive requirements of this division, may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.

(b) It is the intent of the Legislature that, in undertaking judicial review pursuant to Sections 21168 and 21168.5, courts shall continue to follow the established principle that there is no presumption that error is prejudicial.

(c) It is further the intent of the Legislature that any court, which finds, or, in the process of reviewing a previous court finding, finds, that a public agency has taken an action without compliance with this division, shall specifically address each of the alleged grounds for noncompliance.

Comment. Section 21005 continues former Public Resources Code Section 21005 without change.

CHAPTER 2. SHORT TITLE

§ 21050. California Environmental Quality Act

21050. This division shall be known and may be cited as the California Environmental Quality Act.

Comment. Section 21050 continues former Public Resources Code Section 21050 without change.

CHAPTER 3. DEFINITIONS

§ 21060. Application of definitions

21060. Unless the context otherwise requires, the definitions in this chapter govern the construction of this division.

Comment. Section 21060 continues former Public Resources Code Section 21060 without change.

Uncodified statutory provisions applicable to former Public Resources Section 21060 now apply to Section 21060 of the Environment Code. See 1972 Cal. Stat., ch. 1154, § 17:

The Legislature finds and declares that Section 1 of this act is intended to clarify existing provisions of the Environmental Quality Act of 1970 and thereby to facilitate and to promote uniform administration of the Environmental Quality Act of 1970 throughout the state. It is therefore the intent of the Legislature in enacting Section 1 of this act only to declare and to clarify existing law.

☞ **Staff Note.** It may be desirable to rearrange these definitions in alphabetical order.

§ 21060.1. Agricultural land

21060.1. (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.

Comment. Section 21060.1 continues former Public Resources Code Section 21060.1 without change.

☞ **Staff Note.** This term appears to be used only in Sections 21061.2 (“land evaluation and assessment” defined) and 21095 (agricultural land conversions). It may be desirable to consolidate these three provisions in one place.

§ 21060.3. Emergency

21060.3. “Emergency” means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. “Emergency” includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

Comment. Section 21060.3 continues former Public Resources Code Section 21060.3 without change.

§ 21060.5. Environment

21060.5. “Environment” means the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance.

Comment. Section 21060.5 continues former Public Resources Code Section 21060.5 without change.

§ 21061. Environmental impact report

21061. (a) “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

1 indicated, and that the source thereof shall be reasonably available for inspection
2 at a public place or public building. An environmental impact report also includes
3 any comments which are obtained pursuant to Section 21104 or 21153, or which
4 are required to be obtained pursuant to this division.

5 (b) An environmental impact report is an informational document which, when
6 its preparation is required by this division, shall be considered by every public
7 agency prior to its approval or disapproval of a project. The purpose of an
8 environmental impact report is to provide public agencies and the public in
9 general with detailed information about the effect which a proposed project is
10 likely to have on the environment; to list ways in which the significant effects of
11 such a project might be minimized; and to indicate alternatives to such a project.

12 (c) In order to facilitate the use of environmental impact reports, public agencies
13 shall require that such reports contain an index or table of contents and a
14 summary. Failure to include such index, table of contents, or summary shall not
15 constitute a cause of action pursuant to Section 21167.

16 **Comment.** Section 21061 continues former Public Resources Code Section 21061 without
17 substantive change.

18 **§ 21061.1. Feasible**


19 21061.1. “Feasible” means capable of being accomplished in a successful
20 manner within a reasonable period of time, taking into account economic,
21 environmental, social, and technological factors.

22 **Comment.** Section 21061.1 continues former Public Resources Code Section 21061.1
23 without change.

24 **§ 21061.2. Land evaluation and site assessment**

25 21061.2. “Land evaluation and site assessment” means a decisionmaking
26 methodology for assessing the potential environmental impact of state and local
27 projects on agricultural land.

28 **Comment.** Section 21061.2 continues former Public Resources Code Section 21061.2
29 without change.

30  **Staff Note.** This term appears to be used only in Sections 21095 (agricultural land
31 conversions). It may be desirable to consolidate these provisions, along with Section 21060.1
32 (“agricultural land” defined), in one place.

33 **§ 21062. Local agency**

34 21062. “Local agency” means any public agency other than a state agency,
35 board, or commission. For purposes of this division a redevelopment agency and a
36 local agency formation commission are local agencies, and neither is a state
37 agency, board, or commission.

38 **Comment.** Section 21062 continues former Public Resources Code Section 21062 without
39 change.

1 **§ 21064. Negative declaration**

2 21064. “Negative declaration” means a written statement briefly describing the
3 reasons that a proposed project will not have a significant effect on the
4 environment and does not require the preparation of an environmental impact
5 report.

6 **Comment.** Section 21064 continues former Public Resources Code Section 21064 without
7 change.

8 **§ 21064.5. Mitigated negative declaration**

9 21064.5. “Mitigated negative declaration” means a negative declaration
10 prepared for a project when the initial study has identified potentially significant
11 effects on the environment, but (1) revisions in the project plans or proposals
12 made by, or agreed to by, the applicant before the proposed negative declaration
13 and initial study are released for public review would avoid the effects or mitigate
14 the effects to a point where clearly no significant effect on the environment
15 would occur, and (2) there is no substantial evidence in light of the whole record
16 before the public agency that the project, as revised, may have a significant effect
17 on the environment.

18 **Comment.** Section 21064.5 continues former Public Resources Code Section 21064.5
19 without change.

20 **§ 21065. Project**

21 21065. “Project” means an activity which may cause either a direct physical
22 change in the environment, or a reasonably foreseeable indirect physical change
23 in the environment, and which is any of the following:

- 24 (a) An activity directly undertaken by any public agency.
25 (b) An activity undertaken by a person which is supported, in whole or in part,
26 through contracts, grants, subsidies, loans, or other forms of assistance from one or
27 more public agencies.
28 (c) An activity that involves the issuance to a person of a lease, permit, license,
29 certificate, or other entitlement for use by one or more public agencies.

30 **Comment.** Section 21065 continues former Public Resources Code Section 21065 without
31 change. See also Section 75 (“public agency” defined).

32 Uncodified statutory provisions applicable to former Public Resources Section 21065 now
33 apply to Section 21065 of the Environment Code. See 1994 Cal. Stat. ch. 1230, § 12(b):

34 The Legislature hereby declares that the amendment of Section 21065 of the Public
35 Resources Code by Section 4 of this act is intended to clarify the definition of
36 ‘project’ as currently set forth in subdivision (a) of Section 15378 of Title 14 of the
37 California Code of Regulations, as adopted by the Secretary of the Resources Agency.
38 The primary purpose of the change is to codify the holdings of *Kaufman & Broad-*
39 *South Bay, Inc. v. Morgan Hill Unified School District* (1992), 9 Cal. App. 4th 464,
40 and *City of Livermore v. Local Agency Formation Com.* (1986), 184 Cal. App. 3d
41 531.

1 **§ 21065.5. Geothermal exploratory project**

2 21065.5. “Geothermal exploratory project” means a project as defined in
3 Section 21065 composed of not more than six wells and associated drilling and
4 testing equipment, whose chief and original purpose is to evaluate the presence
5 and characteristics of geothermal resources prior to commencement of a
6 geothermal field development project as defined in Section 65928.5 of the
7 Government Code. Wells included within a geothermal exploratory project must
8 be located at least one-half mile from geothermal development wells which are
9 capable of producing geothermal resources in commercial quantities.

10 **Comment.** Section 21065.5 continues former Public Resources Code Section 21065.5
11 without change.

12 ☞ **Staff Note.** This term appears to be used only in Section 21090.1 (geothermal
13 exploratory projects). It may be desirable to consolidate these provisions in one place.

14 **§ 21067. Lead agency**

15 21067. “Lead agency” means the public agency which has the principal
16 responsibility for carrying out or approving a project which may have a
17 significant effect upon the environment.

18 **Comment.** Section 21067 continues former Public Resources Code Section 21067 without
19 change.

20 **§ 21068. Significant effect on the environment**

21 21068. “Significant effect on the environment” means a substantial, or
22 potentially substantial, adverse change in the environment.

23 **Comment.** Section 21068 continues former Public Resources Code Section 21068 without
24 change.

25 **§ 21068.5. Tiering or tier**

26 21068.5. “Tiering” or “tier” means the coverage of general matters and
27 environmental effects in an environmental impact report prepared for a policy,
28 plan, program or ordinance followed by narrower or site-specific environmental
29 impact reports which incorporate by reference the discussion in any prior
30 environmental impact report and which concentrate on the environmental effects
31 which (a) are capable of being mitigated, or (b) were not analyzed as significant
32 effects on the environment in the prior environmental impact report.

33 **Comment.** Section 21068.5 continues former Public Resources Code Section 21068.5
34 without change.

35 **§ 21069. Responsible agency**

36 21069. “Responsible agency” means a public agency, other than the lead
37 agency, which has responsibility for carrying out or approving a project.

38 **Comment.** Section 21069 continues former Public Resources Code Section 21069 without
39 change. See also Sections 21067 (“lead agency” defined), 75 (“public agency” defined).

CHAPTER 4. GENERAL PROVISIONS

Article 1. Application of Division

§ 21080. Projects covered by division

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.

(b) This division does not apply to any of the following activities:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report, negative declaration, or other document, prepared pursuant to a regulatory program certified pursuant to Section 21080.5, which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located if the environmental impact report, negative declaration, or document includes the environmental impact, if any, of the action described in this paragraph.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for the Olympic games.

(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of (A) meeting operating expenses, including employee

1 wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or
2 materials, (C) meeting financial reserve needs and requirements, (D) obtaining
3 funds for capital projects necessary to maintain service within existing service
4 areas, or (E) obtaining funds necessary to maintain those intracity transfers as are
5 authorized by city charter. The public agency shall incorporate written findings in
6 the record of any proceeding in which an exemption under this paragraph is
7 claimed setting forth with specificity the basis for the claim of exemption.

8 (9) All classes of projects designated pursuant to Section 21084.

9 (10) A project for the institution or increase of passenger or commuter services
10 on rail or highway rights-of-way already in use, including modernization of
11 existing stations and parking facilities.

12 (11) A project for the institution or increase of passenger or commuter service
13 on high-occupancy vehicle lanes already in use, including the modernization of
14 existing stations and parking facilities.

15 (12) Facility extensions not to exceed four miles in length which are required
16 for the transfer of passengers from or to exclusive public mass transit guideway or
17 busway public transit services.

18 (13) A project for the development of a regional transportation improvement
19 program, the state transportation improvement program, or a congestion
20 management program prepared pursuant to Section 65089 of the Government
21 Code.

22 (14) Any project or portion thereof located in another state which will be
23 subject to environmental impact review pursuant to the National Environmental
24 Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state.
25 Any emissions or discharges that would have a significant effect on the
26 environment in this state are subject to this division.

27 (15) Projects undertaken by a local agency to implement a rule or regulation
28 imposed by a state agency, board, or commission under a certified regulatory
29 program pursuant to Section 21080.5. Any site-specific effect of the project
30 which was not analyzed as a significant effect on the environment in the plan or
31 other written documentation required by Section 21080.5 is subject to this
32 division.

33 (c) If a lead agency determines that a proposed project, not otherwise exempt
34 from this division, would not have a significant effect on the environment, the
35 lead agency shall adopt a negative declaration to that effect. The negative
36 declaration shall be prepared for the proposed project in either of the following
37 circumstances:

38 (1) There is no substantial evidence, in light of the whole record before the lead
39 agency, that the project may have a significant effect on the environment.

40 (2) An initial study identifies potentially significant effects on the environment,
41 but (A) revisions in the project plans or proposals made by, or agreed to by, the
42 applicant before the proposed negative declaration and initial study are released
43 for public review would avoid the effects or mitigate the effects to a point where

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

4 (d) If there is substantial evidence, in light of the whole record before the lead
5 agency, that the project may have a significant effect on the environment, an
6 environmental impact report shall be prepared.

7 (e)(1) For the purposes of this section and this division, substantial evidence
8 includes fact, a reasonable assumption predicated upon fact, or expert opinion
9 supported by fact.

10 (2) Substantial evidence is not argument, speculation, unsubstantiated opinion
11 or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social
12 or economic impacts that do not contribute to, or are not caused by, physical
13 impacts on the environment.

14 (f) As a result of the public review process for a mitigated negative declaration,
15 including administrative decisions and public hearings, the lead agency may
16 conclude that certain mitigation measures identified pursuant to paragraph (2) of
17 subdivision (c) are infeasible or otherwise undesirable. In those circumstances, the
18 lead agency, prior to approving the project, may delete those mitigation measures
19 and substitute for them other mitigation measures that the lead agency finds, after
20 holding a public hearing on the matter, are equivalent or more effective in
21 mitigating significant effects on the environment to a less than significant level
22 and that do not cause any potentially significant effect on the environment. If
23 those new mitigation measures are made conditions of project approval or are
24 otherwise made part of the project approval, the deletion of the former measures
25 and the substitution of the new mitigation measures shall not constitute an action
26 or circumstance requiring recirculation of the mitigated negative declaration.

27 (g) Nothing in this section shall preclude a project applicant or any other person
28 from challenging, in an administrative or judicial proceeding, the legality of a
29 condition of project approval imposed by the lead agency. If, however, any
30 condition of project approval set aside by either an administrative body or court
31 was necessary to avoid or lessen the likelihood of the occurrence of a significant
32 effect on the environment, the lead agency's approval of the negative declaration
33 and project shall be invalid and a new environmental review process shall be
34 conducted before the project can be reapproved, unless the lead agency
35 substitutes a new condition that the lead agency finds, after holding a public
36 hearing on the matter, is equivalent to, or more effective in, lessening or avoiding
37 significant effects on the environment and that does not cause any potentially
38 significant effect on the environment.

39 **Comment.** Section 21080 continues former Public Resources Code Section 21080 without
40 change.

1 **§ 21080.01. California Men’s Colony West Facility**

2 21080.01. This division shall not apply to any activity or approval necessary for
3 the reopening and operation of the California Men’s Colony West Facility in San
4 Luis Obispo County.

5 **Comment.** Section 21080.01 continues former Public Resources Code Section 21080.01
6 without change.

7 **§ 21080.02. Corcoran prison facility**

8 21080.02. This division shall not apply to any activity or approval necessary for
9 or incidental to planning, design, site acquisition, construction, operation, or
10 maintenance of the new prison facility at or in the vicinity of Corcoran in Kings
11 County as authorized by the act that enacted this section.

12 **Comment.** Section 21080.02 continues former Public Resources Code Section 21080.02
13 without change.

14 **§ 21080.03. Kings and Amador County prisons**

15 21080.03. This division shall not apply to any activity or approval necessary for
16 or incidental to the location, development, construction, operation, or
17 maintenance of the prison in the County of Kings, authorized by Section 9 of
18 Chapter 958 of the Statutes of 1983, as amended, and of the prison in the County
19 of Amador (Ione), authorized by Chapter 957 of the Statutes of 1983, as
20 amended.

21 **Comment.** Section 21080.03 continues former Public Resources Code Section 21080.03
22 without change.

23 **§ 21080.04. Wine train**

24 21080.04. (a) Notwithstanding paragraph (10) of subdivision (b) of Section
25 21080, this division applies to a project for the institution of passenger rail service
26 on a line paralleling State Highway 29 and running from Rocktram to Krug in the
27 Napa Valley. With respect to that project, and for the purposes of this division, the
28 Public Utilities Commission is the lead agency.

29 (b) It is the intent of the Legislature in enacting this section to abrogate the
30 decision of the California Supreme Court “that Section 21080, subdivision
31 (b)(11), exempts Wine Train’s institution of passenger service on the Rocktram-
32 Krug line from the requirements of CEQA” in Napa Valley Wine Train, Inc. v.
33 Public Utilities Com., 50 Cal.3d 370.

34 (c) Nothing in this section is intended to affect or apply to, or to confer
35 jurisdiction upon the Public Utilities Commission with respect to, any other
36 project involving rail service.

37 **Comment.** Section 21080.04 continues former Public Resources Code Section 21080.04
38 without change.

1 **§ 21080.05. San Francisco Peninsula commute service**

2 21080.05. This division does not apply to a project by a public agency to lease
3 or purchase the rail right-of-way used for the San Francisco Peninsula commute
4 service between San Francisco and San Jose, together with all branch and spur
5 lines, including the Dumbarton and Vasona lines.

6 **Comment.** Section 21080.05 continues former Public Resources Code Section 21080.05
7 without change.

8 **§ 21080.07. Riverside and Del Norte Counties prison facilities**

9 21080.07. This division shall not apply to any activity or approval necessary for
10 or incidental to planning, design, site acquisition, construction, operation, or
11 maintenance of the new prison facilities located in any of the following places:

12 (a) The County of Riverside.

13 (b) The County of Del Norte.

14 **Comment.** Section 21080.07 continues former Public Resources Code Section 21080.07
15 without change.

16 **§ 21080.08. Rural Economic Development Infrastructure Panel**

17 21080.08. This division shall not apply to any activity or approval necessary for
18 or incidental to project funding, or the authorization for the expenditure of funds
19 for the project, by the Rural Economic Development Infrastructure Panel
20 pursuant to Article 5 (commencing with Section 15373.6) of Chapter 2.5 of Part
21 6.7 of Division 3 of Title 2 of the Government Code.

22 **Comment.** Section 21080.08 continues former Public Resources Code Section 21080.08
23 without change.

24 **§ 21080.09. Public higher education campus**

25 21080.09. (a) For purposes of this section, the following definitions apply:

26 (1) “Public higher education” has the same meaning as specified in Section
27 66010 of the Education Code.

28 (2) “Long range development plan” means a physical development and land
29 use plan to meet the academic and institutional objectives for a particular campus
30 or medical center of public higher education.

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

37 (c) The approval of a project on a particular campus or medical center of public
38 higher education is subject to this division and may be addressed, subject to the
39 other provisions of this division, in a tiered environmental analysis based upon a
40 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.

Comment. Section 21080.09 continues former Public Resources Code Section 21080.09 without change.

Article 2. Determination Whether Environmental Impact Report Required

§ 21080.1. Lead agency

21080.1. (a) The lead agency shall be responsible for determining whether an environmental impact report, a negative declaration, or a mitigated negative declaration shall be required for any project which is subject to this division. That determination shall be final and conclusive on all persons, including responsible agencies, unless challenged as provided in Section 21167.

(b) In the case of a project described in subdivision (c) of Section 21065, the lead agency shall, upon the request of a potential applicant, provide for consultation prior to the filing of the application regarding the range of actions, potential alternatives, mitigation measures, and any potential and significant effects on the environment of the project.

Comment. Section 21080.1 continues former Public Resources Code Section 21080.1 without change.

§ 21080.2. Time for determination

21080.2. In the case of a project described in subdivision (c) of Section 21065, the determination required by Section 21080.1 shall be made within 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.

Comment. Section 21080.2 continues former Public Resources Code Section 21080.2 without change.

§ 21080.3. Consultation

21080.3. (a) Prior to determining whether a negative declaration or environmental impact report is required for a project, the lead agency shall consult with all responsible agencies and with any other public agency which has jurisdiction by law over natural resources affected by the project which are held in trust for the people of the State of California. Prior to that required consultation, the lead agency may informally contact any such agency.

1 (b) In order to expedite the requirements of subdivision (a), the Office of
2 Planning and Research, upon request of a lead agency, shall assist the lead
3 agency in determining the various responsible agencies for a proposed project. In
4 the case of a project described in subdivision (c) of Section 21065, the request
5 may also be made by the project applicant.

6 **Comment.** Section 21080.3 continues former Public Resources Code Section 21080.3
7 without change.

8 **§ 21080.4. Notice of determination**

9 21080.4. (a) If a lead agency determines that an environmental impact report is
10 required for a project, the lead agency shall immediately send notice of that
11 determination by certified mail or an equivalent procedure to each responsible
12 agency and to those public agencies having jurisdiction by law over natural
13 resources affected by the project that are held in trust for the people of the State
14 of California. Upon receipt of the notice, each responsible agency and each
15 public agency having jurisdiction by law over natural resources affected by the
16 project that are held in trust for the people of the State of California shall specify
17 to the lead agency the scope and content of the environmental information that is
18 germane to the statutory responsibilities of that responsible agency or public
19 agency in connection with the proposed project and which, pursuant to the
20 requirements of this division, shall be included in the environmental impact report.
21 The information shall be specified in writing and shall be communicated to the
22 lead agency by certified mail or equivalent procedure not later than 30 days after
23 the date of receipt of the notice of the lead agency's determination. The lead
24 agency shall request similar guidance from appropriate federal agencies.

25 (b) To expedite the requirements of subdivision (a), the lead agency or any
26 responsible agency or public agency having jurisdiction by law over natural
27 resources affected by the project that are held in trust for the people of the State
28 of California may request one or more meetings between representatives of those
29 agencies for the purpose of assisting the lead agency to determine the scope and
30 content of the environmental information that any of those responsible agencies
31 or public agencies may require. In the case of a project described in subdivision
32 (c) of Section 21065, the request may also be made by the project applicant. The
33 meetings shall be convened by the lead agency as soon as possible, but not later
34 than 30 days after the date that the meeting was requested.

35 (c) To expedite the requirements of subdivision (a), the Office of Planning and
36 Research, upon request of a lead agency, shall assist the lead agency in
37 determining the various responsible agencies, public agencies having jurisdiction
38 by law over natural resources affected by the project that are held in trust for the
39 people of the State of California, and any federal agencies that have responsibility
40 for carrying out or approving a proposed project. In the case of a project
41 described in subdivision (c) of Section 21065, such a request may also be made
42 by the project applicant.

(d) If a state agency is a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, subject to the requirements of subdivision (a), the Office of Planning and Research shall ensure that the information required by subdivision (a) is transmitted to the lead agency, and that affected agencies are notified regarding meetings to be held upon request pursuant to subdivision (b), within the required time period.

Comment. Section 21080.4 continues former Public Resources Code Section 21080.4 without change.

§ 21080.5. Documentation in lieu of environmental impact report

21080.5. (a) Except as provided in Section 21158.1, when the regulatory program of a state agency requires a plan or other written documentation, containing environmental information and complying with paragraph (3) of subdivision (d), to be submitted in support of any activity listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section.

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

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

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

(c) A regulatory program certified pursuant to this section is exempt from Chapter 5 (commencing with Section 21100), Chapter 6 (commencing with Section 21150), and Section 21167, except as provided in Article 2 (commencing with Section 21157) of Chapter 7.

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

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

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

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

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

(A) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which

1 would substantially lessen any significant adverse effect which the activity may
2 have on the environment.

3 (B) Include guidelines for the orderly evaluation of proposed activities and the
4 preparation of the plan or other written documentation in a manner consistent
5 with the environmental protection purposes of the regulatory program.

6 (C) Require the administering agency to consult with all public agencies which
7 have jurisdiction, by law, with respect to the proposed activity.

8 (D) Require that final action on the proposed activity include the written
9 responses of the issuing authority to significant environmental points raised
10 during the evaluation process.

11 (E) Require the filing of a notice of the decision by the administering agency on
12 the proposed activity with the Secretary of the Resources Agency. Those notices
13 shall be available for public inspection, and a list of the notices shall be posted on
14 a weekly basis in the Office of the Resources Agency. Each list shall remain
15 posted for a period of 30 days.

16 (F) Require notice of the filing of the plan or other written documentation to be
17 made to the public and to any person who requests, in writing, notification. The
18 notification shall be made in a manner that will provide the public or any person
19 requesting notification with sufficient time to review and comment on the filing.

20 (3) The plan or other written documentation required by the regulatory program
21 does both of the following:

22 (A) Includes a description of the proposed activity with alternatives to the
23 activity, and mitigation measures to minimize any significant adverse effect on the
24 environment of the activity.

25 (B) Is available for a reasonable time for review and comment by other public
26 agencies and the general public.

27 (e)(1) The Secretary of the Resources Agency shall certify a regulatory program
28 which the secretary determines meets all the qualifications for certification set
29 forth in this section, and withdraw certification on determination that the
30 regulatory program has been altered so that it no longer meets those
31 qualifications. Certification and withdrawal of certification shall occur only after
32 compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of
33 Division 3 of Title 2 of the Government Code.

34 (2) In determining whether or not a regulatory program meets the qualifications
35 for certification set forth in this section, the inquiry of the secretary shall extend
36 only to the question of whether the regulatory program meets the generic
37 requirements of subdivision (d). The inquiry shall not extend to individual
38 decisions to be reached under the regulatory program, including the nature of
39 specific alternatives or mitigation measures which might be proposed to lessen
40 any significant adverse effect on the environment of the activity.

41 (3) If the secretary determines that the regulatory program submitted for
42 certification does not meet the qualifications for certification set forth in this

1 section, the secretary shall adopt findings setting forth the reasons for the
2 determination.

3 (f) After a regulatory program has been certified pursuant to this section, any
4 proposed change in the program which could affect compliance with the
5 qualifications for certification specified in subdivision (d) may be submitted to the
6 Secretary of the Resources Agency for review and comment. The scope of the
7 secretary's review shall extend only to the question of whether the regulatory
8 program meets the generic requirements of subdivision (d). The review shall not
9 extend to individual decisions to be reached under the regulatory program,
10 including specific alternatives or mitigation measures which might be proposed to
11 lessen any significant adverse effect on the environment of the activity. The
12 secretary shall have 30 days from the date of receipt of the proposed change to
13 notify the state agency whether the proposed change will alter the regulatory
14 program so that it no longer meets the qualification for certification established in
15 this section and will result in a withdrawal of certification as provided in this
16 section.

17 (g) Any action or proceeding to attack, review, set aside, void, or annul a
18 determination or decision of a state agency approving or adopting a proposed
19 activity under a regulatory program which has been certified pursuant to this
20 section on the basis that the plan or other written documentation prepared
21 pursuant to paragraph (3) of subdivision (d) does not comply with this section
22 shall be commenced not later than 30 days from the date of the filing of notice of
23 the approval or adoption of the activity.

24 (h)(1) Any action or proceeding to attack, review, set aside, void, or annul a
25 determination of the Secretary of the Resources Agency to certify a regulatory
26 program pursuant to this section on the basis that the regulatory program does
27 not comply with this section shall be commenced within 30 days from the date of
28 certification by the secretary.

29 (2) In any action brought pursuant to paragraph (1), the inquiry shall extend
30 only to whether there was a prejudicial abuse of discretion by the secretary.
31 Abuse of discretion is established if the secretary has not proceeded in a manner
32 required by law or if the determination is not supported by substantial evidence.

33 (i) For purposes of this section, any county agricultural commissioner is a state
34 agency.

35 (j) For purposes of this section, any air quality management district or air
36 pollution control district is a state agency, except that the approval, if any, by
37 such a district of a nonattainment area plan is subject to this section only if, and to
38 the extent that, the approval adopts or amends rules or regulations.

39 **Comment.** Section 21080.5 continues former Public Resources Code Section 21080.5
40 without substantive change.

Article 3. Exemptions

☞ **Staff Note.** The following uncodified provisions constitute exceptions to the application of CEQA. The staff would like to receive input on the usefulness of codifying these provisions:

See 1993 Cal. Stat. ch. 1131, § 1:

(a) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) shall not apply to a discretionary decision by an air quality management district for a project consisting of the application of coatings within an existing facility at an automotive manufacturing plant if the district finds all of the following:

(1) The project will not cause a net increase in any emissions of any pollutant for which a national or state ambient air quality standard has been established after the internal emission accounting for previous emission reductions achieved at the facility and recognized by the district.

(2) The project will not cause a net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment. For purposes of this section, the term 'net increase in adverse impacts of toxic air contaminants as determined by a health risk assessment' shall be determined in accordance with the rules and regulations of the district.

(3) The project will not cause any other adverse effect on the environment.

(b) The district shall provide a 10-day notice, at the time of the issuance of a permit, of any such exemption by mail to any person who requests such a notice in writing, and by publication in two newspapers of general circulation in the area of the project. The notice shall state that the complete file on the project and the basis for the district's findings is available for inspection and copying at the office of the air quality management district.

(c) Any person may appeal to the hearing board as provided in Section 42302.1 of the Health and Safety Code, from the issuance of a permit after a decision of any district that a project is exempt pursuant to this section. If there is substantial evidence in light of the whole record before the hearing board that the project may not satisfy one or more of the criteria established pursuant to subdivision (a), the permit shall be revoked. If there is no such substantial evidence, the exemption shall be upheld and there shall be no further compliance with the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code. Any appeal under this subdivision shall be scheduled for hearing on the calendar of the hearing board within 10 working days of the appeal being filed. The hearing board shall give the appeal priority on its calendar and shall render a decision on the appeal within 21 working days of the appeal being filed. The hearing board may delegate the authority to hear and decide such an appeal to a subcommittee of the hearing board.

(d) On or before December 31, 1995, the Resources Agency shall prepare and submit to the Legislature and the Governor a study on the exemption established pursuant to this section in order to determine the advisability of expanding this exemption to include other industrial facilities. The study shall identify the potential benefits and adverse impacts on the environment from an expansion of the exemption and shall determine the potential benefits and adverse impacts on public participation in such an exemption process.

See also 1996 Cal. Stat. ch. 757, § 1:

(a) Division 13 (commencing with Section 21000) of the Public Resources Code shall not apply to the refinancing or defeasance of existing bond indebtedness of the California Pollution Control Financing Authority Solid Waste Revenue Bonds by the County of San Diego or any agency within the County of San Diego. This exemption extends to any and all actions necessary to carry out that refinancing or defeasance, including, but not limited to, the acquisition of the North County Resource Recovery Recycling Facility by the County of San Diego.

(b) The exemption provided in subdivision (a) does not apply to the transfer of title to any asset to any entity other than the County of San Diego. The exemption also does not apply to any change or discontinuance in the operation of the North County Resource Recovery Recycling Facility, or of the San Marcos Landfill. For purposes of Division 13 (commencing with Section 21000) of the Public Resources Code, the refinancing or defeasance of the existing bond indebtedness, together with the acquisition of the North County Resource Recovery Recycling Facility, shall not be treated as part of a different or larger project.

(c) This act is expressly made retroactive and applies to the actions indicated in this section taken on or after June 1, 1996.

See also 1997 Cal. Stat. ch. 4, § 2:

(a) Division 13 (commencing with Section 21000) of the Public Resources Code shall not apply to the relocation of occupants or uses from real property pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code, or to the relocation of occupants or uses from real property of the Port of San Francisco to other real property of the Port of San Francisco, if both of the following criteria are met:

(1) The real property is proposed to be used for an open air ballpark for major league baseball, and is located in a special zoning district permitting, or conditionally permitting, that use, which zoning district was established pursuant to a ballot measure approved by the voters of the city and county in which the property is located.

(2) The relocation activities, if considered independently of the proposed ballpark use of the property, would be exempt from this division.

(b) This section shall not affect the application of Division 13 (commencing with Section 21000) to any discretionary action by a public agency not otherwise exempted by this section, including the construction of such a ballpark.

(c) Nothing in this section shall be construed to restrict the ability or rights of relocated occupants to challenge or appeal the relocation options offered them by the City and County of San Francisco, the City and County of San Francisco Redevelopment Agency, the Port of San Francisco, or the Department of Transportation pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code, or under proposed mitigation measures, if any, specified pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(d) This section shall remain in effect for two years after its effective date and as of that date shall become inoperative, and as of January 1, 2000, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

§ 21080.7. Housing or neighborhood commercial facilities in urbanized area

21080.7. (a) No environmental impact report or negative declaration is required for any project involving the construction of housing or neighborhood commercial facilities in an urbanized area if the lead agency does all of the following:

(1) Finds, after giving notice pursuant to subdivision (c) or (d) of Section 21092 and following the procedure prescribed by law or regulation which would be necessary to make a determination pursuant to Section 21080.1, all of the following:

(A) The project is consistent with a comprehensive regulatory document which has been adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Title 7 of the Government Code or, in the coastal zone, a local

1 coastal program certified pursuant to Article 2 (commencing with Section 30510)
2 of Chapter 6 of Division 20 of the Public Resources Code.

3 (B) For purposes of this section, the plan or program was adopted pursuant to
4 the procedure established by Article 8 (commencing with Section 65450) of
5 Chapter 3 of Title 7 of the Government Code not more than five years prior to the
6 finding made pursuant to this section.

7 (C) The plan or program has been the subject of an environmental impact
8 report.

9 (D) The environmental impact report is sufficiently detailed so that the
10 significant effects on the environment of the project and measures necessary to
11 mitigate or avoid those effects can be determined, including any significant
12 physical effects on existing structures and neighborhoods of historical or
13 aesthetic significance that exist in the area covered by the plan or program and
14 measures necessary to mitigate or avoid those effects.

15 (2) Makes one or more of the findings as required pursuant to Section 21081.

16 (3) Files a notice of the decision on the proposed activity with the county clerk.
17 Those notices shall be available for public inspection, and a list of the notices shall
18 be posted on a weekly basis in the office of the county clerk. Each list shall
19 remain posted for a period of 30 days.

20 (b) As used in this section:

21 (1) "Neighborhood commercial facilities" means those commercial facilities
22 which are an integral part of a project involving the construction of housing and
23 which will serve the residents of the housing.

24 (2) "Urbanized area" means a central city or cities and surrounding closely
25 settled territory, as defined by the United States Department of Commerce Bureau
26 of the Census in the Federal Register, Volume 39, Number 85, for Wednesday,
27 May 1, 1974, at pages 15202 and 15203, and as periodically updated.

28 **Comment.** Section 21080.7 continues former Public Resources Code Section 21080.7
29 without substantive change.

30 **§ 21080.8. Conversion of mobilehome park**

31 21080.8. This division does not apply to the conversion of an existing rental
32 mobilehome park to a resident initiated subdivision, cooperative, or condominium
33 for mobilehomes if the conversion will not result in an expansion of or change in
34 existing use of the property.

35 **Comment.** Section 21080.8 continues former Public Resources Code Section 21080.8
36 without change.

37 **§ 21080.9. Local coastal program or long-range land use development**

38 21080.9. This division shall not apply to activities and approvals by any local
39 government, as defined in Section 30109 of the Public Resources Code, or any
40 state university or college, as defined in Section 30119 of the Public Resources
41 Code, as necessary for the preparation and adoption of a local coastal program or

1 long-range land use development plan pursuant to Division 20 (commencing with
2 Section 30000) of the Public Resources Code; provided, however, that
3 certification of a local coastal program or long-range land use development plan
4 by the California Coastal Commission pursuant to Chapter 6 (commencing with
5 Section 30500) of Division 20 of the Public Resources Code shall be subject to
6 the requirements of this division. For the purpose of Section 21080.5, a certified
7 local coastal program or long-range land use development plan constitutes a plan
8 for use in the California Coastal Commission's regulatory program.

9 **Comment.** Section 21080.9 continues former Public Resources Code Section 21080.9
10 without substantive change.

11 **§ 21080.10. General plan, low or moderate income or residential or agricultural housing**

12 21080.10. This division does not apply to any of the following:

13 (a) An extension of time, granted pursuant to Section 65361 of the Government
14 Code, for the preparation and adoption of one or more elements of a city or
15 county general plan.

16 (b) Actions taken by the Department of Housing and Community Development
17 or the California Housing Finance Agency to provide financial assistance or
18 insurance for the development and construction of residential housing for
19 persons and families of low or moderate income, as defined in Section 50093 of
20 the Health and Safety Code, if the project which is the subject of the application
21 for financial assistance or insurance will be reviewed pursuant to this division by
22 another public agency.

23 (c)(1) Any development project which consists of the construction, conversion,
24 or use of residential housing for agricultural employees, as defined in paragraph
25 (2), that is affordable to lower-income households, as defined in Section 50079.5
26 of the Health and Safety Code, if there is no public financial assistance for the
27 development project and the developer of the development project provides
28 sufficient legal commitments to the appropriate local agency to ensure the
29 continued availability and use of the housing units for lower-income households
30 for a period of at least 15 years, or any development project that consists of the
31 construction, conversion, or use of residential housing for agricultural employees,
32 as defined in paragraph (2) that is affordable to low-and moderate-income
33 households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of
34 the Government Code, if there is public financial assistance for the development
35 project and the developer of the development project provides sufficient legal
36 commitments to the appropriate local agency to ensure the continued availability
37 and use of the housing units for low-and moderate-income households for a
38 period of at least 15 years, if either type of development project meets all of the
39 following requirements:

40 (A)(i) If the development project is proposed for an urbanized area, it is located
41 on a project site which is adjacent, on at least two sides, to land that has been
42 developed, and consists of not more than 45 units, or is housing for a total of 45

1 or fewer agricultural employees if the housing consists of dormitories, barracks, or
2 other group living facilities.

3 (ii) If the development project is proposed for a nonurbanized area, it is located
4 on a project site zoned for general agricultural use, and consists of not more than
5 20 units, or is housing for a total of 20 or fewer agricultural workers if the
6 housing consists of dormitories, barracks, or other group living facilities.

7 (B) The development project is consistent with the jurisdiction's general plan as
8 it existed on the date that the application was deemed complete.

9 (C) The development project is consistent with the zoning designation, as
10 specified in the zoning ordinance as it existed on the date that the application
11 was deemed complete, unless the zoning is inconsistent with the general plan
12 because the local agency has not rezoned the property to bring it into conformity
13 with the general plan.

14 (D) The development project site is not more than five acres in area, except that
15 a project site located in an area with a population density of at least 1,000 persons
16 per square mile shall not be more than two acres in area.

17 (E) The development project site can be adequately served by utilities.

18 (F) The development project site has no value as a wildlife habitat.

19 (G) The development project site is not included on any list of facilities and sites
20 compiled pursuant to Section 65962.5 of the Government Code.

21 (H) The development project will not involve the demolition of, or any
22 substantial adverse change, in any structure that is listed, or is determined to be
23 eligible for listing, in the California Register of Historic Resources.

24 (2) As used in paragraph (1), "residential housing for agricultural employees"
25 means housing accommodations for an agricultural employee, as defined in
26 subdivision (b) of Section 1140.4 of the Labor Code.

27 (3) As used in paragraph (1), "urbanized area" means either of the following:

28 (A) An area with a population density of at least 1,000 persons per square mile.

29 (B) An area with a population density of less than 1,000 persons per square mile
30 that is identified as an urban area in a general plan adopted by a local
31 government, and was not designated, on the date that the application was
32 deemed complete, as an area reserved for future urban growth.

33 (4) This division shall apply to any development project described in this
34 subdivision if a public agency which is carrying out or approving the
35 development project determines that there is a reasonable possibility that the
36 project, if completed, would have a significant effect on the environment due to
37 unusual circumstances, or that the cumulative impact of successive projects of the
38 same type in the same area over time would be significant.

39 **Comment.** Section 21080.10 continues former Public Resources Code Section 21080.10
40 without substantive change.

41 Uncodified statutory provisions applicable to former Public Resources Section 21080.10
42 now apply to Section 21080.10 of the Environment Code. See 1994 Cal. Stat. ch. 1058, § 2:

43 It is the intent of the Legislature that by 1997 the Office of Planning and Research
44 include in its annual survey questions relating to the impact of the exemption to the

California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for specified types of agricultural employee housing that is provided pursuant to subdivision (c) of Section 21080.10 of the Public Resources Code, as amended by Section 1 of this act, on lead agencies that are considering the approval of agricultural employee housing development projects. It is the intent of the Legislature that the survey include questions relating to the ability of the lead agency to address potential adverse environmental effects that may result from the proposed development, the conversion of agricultural lands to urban uses, the ability of the lead agency to impose conditions on the proposed project, the time necessary for the lead agency to consider and act on the proposed project, and an estimate of the time necessary for the lead agency to consider and act on the development project if subdivision (c) of Section 21080.10 of the Public Resources Code were not in effect.

§ 21080.11. State Lands Commission

21080.11. 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.

Comment. Section 21080.11 continues former Public Resources Code Section 21080.11 without change.

§ 21080.12. Levee repair

21080.12. (a) This division does not apply to the repair, reconstruction, restoration, or rehabilitation of a public facility or private levee damaged or destroyed by the storms and floods of 1997 in a disaster-stricken area of a county for which the Governor has proclaimed a state of emergency, so long as the repair, reconstruction, restoration, or rehabilitation is limited to restoring the condition of the public facility or private levee as it was immediately prior to the storms and floods of 1997.

(b) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1999, deletes or extends that date.

Comment. Section 21080.12 continues former Public Resources Code Section 21080.12 without change.

§ 21080.13. Railroad grade separation project

21080.13. This division shall not apply to any railroad grade separation project which eliminates an existing grade crossing or which reconstructs an existing grade separation.

Comment. Section 21080.13 continues former Public Resources Code Section 21080.13 without change.

§ 21080.14. Lower income housing

21080.14. (a) Except as provided in subdivision (c), this division does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of not more than 100 units in an urbanized area that is affordable to lower income households, as defined in Section 50079.5 of

1 the Health and Safety Code, if the developer of the development project provides
2 sufficient legal commitments to the appropriate local agency to ensure the
3 continued availability and use of the housing units for lower income households
4 for a period of at least 15 years, or that is affordable to low-and moderate-income
5 households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of
6 the Government Code, if the developer of the development project provides
7 sufficient legal commitments to the appropriate local agency to ensure the
8 continued availability and use of the housing units for low-and moderate-income
9 households at monthly housing costs as determined pursuant to paragraph (2) of
10 subdivision (h) of Section 65589.5 of the Government Code, the developer
11 provides sufficient legal commitments to ensure continued availability of units for
12 the lower income households for 30 years as provided in paragraph (3) of
13 subdivision (h) of Section 65589.5 of the Government Code, and the
14 development project meets all of the following requirements:

15 (1) The development project is consistent with the jurisdiction's general plan or
16 any applicable specific plan or local coastal program as it existed on the date that
17 the application was deemed complete.

18 (2) The development project is consistent with the zoning designation, as
19 specified in the zoning ordinance as it existed on the date that the application
20 was deemed complete, unless the zoning is inconsistent with the general plan
21 because the local agency has not rezoned the property to bring it into conformity
22 with the general plan.

23 (3) The project site is an infill site that has been previously developed for urban
24 uses, or the immediately contiguous properties surrounding the project site are, or
25 previously have been, developed for urban uses.

26 (4) The project site is not more than five acres in area.

27 (5) The project site can be adequately served by utilities.

28 (6) The project site has no value as a wildlife habitat.

29 (7) The project site is not included on any list of facilities and sites compiled
30 pursuant to Section 65962.5 of the Government Code.

31 (8) The project site is subject to an assessment prepared by a California
32 registered environmental assessor to determine the presence of hazardous
33 contaminants on the site and the potential for exposure of site occupants to
34 significant health hazards from nearby properties and activities. If hazardous
35 contaminants on the site are found, the contaminants shall be removed or any
36 significant effects of those contaminants shall be mitigated to a level of
37 insignificance. If the potential for exposure to significant health hazards from
38 surrounding properties or activities is found to exist, the effects of the potential
39 exposure shall be mitigated to a level of insignificance.

40 (9) The project will not involve the demolition of, or any substantial adverse
41 change in, any district, landmark, object, building, structure, site, area, or place that
42 is listed, or determined to be eligible for listing, in the California Register of
43 Historical Resources.

(b) As used in subdivision (a), “urbanized area” means an area that has a population density of at least 1,000 persons per square mile.

(c) Notwithstanding subdivision (a), this division does apply to a development project described in subdivision (a) if there is a reasonable possibility that the development project would have a significant effect on the environment or the residents of the development project due to unusual circumstances or due to related or cumulative impacts of reasonably foreseeable projects in the vicinity of the development project.

Comment. Section 21080.14 continues former Public Resources Code Section 21080.14 without change.

Uncodified statutory provisions applicable to former Public Resources Section 21080.14 now apply to Section 21080.14 of the Environment Code. See 1994 Cal. Stat. ch. 1230, § 13:

(a) The Office of Planning and Research may include in its annual survey questions relating to the impact of the exemption to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for specified types of residential housing that is provided pursuant to Section 21080.14 of the Public Resources Code, as added by Section 7 of this act, on lead agencies that are considering the approval of housing development projects that are intended for lower income households or that are affordable to low-and moderate-income households.

(b) It is the intent of the Legislature that the survey questions shall include an analysis of the ability of the lead agency to address potential significant effects on the environment that may result from the proposed development project, including the conversion of agricultural lands to urban uses, to impose conditions on the construction of the proposed development project, and to shorten the amount of time within which the proposed development project may be considered and acted upon.

§ 21080.17. Implementation of Gov’t Code Sections 65852.1 and 65852.2

21080.17. 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.

Comment. Section 21080.17 continues former Public Resources Code Section 21080.17 without change.

§ 21080.18. Public school closing

21080.18. 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.

Comment. Section 21080.18 continues former Public Resources Code Section 21080.18 without change.

§ 21080.19. Restriping streets or highways

21080.19. This division does not apply to a project for restriping of streets or highways to relieve traffic congestion.

1 **Comment.** Section 21080.19 continues former Public Resources Code Section 21080.19
2 without change.

3 **§ 21080.21. Pipeline right of way**

4 21080.21. This division does not apply to any project of less than one mile in
5 length within a public street or highway or any other public right-of-way for the
6 installation of a new pipeline or the maintenance, repair, restoration,
7 reconditioning, relocation, replacement, removal, or demolition of an existing
8 pipeline. For purposes of this section, “pipeline” includes subsurface facilities but
9 does not include any surface facility related to the operation of the underground
10 facility.

11 **Comment.** Section 21080.21 continues former Public Resources Code Section 21080.21
12 without change.

13 **§ 21080.22. General plan amendments**

14 21080.22. (a) This division does not apply to activities and approvals by a local
15 government necessary for the preparation of general plan amendments pursuant
16 to Section 29763 of the Public Resources Code, except that the approval of
17 general plan amendments by the Delta Protection Commission is subject to the
18 requirements of this division.

19 (b) For purposes of Section 21080.5, a general plan amendment is a plan
20 required by the regulatory program of the Delta Protection Commission.

21 **Comment.** Section 21080.22 continues former Public Resources Code Section 21080.22
22 without substantive change.

23 **§ 21080.23. Pipelines**

24 21080.23. (a) This division does not apply to any project which consists of the
25 inspection, maintenance, repair, restoration, reconditioning, relocation,
26 replacement, or removal of an existing pipeline, as defined in subdivision (a) of
27 Section 51010.5 of the Government Code, or any valve, flange, meter, or other
28 piece of equipment that is directly attached to the pipeline, if the project meets all
29 of the following conditions:

30 (1)(A) The project is less than eight miles in length.

31 (B) Notwithstanding subparagraph (A), actual construction and excavation
32 activities undertaken to achieve the maintenance, repair, restoration,
33 reconditioning, relocation, replacement, or removal of an existing pipeline are not
34 undertaken over a length of more than one-half mile at any one time.

35 (2) The project consists of a section of pipeline that is not less than eight miles
36 from any section of pipeline that has been subject to an exemption pursuant to
37 this section in the past 12 months.

38 (3) The project is not solely for the purpose of excavating soil that is
39 contaminated by hazardous materials, and, to the extent not otherwise expressly
40 required by law, the party undertaking the project immediately informs the lead
41 agency of the discovery of contaminated soil.

1 (4) To the extent not otherwise expressly required by law, the person
2 undertaking the project has, in advance of undertaking the project, prepared a
3 plan that will result in notification of the appropriate agencies so that they may
4 take action, if determined to be necessary, to provide for the emergency
5 evacuation of members of the public who may be located in close proximity to
6 the project.

7 (5) Project activities are undertaken within an existing right-of-way and the
8 right-of-way is restored to its condition prior to the project.

9 (6) The project applicant agrees to comply with all conditions otherwise
10 authorized by law, imposed by the city or county planning department as part of
11 any local agency permit process, that are required to mitigate potential impacts of
12 the proposed project, and to otherwise comply with the Keene-Nejedly California
13 Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of
14 Division 5 of the Public Resources Code), the California Endangered Species Act
15 (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game
16 Code), and other applicable state laws, and with all applicable federal laws.

17 (b) If a project meets all of the requirements of subdivision (a), the person
18 undertaking the project shall do all of the following:

19 (1) Notify, in writing, any affected public agency, including, but not limited to,
20 any public agency having permit, land use, environmental, public health
21 protection, or emergency response authority of the exemption of the project from
22 this division by subdivision (a).

23 (2) Provide notice to the public in the affected area in a manner consistent with
24 paragraph (3) of subdivision (b) of Section 21092.

25 (3) In the case of private rights-of-way over private property, receive from the
26 underlying property owner permission for access to the property.

27 (4) Comply with all conditions otherwise authorized by law, imposed by the
28 city or county planning department as part of any local agency permit process,
29 that are required to mitigate potential impacts of the proposed project, and
30 otherwise comply with the Keene-Nejedly California Wetlands Preservation Act
31 (Chapter 7 (commencing with Section 5810) of Division 5 of the Public
32 Resources Code), the California Endangered Species Act (Chapter 1.5
33 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and
34 other applicable state laws, and with all applicable federal laws.

35 (c) Prior to January 1, 1999, this section shall not apply to ARCO Pipeline
36 Company's crude oil pipelines designated as Crude Oil Line 1, from Tejon Station
37 south to its terminus, and Crude Oil Line 90.

38 (d) This section does not apply to either of the following:

39 (1) A project in which the diameter of the pipeline is increased.

40 (2) A project undertaken within the boundaries of an oil refinery.

41 **Comment.** Section 21080.23 continues former Public Resources Code Section 21080.23
42 without substantive change.

1 **§ 21080.24. Air quality permits**

2 21080.24. (a) This division does not apply to the issuance, modification,
3 amendment, or renewal of any permit by an air pollution control district or air
4 quality management district pursuant to Title V, as defined in Section 39053.3 of
5 the Health and Safety Code, or pursuant to a district Title V program established
6 under Sections 42301.10, 42301.11, and 42301.12 of the Health and Safety Code,
7 unless the issuance, modification, amendment, or renewal authorizes a physical or
8 operational change to a source or facility.

9 (b) Nothing in this section is intended to result in the application of this division
10 to any physical or operational change which, prior to January 1, 1995, was not
11 subject to this division.

12 **Comment.** Section 21080.24 continues former Public Resources Code Section 21080.24
13 without substantive change.

14 **§ 21080.26. Compliance with Health & Safety Code Sections 4026.7 and 4026.8**

15 21080.26. This division does not apply to minor alterations to utilities made for
16 the purposes of complying with Sections 4026.7 and 4026.8 of the Health and
17 Safety Code or regulations adopted thereunder.

18 **Comment.** Section 21080.26 continues former Public Resources Code Section 21080.26
19 without change.

20 **§ 21080.32. Publicly owned transit agencies**

21 21080.32. (a) This section shall only apply to publicly owned transit agencies,
22 but shall not apply to any publicly owned transit agency created pursuant to
23 Section 130050.2 of the Public Utilities Code.

24 (b) Except as provided in subdivision (c), and in accordance with subdivision
25 (d), this division does not apply to actions taken on or after July 1, 1995, by a
26 publicly owned transit agency to implement budget reductions caused by the
27 failure of agency revenues to adequately fund agency programs and facilities.

28 (c) This section does not apply to any action to reduce or eliminate a transit
29 service, facility, program, or activity that was approved or adopted as a mitigation
30 measure in any environmental document authorized by this division or the
31 National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.) or to any state or
32 federal requirement that is imposed for the protection of the environment.

33 (d)(1) This section applies only to actions taken after the publicly owned transit
34 agency has made a finding that there is a fiscal emergency caused by the failure
35 of agency revenues to adequately fund agency programs and facilities, and after
36 the publicly owned transit agency has held a public hearing to consider those
37 actions. A publicly owned transit agency that has held such a hearing shall
38 respond within 30 days at a regular public meeting to suggestions made by the
39 public at the initial public hearing. Those actions shall be limited to projects
40 defined in subdivision (a) or (b) of Section 21065 which initiate or increase fees,
41 rates, or charges charged for any existing public service, program, or activity; or

1 reduce or eliminate the availability of an existing publicly owned transit service,
2 facility, program, or activity.

3 (2) For purposes of this subdivision, “fiscal emergency,” when applied to a
4 publicly owned transit agency, means that the agency is projected to have
5 negative working capital within one year from the date that the agency makes
6 the finding that there is a fiscal emergency pursuant to this section. Working
7 capital shall be determined by adding together all unrestricted cash, unrestricted
8 short-term investments, and unrestricted short-term accounts receivable and then
9 subtracting unrestricted accounts payable. Employee retirement funds, including
10 Internal Revenue Code Section 457 deferred compensation plans and Section
11 401(k) plans, health insurance reserves, bond payment reserves, workers’
12 compensation reserves, and insurance reserves, shall not be factored into the
13 formula for working capital.

14 **Comment.** Section 21080.32 continues former Public Resources Code Section 21080.32
15 without change.

16 **§ 21080.33. Emergency highway projects**

17 21080.33. This division does not apply to any emergency project undertaken,
18 carried out, or approved by a public agency to maintain, repair, or restore an
19 existing highway, as defined in Section 360 of the Vehicle Code, except for a
20 highway designated as an official state scenic highway pursuant to Section 262
21 of the Streets and Highways Code, within the existing right-of-way of the
22 highway, damaged as a result of fire, flood, storm, earthquake, land subsidence,
23 gradual earth movement, or landslide, within one year of the damage. This section
24 does not exempt from this division any project undertaken, carried out, or
25 approved by a public agency to expand or widen a highway damaged by fire,
26 flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

27 **Comment.** Section 21080.33 continues former Public Resources Code Section 21080.33
28 without change.

29 Article 4. Findings by Agency

30 **§ 21081. Findings required**

31 21081. Pursuant to the policy stated in Sections 21002 and 21002.1, no public
32 agency shall approve or carry out a project for which an environmental impact
33 report has been certified which identifies one or more significant effects on the
34 environment that would occur if the project is approved or carried out unless
35 both of the following occur:

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

38 (1) Changes or alterations have been required in, or incorporated into, the
39 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.

Comment. Section 21081 continues former Public Resources Code Section 21081 without change.

§ 21081.5. Findings based on substantial evidence in record

21081.5. In making the findings required by paragraph (3) of subdivision (a) of Section 21081, the public agency shall base its findings on substantial evidence in the record.

Comment. Section 21081.5 continues former Public Resources Code Section 21081.5 without change.

§ 21081.6. Reporting or monitoring program

21081.6. (a) When making the findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

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

(b) A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by

1 incorporating the mitigation measures into the plan, policy, regulation, or project
2 design.

3 (c) Prior to the close of the public review period for a draft environmental
4 impact report or mitigated negative declaration, a responsible agency, or a public
5 agency having jurisdiction over natural resources affected by the project, shall
6 either submit to the lead agency complete and detailed performance objectives for
7 mitigation measures which would address the significant effects on the
8 environment identified by the responsible agency or agency having jurisdiction
9 over natural resources affected by the project, or refer the lead agency to
10 appropriate, readily available guidelines or reference documents. Any mitigation
11 measures submitted to a lead agency by a responsible agency or an agency
12 having jurisdiction over natural resources affected by the project shall be limited
13 to measures which mitigate impacts to resources which are subject to the
14 statutory authority of, and definitions applicable to, that agency. Compliance or
15 noncompliance by a responsible agency or agency having jurisdiction over
16 natural resources affected by a project with that requirement shall not limit the
17 authority of the responsible agency or agency having jurisdiction over natural
18 resources affected by a project, or the authority of the lead agency, to approve,
19 condition, or deny projects as provided by this division or any other provision of
20 law.

21 **Comment.** Section 21081.6 continues former Public Resources Code Section 21081.6
22 without change.

23 Statements of legislative intent applicable to former Public Resources Section 21081.6 now
24 apply to Section 21081.6 of the Environment Code. See The Assembly Journal for the 1993-
25 94 Regular Session, p. 9134, printed the following statement by Assembly Member Sher,
26 dated Aug. 29, 1994, concerning A.B. 314 (1994 Cal. Stat. ch. 1294):

27 I would like to clarify the intent behind the changes made by AB 314 to Section
28 21081.6 of the Public Resources Code. This measure amends Section 21081.6(b) of
29 the Public Resources Code to read: 'A public agency shall provide that measures to
30 mitigate or avoid significant effects on the environment are fully enforceable through
31 permit conditions, agreements, or other measures.' Senator Thompson's SB 749
32 amends the same section of law and contains language which ensures that if both
33 measures are enacted, the language in AB 314 will not be chaptered out.

34 It is my intent in authoring the amendments to Section 21081.6(b), that the use of
35 the words 'other measures,' does not expand the jurisdiction or authority of public
36 agencies. This provision is intended to clarify that public agencies shall use those
37 express or implied powers provided by other law to make mitigation measures
38 enforceable.

39 **§ 21081.7. Transportation information**

40 21081.7. Transportation information resulting from the reporting or monitoring
41 program required to be adopted by a public agency pursuant to Section 21081.6
42 shall be submitted to the transportation planning agency in the region where the
43 project is located when the project has impacts that are of statewide, regional, or
44 areawide significance according to criteria developed pursuant to Section 21083.
45 The transportation planning agency shall adopt guidelines for the submittal of
46 those reporting or monitoring programs.

1 **Comment.** Section 21081.7 continues former Public Resources Code Section 21081.7
2 without change.

3 Article 5. Environmental Impact Reports and Negative Declarations

4 **§ 21082. Agency objectives, criteria, and procedures**

5 21082. All public agencies shall adopt by ordinance, resolution, rule, or
6 regulation, objectives, criteria, and procedures for the evaluation of projects and
7 the preparation of environmental impact reports and negative declarations
8 pursuant to this division. A school district, or any other district, whose boundaries
9 are coterminous with a city, county, or city and county, may utilize the objectives,
10 criteria, and procedures of the city, county, or city and county, as may be
11 applicable, in which case, the school district or other district need not adopt
12 objectives, criteria, and procedures of its own. The objectives, criteria, and
13 procedures shall be consistent with the provisions of this division and with the
14 guidelines adopted by the Secretary of the Resources Agency pursuant to
15 Section 21083. Such objectives, criteria, and procedures shall be adopted by each
16 public agency no later than 60 days after the Secretary of the Resources Agency
17 has adopted guidelines pursuant to Section 21083.

18 **Comment.** Section 21082 continues former Public Resources Code Section 21082 without
19 change.

20 **§ 21082.1. Agency responsibility for draft**

21 21082.1. (a) Any draft environmental impact report, environmental impact
22 report, or negative declaration prepared pursuant to the requirements of this
23 division shall be prepared directly by, or under contract to, a public agency.

24 (b) This section is not intended to prohibit, and shall not be construed as
25 prohibiting, any person from submitting information or other comments to the
26 public agency responsible for preparing an environmental impact report, draft
27 environmental impact report, or negative declaration. The information or other
28 comments may be submitted in any format, shall be considered by the public
29 agency, and may be included, in whole or in part, in any report or declaration.

30 (c) The lead agency shall do all of the following:

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

33 (2) Circulate draft documents which reflect its independent judgment.

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

37 **Comment.** Section 21082.1 continues former Public Resources Code Section 21082.1
38 without change.

39 Statements of legislative intent and uncodified statutory provisions applicable to former
40 Public Resources Section 21082.1 now apply to Section 21082.1 of the Environment Code.
41 See 1976 Cal. Stat. ch. 1312, § 21:

1 The Legislature declares that it makes no finding whether Sections 21002, 21002.1,
2 and 21082.1, as added to the Public Resources Code by this act, are, or are not,
3 declaratory of existing law.

4 See also 1981 Cal. Stat. ch. 480, § 4:

5 The Legislature hereby finds and declares that the amendments made to Section
6 21082.1 of the Public Resources Code by Section 2 of this act are intended to clarify
7 that public agencies preparing environmental impact reports or negative declarations
8 are required by law to consider any comments they receive with respect to the
9 environmental impact report or negative declaration which is under preparation and
10 to clarify further that those agencies have no affirmative statutory responsibility to
11 seek comments from organizations or individual members of the public or to
12 consider comments at any particular point in time prior to completion of the
13 environmental impact report or negative declaration. With respect to this issue, the
14 amendments to Section 21082.1 are intended to clarify any uncertainties which may
15 have resulted from the holding in *Woodland Hills Residents Assn., Inc. v. City*
16 *Council*, 26 Cal.3d 938.

17 See also 1991 Cal. Stat. ch. 905, § 3:

18 The amendments to Section 21082.1 of the Public Resources Code made by this
19 act, and the provisions of Section 21092.5 of the Public Resources Code, apply only
20 to projects for which notice has not been provided pursuant to Section 21092 of the
21 Public Resources Code as of January 1, 1992.

22 The Senate Daily Journal of Aug. 28, 1991 printed the following statement by Assembly
23 Member Sher concerning A.B. 1642 (1991 Cal. Stat. ch. 905).

24 This letter is to inform you and other Members of the Legislature that AB 1642,
25 which I am carrying, is not intended to enact changes to the California Environmental
26 Quality Act (Division 13 of the Public Resources Code, commencing with Section
27 21000) which are inconsistent with the decision of the court in *Friends of La Vina*, 91
28 Daily Journal D.A.R. 9519.

29 **§ 21082.2. Determination of significant effect on environment**

30 21082.2. (a) The lead agency shall determine whether a project may have a
31 significant effect on the environment based on substantial evidence in light of the
32 whole record.

33 (b) The existence of public controversy over the environmental effects of a
34 project shall not require preparation of an environmental impact report if there is
35 no substantial evidence in light of the whole record before the lead agency that
36 the project may have a significant effect on the environment.

37 (c) Argument, speculation, unsubstantiated opinion or narrative, evidence
38 which is clearly inaccurate or erroneous, or evidence of social or economic
39 impacts which do not contribute to, or are not caused by, physical impacts on the
40 environment, is not substantial evidence. Substantial evidence shall include facts,
41 reasonable assumptions predicated upon facts, and expert opinion supported by
42 facts.

43 (d) If there is substantial evidence, in light of the whole record before the lead
44 agency, that a project may have a significant effect on the environment, an
45 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.

Comment. Section 21082.2 continues former Public Resources Code Section 21082.2 without change.

Article 6. CEQA Guidelines

§ 21083. Preparation of guidelines

21083. (a) The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division.

The guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a “significant effect on the environment.” The criteria shall require a finding that a project may have a “significant effect on the environment” if any of the following conditions exist:

(1) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

(2) The possible effects of a project are individually limited but cumulatively considerable. As used in this subdivision, “cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

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

(b) The guidelines shall also include procedures for determining the lead agency pursuant to Section 21165.

(c) The guidelines shall also include criteria for public agencies to use in determining when a proposed project is of sufficient statewide, regional, or areawide environmental significance that it should be submitted to appropriate state agencies for review and comment prior to completion of an environmental impact report or negative declaration thereon.

(d) 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.

1 **Comment.** Section 21083 continues former Public Resources Code Section 21083 without
2 substantive change.

3 **§ 21083.1. Limitations on guidelines**

4 21083.1. It is the intent of the Legislature that courts, consistent with generally
5 accepted rules of statutory interpretation, shall not interpret this division or the
6 state guidelines adopted pursuant to Section 21083 in a manner which imposes
7 procedural or substantive requirements beyond those explicitly stated in this
8 division or in the state guidelines.

9 **Comment.** Section 21083.1 continues former Public Resources Code Section 21083.1
10 without change.

11 **§ 21084. List of exempt classes of projects; projects damaging scenic resources**

12 21084. (a) The guidelines prepared and adopted pursuant to Section 21083
13 shall include a list of classes of projects which have been determined not to have
14 a significant effect on the environment and which shall be exempt from this
15 division. In adopting the guidelines, the Secretary of the Resources Agency shall
16 make a finding that the listed classes of projects referred to in this section do not
17 have a significant effect on the environment.

18 (b) No project which may result in damage to scenic resources, including, but
19 not limited to, trees, historic buildings, rock outcroppings, or similar resources,
20 within a highway designated as an official state scenic highway, pursuant to
21 Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the
22 Streets and Highways Code, shall be exempted from this division pursuant to
23 subdivision (a). This subdivision does not apply to improvements as mitigation for
24 a project for which a negative declaration has been approved or an
25 environmental impact report has been certified.

26 (c) No project located on a site which is included on any list compiled pursuant
27 to Section 65962.5 of the Government Code shall be exempted from this division
28 pursuant to subdivision (a).

29 (d) The changes made to this section by Chapter 1212 of the Statutes of 1991
30 apply only to projects for which applications have not been deemed complete on
31 or before January 1, 1992, pursuant to Section 65943 of the Government Code.

32 (e) No project that may cause a substantial adverse change in the significance
33 of an historical resource, as specified in Section 21097.1, shall be exempted from
34 this division pursuant to subdivision (a).

35 **Comment.** Section 21084 continues former Public Resources Code Section 21084 without
36 substantive change.

37 **§ 21086. Changes to list of exempt projects**

38 21086. (a) A public agency may, at any time, request the addition or deletion of
39 a class of projects, to the list designated pursuant to Section 21084. Such a
40 request shall be made in writing to the Office of Planning and Research and shall

1 include information supporting the public agency's position that such class of
2 projects does, or does not, have a significant effect on the environment.

3 (b) The Office of Planning and Research shall review each such request and, as
4 soon as possible, shall submit its recommendation to the Secretary of the
5 Resources Agency. Following the receipt of such recommendation, the Secretary
6 of the Resources Agency may add or delete the class of projects to the list of
7 classes of projects designated pursuant to Section 21084 which are exempt from
8 the requirements of this division.

9 (c) The addition or deletion of a class of projects, as provided in this section, to
10 the list specified in Section 21084 shall constitute an amendment to the guidelines
11 adopted pursuant to Section 21083 and shall be adopted in the manner
12 prescribed in Sections 21083, 21084, and 21087.


13 **Comment.** Section 21086 continues former Public Resources Code Section 21086 without
14 substantive change.

15 **§ 21087. Review of guidelines**

16 21087. (a) The Office of Planning and Research shall, at least once every two
17 years, review the guidelines adopted pursuant to Section 21083 and shall
18 recommend proposed changes or amendments to the Secretary of the Resources
19 Agency. The Secretary of the Resources Agency shall certify and adopt
20 guidelines, and any amendments thereto, at least once every two years, pursuant
21 to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2
22 of the Government Code, which shall become effective upon the filing thereof.
23 However, guidelines shall not be adopted or amended without compliance with
24 Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

25 (b) Within six months of the enactment of AB 314 of the 1993-94 Regular
26 Session of the Legislature, the Office of Planning and Research shall recommend
27 proposed changes and the Secretary of the Resources Agency shall certify and
28 adopt revisions to the guidelines pursuant to Section 21083 to reflect the
29 changes to this division enacted during the 1993-94 Regular Session of the
30 Legislature.

31 **Comment.** Section 21087 continues former Public Resources Code Section 21087 without
32 change.

33  **Staff Note.** Subdivision (b) may no longer be necessary.

34 **§ 21088. Distribution of guidelines**

35 21088. The Secretary of the Resources Agency shall provide for the timely
36 distribution to all public agencies of the guidelines and any amendments or
37 changes thereto. In addition, the Secretary of the Resources Agency may provide
38 for publication of a bulletin to provide public notice of the guidelines, or any
39 amendments or changes thereto, and of the completion of environmental impact
40 reports prepared in compliance with this division.

§ 21089. Fees

(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.

Article 8. Determination of “Project”

21090. For all purposes of this division, all public and private activities or undertakings pursuant to, or in furtherance of, a redevelopment plan shall be deemed to be a single project. However, further environmental review of any public or private activity or undertaking pursuant to, or in furtherance of, a redevelopment plan shall be conducted if any of the events specified in Section 21166 have occurred.

§ 21090.1. Geothermal exploratory project

Comment. Section 21090.1 continues former Public Resources Code Section 21090.1 without change.

Article 9. Public Notice and Review

§ 21091. Public review period

21091. (a) The public review period for a draft environmental impact report shall not be less than 30 days. If the draft environmental impact report is submitted to the State Clearinghouse for review, the review period shall be at least 45 days.

(b) The public review period for a proposed negative declaration shall not be less than 20 days. If the proposed negative declaration is submitted to the State Clearinghouse for review, the review period shall be at least 30 days.

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

(d)(1) The lead agency shall consider any comments it receives on a draft environmental impact report or on a proposed negative declaration, which are received within the public review period.

(2)(A) With respect to the consideration of comments received on a draft environmental impact report, the lead agency shall evaluate any comments on environmental issues that are received from persons who have reviewed the draft and shall prepare a written response pursuant to subparagraph (B). The lead agency may also respond to comments that are received after the close of the public review period.

(B) The written response shall describe the disposition of any significant environmental issue that is raised by commenters. The responses shall be prepared consistent with Section 15088 of Title 14 of the California Code of Regulations, as those regulations existed on June 1, 1993.

(e)(1) Criteria for shorter review periods by the State Clearinghouse for documents which must be submitted to the State Clearinghouse shall be set forth in the written guidelines issued by the Office of Planning and Research and made available to the public.

(2) Those shortened review periods shall not be less than 30 days for a draft environmental impact report and 20 days for a negative declaration.

(3) Any request for a shortened review period shall only be made in writing by the decisionmaking body of the lead agency to the Office of Planning and Research. The decisionmaking body may designate by resolution or ordinance a person authorized to request a shortened review period. Any designated person shall notify the decisionmaking body of this request.

(4) Any request approved by the State Clearinghouse shall be consistent with the criteria set forth in the written guidelines of the Office of Planning and Research.

1 (5) A shortened review period shall not be approved by the Office of Planning
2 and Research for any proposed project of statewide, regional, or areawide
3 environmental significance as determined pursuant to Section 21083.

4 (6) Any approval of a shortened review period shall be given prior to, and
5 reflected in, the public notice required pursuant to Section 21092.

6 (f) Prior to carrying out or approving a project for which a negative declaration
7 has been adopted, the lead agency shall consider the negative declaration
8 together with any comments that were received and considered pursuant to
9 paragraph (1) of subdivision (d).

10 **Comment.** Section 21091 continues former Public Resources Code Section 21091 without
11 change.

12 **§ 21092. Public notice**

13 21092. (a) Any lead agency which is preparing an environmental impact report
14 or a negative declaration or making a determination pursuant to Section 21157
15 shall provide public notice of that fact within a reasonable period of time prior to
16 certification of the environmental impact report or adoption of the negative
17 declaration.

18 (b)(1) The notice shall specify the period during which comments will be
19 received on the draft environmental report or negative declaration, and shall
20 include the date, time, and place of any public meetings or hearings on the
21 proposed project, a brief description of the proposed project and its location, the
22 significant effects on the environment, if any, anticipated as a result of the project,
23 and the address where copies of the draft environmental impact report or
24 negative declaration, and all documents referenced in the draft environmental
25 impact report or negative declaration, are available for review.

26 (2) This section shall not be construed in any manner which results in the
27 invalidation of an action because of the alleged inadequacy of the notice content,
28 provided that there has been substantial compliance with the notice content
29 requirements of this section.

30 (3) The notice required by this section shall be given to the last known name
31 and address of all organizations and individuals who have previously requested
32 notice and shall also be given by at least one of the following procedures:

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

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

40 (C) Direct mailing to the owners and occupants of contiguous property shown
41 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.

Comment. Section 21092 continues former Public Resources Code Section 21092 without change.

Uncodified statutory provisions applicable to former Public Resources Section 21092 now apply to Section 21092 of the Environment Code. See 1980 Cal. Stat. ch. 131, § 4:

The legislature hereby declares that the amendments to Section 21092 of the Public Resources Code made by this act are intended to eliminate uncertainties raised by the recent appellate court decision of *Plaggmier v. City of San Jose*, 101 Cal.App.3d 842, with respect to persons entitled to receive mailed notice pursuant to such section.

In addition, insofar as *Plaggmier* may also raise procedural uncertainties about the manner in which public notice requirements must be met generally, the Legislature hereby affirms the general principle that statutory requirements for public notice are fulfilled if the public agency responsible for giving the notice makes a good faith effort to follow the procedures prescribed by law for giving the notice, and that, in

such circumstances, failure of any person to receive such notice shall not affect the validity of any action subsequently taken by such agency.

§ 21092.1. New information

21092.1. When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.

Comment. Section 21092.1 continues former Public Resources Code Section 21092.1 without change.

§ 21092.2. Request for notice

21092.2. The notices required pursuant to Sections 21080.4, 21092, 21108, and 21152 shall be mailed to any person who has filed a written request for notices with either the clerk of the governing body or, if there is no governing body, the director of the agency. The request may also be filed with any other person designated by the governing body or director to receive these requests. The agency may require requests for notices to be annually renewed. The public agency may charge a fee, except to other public agencies, which is reasonably related to the costs of providing this service. This section shall not be construed in any manner which 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.

Comment. Section 21092.2 continues former Public Resources Code Section 21092.2 without change.

§ 21092.3. Posting of notice

21092.3. The notices required pursuant to Sections 21080.4 and 21092 for an environmental impact report shall be posted in the office of the county clerk of each county in which the project will be located and shall remain posted for a period of 30 days. The notice required pursuant to Section 21092 for a negative declaration shall be so posted for a period of 20 days, unless otherwise required by law to be posted for 30 days. The county clerk shall post the notices within 24 hours of receipt.

Comment. Section 21092.3 continues former Public Resources Code Section 21092.3 without change.

Article 10. Duties of Lead Agency

§ 21092.4. Projects of statewide, regional, or areawide significance

21092.4. (a) For a project of statewide, regional, or areawide significance, the lead agency shall consult with transportation planning agencies and public

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

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

13 **Comment.** Section 21092.4 continues former Public Resources Code Section 21092.4
14 without change.

15 **§ 21092.5. Response to public agency comments**

16 21092.5. (a) At least 10 days prior to certifying an environmental impact report,
17 the lead agency shall provide a written proposed response to a public agency on
18 comments made by that agency which conform with the requirements of this
19 division. Proposed responses shall conform with the legal standards established
20 for responses to comments on draft environmental impact reports. Copies of
21 responses or the environmental document in which they are contained, prepared
22 in conformance with other requirements of this division and the guidelines
23 adopted pursuant to Section 21083, may be used to meet the requirements
24 imposed by this section.

25 (b) The lead agency shall notify any public agency which comments on a
26 negative declaration, of the public hearing or hearings, if any, on the project for
27 which the negative declaration was prepared. If notice to the commenting public
28 agency is provided pursuant to Section 21092, the notice shall satisfy the
29 requirement of this subdivision.

30 (c) Nothing in this section requires the lead agency to respond to comments not
31 received within the comment periods specified in this division, to reopen comment
32 periods, or to delay acting on a negative declaration or environmental impact
33 report.

34 **Comment.** Section 21092.5 continues former Public Resources Code Section 21092.5
35 without change.

36 Uncodified statutory provisions applicable to former Public Resources Section 21092.5
37 now apply to Section 21092.5 of the Environment Code. See 1991 Cal. Stat. ch. 905, § 3:

38 The amendments to Section 21082.1 of the Public Resources Code made by this
39 act, and the provisions of Section 21092.5 of the Public Resources Code, apply only
40 to projects for which notice has not been provided pursuant to Section 21092 of the
41 Public Resources Code as of January 1, 1992.

1 **§ 21092.6. Sites listed pursuant to Gov't Code Section 65962.5**

2 21092.6. (a) The lead agency shall consult the lists compiled pursuant to
3 Section 65962.5 of the Government Code to determine whether the project and
4 any alternatives are located on a site which is included on any list. The lead
5 agency shall indicate whether a site is on any list not already identified by the
6 applicant. The lead agency shall specify the list and include the information in the
7 statement required pursuant to subdivision (f) of Section 65962.5 of the
8 Government Code, in the notice required pursuant to Section 21080.4, a negative
9 declaration, and a draft environmental impact report. The requirement in this
10 section to specify any list shall not be construed to limit compliance with this
11 division.

12 (b) If a project or any alternatives are located on a site which is included on any
13 of the lists compiled pursuant to Section 65962.5 of the Government Code and
14 the lead agency did not accurately specify or did not specify any list pursuant to
15 subdivision (a), the California Environmental Protection Agency shall notify the
16 lead agency specifying any list with the site when it receives notice pursuant to
17 Section 21080.4, a negative declaration, and a draft environmental impact report.
18 The California Environmental Protection Agency shall not be liable for failure to
19 notify the lead agency pursuant to this subdivision.

20 (c) This section applies only to projects for which applications have not been
21 deemed complete pursuant to Section 65943 of the Government Code on or
22 before January 1, 1992.

23 **Comment.** Section 21092.6 continues former Public Resources Code Section 21092.6
24 without change.

25 Article 11. Tiered Reports

26 **§ 21093. Policy to tier environmental impact reports**

27 21093. (a) The Legislature finds and declares that tiering of environmental
28 impact reports will promote construction of needed housing and other
29 development projects by (1) streamlining regulatory procedures, (2) avoiding
30 repetitive discussions of the same issues in successive environmental impact
31 reports, and (3) ensuring that environmental impact reports prepared for later
32 projects which are consistent with a previously approved policy, plan, program, or
33 ordinance concentrate upon environmental effects which may be mitigated or
34 avoided in connection with the decision on each later project. The Legislature
35 further finds and declares that tiering is appropriate when it helps a public agency
36 to focus upon the issues ripe for decision at each level of environmental review
37 and in order to exclude duplicative analysis of environmental effects examined in
38 previous environmental impact reports.

39 (b) To achieve this purpose, environmental impact reports shall be tiered
40 whenever feasible, as determined by the lead agency.

1 **Comment.** Section 21093 continues former Public Resources Code Section 21093 without
2 change.

3 **§ 21094. Later projects**

4 21094. (a) Where a prior environmental impact report has been prepared and
5 certified for a program, plan, policy, or ordinance, the lead agency for a later
6 project that meets the requirements of this section shall examine significant effects
7 of the later project upon the environment by using a tiered environmental impact
8 report, except that the report on the later project need not examine those effects
9 which the lead agency determines were either (1) mitigated or avoided pursuant
10 to paragraph (1) of subdivision (a) of Section 21081 as a result of the prior
11 environmental impact report, or (2) examined at a sufficient level of detail in the
12 prior environmental impact report to enable those effects to be mitigated or
13 avoided by site specific revisions, the imposition of conditions, or by other means
14 in connection with the approval of the later project.

15 (b) This section applies only to a later project which the lead agency determines
16 (1) is consistent with the program, plan, policy, or ordinance for which an
17 environmental impact report has been prepared and certified, (2) is consistent
18 with applicable local land use plans and zoning of the city, county, or city and
19 county in which the later project would be located, and (3) is not subject to
20 Section 21166.

21 (c) For purposes of compliance with this section, an initial study shall be
22 prepared to assist the lead agency in making the determinations required by this
23 section. The initial study shall analyze whether the later project may cause
24 significant effects on the environment that were not examined in the prior
25 environmental impact report.

26 (d) All public agencies which propose to carry out or approve the later project
27 may utilize the prior environmental impact report and the environmental impact
28 report on the later project to fulfill the requirements of Section 21081.

29 (e) When tiering is used pursuant to this section, an environmental impact report
30 prepared for a later project shall refer to the prior environmental impact report and
31 state where a copy of the prior environmental impact report may be examined.

32 **Comment.** Section 21094 continues former Public Resources Code Section 21094 without
33 change.

34 Article 12. Special Requirements

35 **§ 21095. Agricultural land conversions**

36 21095. (a) The Resources Agency, in consultation with the Office of Planning
37 and Research, shall develop an amendment to Appendix G of the state guidelines,
38 for adoption pursuant to Section 21083, to provide lead agencies an optional
39 methodology to ensure that significant effects on the environment of agricultural
40 land conversions are quantitatively and consistently considered in the
41 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.

Comment. Section 21095 continues former Public Resources Code Section 21095 without change. The term “agricultural land” is defined in Section 21060.1. The term “land evaluation and site assessment” is defined in Section 21061.2.

Uncodified statutory provisions applicable to former Public Resources Section 21095 now apply to Section 21095 of the Environment Code. See 1993 Cal. Stat. ch. 812, § 1:

The Legislature hereby finds and declares all of the following:

(a) Agriculture is the state’s leading industry and is important to the state’s economy.

(b) The continued productivity of agricultural lands in California is important in maintaining a healthy agricultural economy.

(c) The conversion of agricultural lands to nonagricultural uses threatens the long-term health of the state’s agricultural industry.

(d) The California Environmental Quality Act plays an important role in the preservation of agricultural lands.

(e) It is the intent of the Legislature in enacting this act to encourage wise and efficient land use decisions based on the best available information by promoting the adoption and use of land evaluation and site assessment criteria by state and local agencies based on the system developed by the United States Soil Conservation Service to implement the Farmland Protection Policy Act (7 U.S.C. Sec. 4201, et seq.).

(f) The land evaluation and site assessment model system has proven to be an effective aid to planning in over 200 state and local jurisdictions nationwide, by avoiding duplicative and unnecessary environmental review, while enabling decisionmakers to focus their analyses on significant agricultural land impacts, and providing integrity and consistency to the land use decision process.

§ 21096. Airport comprehensive land use plan plans

21096. (a) If a lead agency prepares an environmental impact report for a project situated within airport comprehensive land use plan boundaries, or, if a comprehensive land use 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.

1 (b) A lead agency shall not adopt a negative declaration for a project described
2 in subdivision (a) unless the lead agency considers whether the project will result
3 in a safety hazard or noise problem for persons using the airport or for persons
4 residing or working in the project area.

5 **Comment.** Section 21096 continues former Public Resources Code Section 21096 without
6 change.

7 **§ 21096.2. Archaeological resources**

8 21096.2. (a) As part of the determination made pursuant to Section 21080.1, the
9 lead agency shall determine whether the project may have a significant effect on
10 archaeological resources. If the lead agency determines that the project may have
11 a significant effect on unique archaeological resources, the environmental impact
12 report shall address the issue of those resources. An environmental impact report,
13 if otherwise necessary, shall not address the issue of nonunique archaeological
14 resources. A negative declaration shall be issued with respect to a project if, but
15 for the issue of nonunique archaeological resources, the negative declaration
16 would be otherwise issued.

17 (b) If it can be demonstrated that a project will cause damage to a unique
18 archaeological resource, the lead agency may require reasonable efforts to be
19 made to permit any or all of these resources to be preserved in place or left in an
20 undisturbed state. Examples of that treatment, in no order of preference, may
21 include, but are not limited to, any of the following:

- 22 (1) Planning construction to avoid archaeological sites.
23 (2) Deeding archaeological sites into permanent conservation easements.
24 (3) Capping or covering archaeological sites with a layer of soil before building
25 on the sites.
26 (4) Planning parks, greenspace, or other open space to incorporate
27 archaeological sites.

28 (c) To the extent that unique archaeological resources are not preserved in
29 place or not left in an undisturbed state, mitigation measures shall be required as
30 provided in this subdivision. The project applicant shall provide a guarantee to
31 the lead agency to pay one-half the estimated cost of mitigating the significant
32 effects of the project on unique archaeological resources. In determining
33 payment, the lead agency shall give due consideration to the in-kind value of
34 project design or expenditures that are intended to permit any or all
35 archaeological resources or California Native American culturally significant sites
36 to be preserved in place or left in an undisturbed state. When a final decision is
37 made to carry out or approve the project, the lead agency shall, if necessary,
38 reduce the specified mitigation measures to those which can be funded with the
39 money guaranteed by the project applicant plus the money voluntarily
40 guaranteed by any other person or persons for those mitigation purposes. In
41 order to allow time for interested persons to provide the funding guarantee
42 referred to in this subdivision, a final decision to carry out or approve a project

1 shall not occur sooner than 60 days after completion of the recommended special
2 environmental impact report required by this section.

3 (d) Excavation as mitigation shall be restricted to those parts of the unique
4 archaeological resource that would be damaged or destroyed by the project.
5 Excavation as mitigation shall not be required for a unique archaeological
6 resource if the lead agency determines that testing or studies already completed
7 have adequately recovered the scientifically consequential information from and
8 about the resource, if this determination is documented in the environmental
9 impact report.

10 (e) In no event shall the amount paid by a project applicant for mitigation
11 measures required pursuant to subdivision (c) exceed the following amounts:

12 (1) An amount equal to one-half of 1 percent of the projected cost of the project
13 for mitigation measures undertaken within the site boundaries of a commercial or
14 industrial project.

15 (2) An amount equal to three-fourths of 1 percent of the projected cost of the
16 project for mitigation measures undertaken within the site boundaries of a
17 housing project consisting of a single unit.

18 (3) If a housing project consists of more than a single unit, an amount equal to
19 three-fourths of 1 percent of the projected cost of the project for mitigation
20 measures undertaken within the site boundaries of the project for the first unit
21 plus the sum of the following:

22 (A) Two hundred dollars (\$200) per unit for any of the next 99 units.

23 (B) One hundred fifty dollars (\$150) per unit for any of the next 400 units.

24 (C) One hundred dollars (\$100) per unit in excess of 500 units.

25 (f) Unless special or unusual circumstances warrant an exception, the field
26 excavation phase of an approved mitigation plan shall be completed within 90
27 days after final approval necessary to implement the physical development of the
28 project or, if a phased project, in connection with the phased portion to which the
29 specific mitigation measures are applicable. However, the project applicant may
30 extend that period if he or she so elects. Nothing in this section shall nullify
31 protections for Indian cemeteries under any other provision of law.

32 (g) As used in this section, “unique archaeological resource” means an
33 archaeological artifact, object, or site about which it can be clearly demonstrated
34 that, without merely adding to the current body of knowledge, there is a high
35 probability that it meets any of the following criteria:

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

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

40 (3) Is directly associated with a scientifically recognized important prehistoric or
41 historic event or person.

42 (h) As used in this section, “nonunique archaeological resource” means an
43 archaeological artifact, object, or site which does not meet the criteria in

1 subdivision (g). A nonunique archaeological resource need be given no further
2 consideration, other than the simple recording of its existence by the lead agency
3 if it so elects.

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

13 (j) This section does not apply to any project described in subdivision (a) or (b)
14 of Section 21065 if the lead agency elects to comply with all other applicable
15 provisions of this division. This section does not apply to any project described in
16 subdivision (c) of Section 21065 if the applicant and the lead agency jointly elect
17 to comply with all other applicable provisions of this division.

18 (k) Any additional costs to any local agency as a result of complying with this
19 section with respect to a project of other than a public agency shall be borne by
20 the project applicant.

21 (l) Nothing in this section is intended to affect or modify the requirements of
22 Section 21084 or 21097.1.

23 **Comment.** Section 21096.2 continues former Public Resources Code Section 21083.2
24 without substantive change.

25 Uncodified statutory provisions applicable to former Public Resources Section 21083.2
26 now apply to Section 21096.2 of the Environment Code. See 1984 Cal. Stat. ch. 1289, § 7:

27 Nothing in this act shall be construed to change the provisions of Section 21083.2
28 of the Public Resources Code as added by Chapter 1623 of 1982.

29 **§ 21096.3. Subdivision maps**

30 21096.3. (a) If a parcel has been zoned to accommodate a particular density of
31 development or has been designated in a community plan to accommodate a
32 particular density of development and an environmental impact report was
33 certified for that zoning or planning action, the application of this division to the
34 approval of any subdivision map or other project that is consistent with the
35 zoning or community plan shall be limited to effects upon the environment which
36 are peculiar to the parcel or to the project and which were not addressed as
37 significant effects in the prior environmental impact report, or which substantial
38 new information shows will be more significant than described in the prior
39 environmental impact report.

40 (b) If a development project is consistent with the general plan of a local
41 agency and an environmental impact report was certified with respect to that
42 general plan, the application of this division to the approval of that development
43 project shall be limited to effects on the environment which are peculiar to the

1 parcel or to the project and which were not addressed as significant effects in the
2 prior environmental impact report, or which substantial new information shows
3 will be more significant than described in the prior environmental impact report.

4 (c) Nothing in this section affects any requirement to analyze potentially
5 significant offsite impacts and cumulative impacts of the project not discussed in
6 the prior environmental impact report with respect to the general plan. However,
7 all public agencies with authority to mitigate the significant effects shall
8 undertake or require the undertaking of any feasible mitigation measures
9 specified in the prior environmental impact report relevant to a significant effect
10 which the project will have on the environment or, if not, then the provisions of
11 this section shall have no application to that effect. The lead agency shall make a
12 finding, at a public hearing, as to whether those mitigation measures will be
13 undertaken.

14 (d) An effect of a project upon the environment shall not be considered peculiar
15 to the parcel or to the project, for purposes of this section, if uniformly applied
16 development policies or standards have been previously adopted by the city or
17 county, with a finding based upon substantial evidence, which need not include
18 an environmental impact report, that the development policies or standards will
19 substantially mitigate that environmental effect when applied to future projects,
20 unless substantial new information shows that the policies or standards will not
21 substantially mitigate the environmental effect.

22 (e) Where a community plan is the basis for application of this section, any
23 rezoning action consistent with the community plan shall be a project subject to
24 exemption from this division in accordance with this section. As used in this
25 section, "community plan" means a part of the general plan of a city or county
26 which (1) applies to a defined geographic portion of the total area included in the
27 general plan, (2) complies with Article 5 (commencing with Section 65300) of
28 Chapter 3 of Division 1 of Title 7 of the Government Code by including or
29 referencing each of the mandatory elements specified in Section 65302 of the
30 Government Code, and (3) contains specific development policies adopted for the
31 area included in the community plan and identifies measures to implement those
32 policies, so that the policies which will apply to each parcel can be determined.

33 (f) No person shall have standing to bring an action or proceeding to attack,
34 review, set aside, void, or annul a finding of a public agency made at a public
35 hearing pursuant to subdivision (a) with respect to the conformity of the project
36 to the mitigation measures identified in the prior environmental impact report for
37 the zoning or planning action, unless he or she has participated in that public
38 hearing. However, this subdivision shall not be applicable if the local agency
39 failed to give public notice of the hearing as required by law. For purposes of this
40 subdivision, a person has participated in the public hearing if he or she has either
41 submitted oral or written testimony regarding the proposed determination,
42 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.

Comment. Section 21096.3 continues former Public Resources Code Section 21083.3 without change.

§ 21096.5. Tahoe Regional Planning Compact

21096.5. (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.

Comment. Section 21096.5 continues former Public Resources Code Section 21083.5 without change.

§ 21096.6. Combined environmental impact report and statement

21096.6. In the event that a project requires both an environmental impact report prepared pursuant to the requirements of this division and an environmental impact statement prepared pursuant to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.), 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

1 to prepare a combined environmental impact report-environmental impact
2 statement and that the time required to prepare such a combined document would
3 be shorter than that required to prepare each document separately.

4 **Comment.** Section 21096.6 continues former Public Resources Code Section 21083.6
5 without substantive change.

6 **§ 21096.7. Use of environmental impact statement**

7 21096.7. In the event that a project requires both an environmental impact
8 report prepared pursuant to the requirements of this division and an
9 environmental impact statement prepared pursuant to the requirements of the
10 National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.), the lead
11 agency shall, whenever possible, use the environmental impact statement as such
12 environmental impact report as provided in Section 21096.5. In order to
13 implement the provisions of this section, each lead agency to which this section is
14 applicable shall consult, as soon as possible, with the agency required to prepare
15 such environmental impact statement.

16 **Comment.** Section 21096.7 continues former Public Resources Code Section 21083.7
17 without substantive change.

18 **§ 21096.8. Military base closure and reuse**

19 21096.8. (a) For the purposes of this section, the following terms have the
20 following meaning:

21 (1) “Reuse plan” means an initial plan for the reuse of a military base adopted
22 by a local government or a redevelopment agency in the form of a general plan,
23 general plan amendment, specific plan, redevelopment plan, or other planning
24 document.

25 (2) “Military base” or “base” means any military base or reservation either
26 closed or realigned by, or scheduled for closure or realignment by, the federal
27 government.

28 (b) If an environmental impact statement on the closure and reuse of a military
29 base has been prepared and filed pursuant to the National Environmental Policy
30 Act of 1969 (42 U.S.C. Sec. 4321 et seq.), the lead agency that is responsible for
31 the preparation of an environmental impact report for a reuse plan for the same
32 base may proceed in the following manner:

33 (1) A notice of the preparation of an environmental impact report on a reuse
34 plan shall be prepared pursuant to either Section 21080.4 or 21080.6 and shall
35 include a description of the reuse plan and a copy of the environmental impact
36 statement. The notice shall indicate that the lead agency intends to utilize the
37 environmental impact statement as a draft environmental impact report and
38 requests comments on whether, and to what extent, the environmental impact
39 statement provides adequate information to serve as a draft environmental impact
40 report, and what specific additional information, if any, is necessary to comply

1 with this division. The notice shall also indicate the address to which written
2 comments may be sent and the deadline for submitting comments.

3 (2) Upon the close of the comment period on the notice of preparation, the lead
4 agency may proceed with preparation of the environmental impact report on the
5 reuse plan. The lead agency shall, to the greatest extent feasible, avoid
6 duplication and utilize information in the environmental impact statement
7 consistent with this division. The draft environmental impact report shall consist
8 of all or part of the environmental impact statement and any additional
9 information that is necessary to prepare a draft environmental impact report in
10 compliance with this division.

11 (3) In all other respects, the environmental impact report for the reuse plan shall
12 be completed in compliance with this division.

13 (c) This section shall remain in effect only until January 1, 2001, and as of that
14 date is repealed, unless a later enacted statute, which is enacted before January 1,
15 2001, deletes or extends that date.

16 **Comment.** Section 21096.8 continues former Public Resources Code Section 21083.8
17 without change.

18 Uncodified statutory provisions applicable to former Public Resources Section 21083.8
19 now apply to Section 21096.8 of the Environment Code. See 1994 Cal. Stat. ch. 862, § 1:

20 The Legislature hereby declares its intent that, if there is sufficient federal funding
21 available and an environmental impact statement for a military base reuse plan has not
22 been prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C.
23 Sec. 4321 et seq.) prior to the preparation of an environmental impact report
24 pursuant to the California Environmental Quality Act (Division 13 (commencing with
25 Section 21000) of the Public Resources Code), a state or local lead agency shall make
26 reasonable and feasible efforts to prepare the environmental impact report jointly with
27 the preparation of the environmental impact statement by the federal lead agency. If
28 such a joint report and statement is not feasible, it is the intent of the Legislature that
29 the state or local lead agency prepare an environmental impact report, but may utilize,
30 pursuant to Section 21083.8 of the Public Resources Code, an environmental impact
31 statement if one has been prepared.

32 It is not the intent of the Legislature in enacting this act to prevent a local agency
33 from utilizing other provisions of the California Environmental Quality Act (Division
34 13 (commencing with Section 21000) of the Public Resources Code) that may be
35 relevant.

36 **§ 21096.9. Military base reuse plan**

37 21096.9. (a)(1) For purposes of this section, “reuse plan” for a military base or
38 reservation has the same meaning as the term as defined in paragraph (1) of
39 subdivision (a) of Section 21096.8, except that the reuse plan shall also consist of
40 a statement of development policies, include a diagram or diagrams illustrating its
41 provisions, and make the designation required in paragraph (2) of this section.

42 (2) The reuse plan shall designate the proposed general distribution and general
43 location of development intensity for housing, business, industry, open space,
44 recreation, natural resources, public buildings and grounds, roads and other
45 transportation facilities, infrastructure, and other categories of public and private
46 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 21096.5, in addition to the procedure authorized pursuant to subdivision (b) of Section 21096.8, 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 which were present at the time that the federal decision became final for the closure or realignment of the base or reservation. 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 or reservation. 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 or reservation. The lead agency may specify particular physical conditions which 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 or reservation. 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

1 applicable general plan, specific plan, and redevelopment plan, and including
2 other applicable provisions of adopted congestion management plans, habitat
3 conservation or natural communities conservation plans, integrated waste
4 management plans, and county hazardous waste management plans.

5 (D) At the close of the hearing, the lead agency shall state, in writing, the
6 specific economic or social reasons, including, but not limited to, new job creation,
7 opportunities for employment of skilled workers, availability of low and moderate
8 income housing, and economic continuity, which support the selection of the
9 baseline.

10 (d)(1) Nothing in this section shall in any way limit the scope of a review or
11 determination of significance of the presence of hazardous or toxic wastes,
12 substances, or materials including, but not limited to, contaminated soils and
13 groundwater, nor shall the regulation of hazardous or toxic wastes, substances, or
14 materials be constrained by prior levels of activity that existed at the time that the
15 federal agency decision to close the military base or reservation became final.

16 (2) This section does not apply to any project undertaken pursuant to Chapter
17 6.5 (commencing with Section 25100) of, or Chapter 6.8 (commencing with
18 Section 25300) of, Division 20 of the Health and Safety Code, or pursuant to the
19 Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section
20 13000) of the Water Code).

21 (3) This section may apply to any reuse plan environmental impact report for
22 which a notice of preparation pursuant to subdivision (a) of Section 21092 is
23 issued within one year from the date that the federal record of decision was
24 rendered for the military base or reservation closure or realignment and reuse, or
25 prior to January 1, 1997, whichever is later, if the environmental impact report is
26 completed and certified within five years from the date that the federal record of
27 decision was rendered.

28 (e) All subsequent development at the military base or reservation site shall be
29 subject to all applicable federal, state, or local laws, including, but not limited to,
30 those relating to air quality, water quality, traffic, threatened and endangered
31 species, noise, and hazardous or toxic wastes, substances, or materials.

32 **Comment.** Section 21096.9 continues former Public Resources Code Section 21083.8.1
33 without substantive change.

34 **§ 21097. Projects affecting Department of Transportation**

35 21097. Notwithstanding Section 21080.4, 21104, or 21153, a lead agency shall
36 call at least one scoping meeting for a proposed project which may affect
37 highways or other facilities under the jurisdiction of the Department of
38 Transportation if the meeting is requested by the department. The lead agency
39 shall call the scoping meeting as soon as possible, but not later than 30 days after
40 receiving the request from the Department of Transportation.

41 **Comment.** Section 21097 continues former Public Resources Code Section 21083.9
42 without change.

1 **§ 21097.1. Change in significance of historical resource**

2 21097.1. A project that may cause a substantial adverse change in the
3 significance of an historical resource is a project that may have a significant effect
4 on the environment. For purposes of this section, an historical resource is a
5 resource listed in, or determined to be eligible for listing in, the California Register
6 of Historical Resources. Historical resources included in a local register of
7 historical resources, as defined in subdivision (k) of Section 5020.1 of the Public
8 Resources Code, or deemed significant pursuant to criteria set forth in subdivision
9 (g) of Section 5024.1 of the Public Resources Code, are presumed to be
10 historically or culturally significant for purposes of this section, unless the
11 preponderance of the evidence demonstrates that the resource is not historically
12 or culturally significant. The fact that a resource is not listed in, or determined to
13 be eligible for listing in, the California Register of Historical Resources, not
14 included in a local register of historical resources, or not deemed significant
15 pursuant to criteria set forth in subdivision (g) of Section 5024.1 of the Public
16 Resources Code shall not preclude a lead agency from determining whether the
17 resource may be an historical resource for purposes of this section.

18 **Comment.** Section 21097.1 continues former Public Resources Code Section 21084.1
19 without substantive change.

20 **§ 21097.2. Medical waste by steam sterilization**

21 21097.2. The Office of Planning and Research shall, at the next revision of the
22 California Environmental Quality Act Guidelines (Chapter 3 (commencing with
23 Section 15000) of Division 6 of Title 14 of the California Code of Regulations)
24 which takes place after January 1, 1996, pursuant to Section 21087, recommend
25 changes to those guidelines that would determine if Sections 15301, 15302, and
26 15304 of Title 14 of the California Code of Regulations apply to the treatment of
27 medical waste by steam sterilization. If the office determines that those provisions
28 of the guidelines apply, consistent with existing law, to that treatment, the office
29 shall recommend clarifying revisions to the guidelines to expressly state that the
30 treatment is subject to a categorical exemption under those provisions of the
31 guidelines. If the office determines that those provisions of the guidelines do not
32 categorically exempt that treatment, and if such an exemption is consistent with
33 existing law, the office shall recommend a categorical exemption for the treatment
34 in its recommended revision of the guidelines.

35 **Comment.** Section 21097.2 continues former Public Resources Code Section 21084.2
36 without change.

37 **§ 21097.3. Reduction of housing units**

38 21097.3. With respect to a project which includes housing development, a
39 public agency shall not, pursuant to this division, reduce the proposed number of
40 housing units as a mitigation measure or project alternative for a particular
41 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 shall not affect any other requirement regarding the residential density of that project.

Comment. Section 21097.3 continues former Public Resources Code Section 21085 without change.

CHAPTER 5. STATE AGENCIES, BOARDS, AND COMMISSIONS

§ 21100. Environmental impact report

21100. (a) All lead agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment. Whenever feasible, a standard format shall be used for environmental impact reports.

(b) The environmental impact report shall include a detailed statement setting forth all of the following:

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

(2) In a separate section:

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

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

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

(4) Alternatives to the proposed project.

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

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

(d) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(e) Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis.

Comment. Section 21100 continues former Public Resources Code Section 21100 without change.

1 **§ 21100.1. Limitation on required information**

2 21100.1. The information described in subparagraph (B) of paragraph (2) of
3 subdivision (b) of Section 21100 shall be required only in environmental impact
4 reports prepared in connection with the following:

5 (a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a
6 public agency.

7 (b) The adoption by a local agency formation commission of a resolution
8 making determinations.

9 (c) A project which will be subject to the requirement for preparing an
10 environmental impact statement pursuant to the requirements of the National
11 Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

12 **Comment.** Section 21100.1 continues former Public Resources Code Section 21100.1
13 without substantive change.

14 **§ 21100.2. Time limits**

15 21100.2. (a)(1) For projects described in subdivision (c) of Section 21065, each
16 state agency shall establish, by resolution or order, time limits that do not exceed
17 the following:

18 (A) One year for completing and certifying environmental impact reports.

19 (B) One hundred eighty days for completing and adopting negative
20 declarations.

21 (2) The time limits specified in paragraph (1) shall apply only to those
22 circumstances in which the state agency is the lead agency for a project. These
23 resolutions or orders may establish different time limits for different types or
24 classes of projects, but all limits shall be measured from the date on which an
25 application requesting approval of the project is received and accepted as
26 complete by the state agency.

27 (3) No application for a project may be deemed incomplete for lack of a waiver
28 of time periods prescribed in state regulations.

29 (4) The resolutions or orders required by this section may provide for a
30 reasonable extension of the time period in the event that compelling
31 circumstances justify additional time and the project applicant consents thereto.

32 (b) If a draft environmental impact report, environmental impact report, or
33 focused environmental impact report is prepared under a contract to a state
34 agency, the contract shall be executed within 45 days from the date on which the
35 state agency sends a notice of preparation pursuant to Section 21080.4. The state
36 agency may take longer to execute the contract if the project applicant and the
37 state agency mutually agree to an extension of the time limit provided by this
38 subdivision.

39 **Comment.** Section 21100.2 continues former Public Resources Code Section 21100.2
40 without change.

1 **§ 21101. Federal projects**

2 21101. In regard to any proposed federal project in this state which may have a
3 significant effect on the environment and on which the state officially comments,
4 the state officials responsible for such comments shall include in their report a
5 detailed statement setting forth the matters specified in Section 21100 prior to
6 transmitting the comments of the state to the federal government. No report shall
7 be transmitted to the federal government unless it includes such a detailed
8 statement as to the matters specified in Section 21100.

9 **Comment.** Section 21101 continues former Public Resources Code Section 21101 without
10 change.

11 **§ 21102. Expenditure of funds**

12 21102. (a) No state agency, board, or commission shall request funds, nor shall
13 any state agency, board, or commission which authorizes expenditures of funds,
14 other than funds appropriated in the Budget Act, authorize funds for expenditure
15 for any project, other than a project involving only feasibility or planning studies
16 for possible future actions which the agency, board, or commission has not
17 approved, adopted or funded, which may have a significant effect on the
18 environment unless such request or authorization is accompanied by an
19 environmental impact report.

20 (b) Feasibility and planning studies exempted by this section from the
21 preparation of an environmental impact report shall nevertheless include
22 consideration of environmental factors.

23 **Comment.** Section 21102 continues former Public Resources Code Section 21102 without
24 substantive change.

25 **§ 21104. Public agency consultation**

26 21104. (a) Prior to completing an environmental impact report, the state lead
27 agency shall consult with, and obtain comments from, each responsible agency,
28 any public agency which has jurisdiction by law with respect to the project, and
29 any city or county which borders on a city or county within which the project is
30 located unless otherwise designated annually by agreement between the state
31 lead agency and the city or county, and may consult with any person who has
32 special expertise with respect to any environmental impact involved. In the case
33 of a project described in subdivision (c) of Section 21065, the state lead agency
34 shall, upon the request of the applicant, provide for early consultation to identify
35 the range of actions, alternatives, mitigation measures, and significant effects to be
36 analyzed in depth in the environmental impact report. The state lead agency may
37 consult with persons identified by the applicant which the applicant believes will
38 be concerned with the environmental effects of the project and may consult with
39 members of the public who have made a written request to be consulted on the
40 project. A request by the applicant for early consultation shall be made not later

1 than 30 days after the determination required by Section 21080.1 with respect to
2 the project.

3 (b) The state lead agency shall consult with, and obtain comments from, the
4 State Air Resources Board in preparing an environmental impact report on a
5 highway or freeway project, as to the air pollution impact of the potential
6 vehicular use of the highway or freeway.

7 (c) A responsible agency or other public agency shall only make substantive
8 comments regarding those activities involved in a project which are within an
9 area of expertise of the agency or which are required to be carried out or
10 approved by the agency. Those comments shall be supported by specific
11 documentation.

12 **Comment.** Section 21104 continues former Public Resources Code Section 21104 without
13 change.

14 **§ 21104.2. Endangered or threatened species**

15 21104.2. The state lead agency shall consult with, and obtain written findings
16 from, the Department of Fish and Game in preparing an environmental impact
17 report on a project, as to the impact of the project on the continued existence of
18 any endangered species or threatened species pursuant to Article 4 (commencing
19 with Section 2090) of Chapter 1.5 of Division 3 of the Fish and Game Code.

20 **Comment.** Section 21104.2 continues former Public Resources Code Section 21104.2
21 without change.

22 **§ 21105. Availability of environmental impact report**

23 21105. The state lead agency shall include the environmental impact report as a
24 part of the regular project report used in the existing review and budgetary
25 process. It shall be available to the Legislature. It shall also be available for
26 inspection by any member of the general public, who may secure a copy thereof
27 by paying for the actual cost of such a copy. It shall be filed by the state lead
28 agency with the appropriate local planning agency of any city, county, or city
29 and county which will be affected by the project.

30 **Comment.** Section 21105 continues former Public Resources Code Section 21105 without
31 change.

32 **§ 21106. Budget for environmental protection**

33 21106. All state agencies, boards, and commissions shall request in their budgets
34 the funds necessary to protect the environment in relation to problems caused by
35 their activities.

36 **Comment.** Section 21106 continues former Public Resources Code Section 21106 without
37 change.

38 **§ 21108. Notification of project**

39 21108. (a) Whenever a state agency, board, or commission approves or
40 determines to carry out a project which is subject to this division, it shall file

1 notice of that approval or that determination with the Office of Planning and
2 Research. The notice shall indicate the determination of the agency, board, or
3 commission whether the project will, or will not, have a significant effect on the
4 environment and shall indicate whether an environmental impact report has been
5 prepared pursuant to this division.

6 (b) Whenever a state agency, board, or commission determines that a project is
7 not subject to this division pursuant to subdivision (b) of Section 21080 or
8 pursuant to Section 21097.3 or 21172, and it approves or determines to carry out
9 that project, it, or the person specified in subdivision (b) or (c) of Section 21065,
10 may file notice of the determination with the Office of Planning and Research.
11 Any notice filed pursuant to this subdivision by a person specified in subdivision
12 (b) or (c) of Section 21065 shall have a certificate of determination attached to it
13 issued by the state agency, board, or commission responsible for making the
14 determination that a project is not subject to the provisions of this division
15 pursuant to subdivision (b) of Section 21080 or pursuant to Section 21097.3 or
16 21172. The certificate of determination may be in the form of a certified copy of
17 an existing document or record of the state agency, board, or commission.

18 (c) All notices filed pursuant to this section shall be available for public
19 inspection, and a list of these notices shall be posted on a weekly basis in the
20 Office of Planning and Research. Each list shall remain posted for a period of 30
21 days.

22 **Comment.** Section 21108 continues former Public Resources Code Section 21108 without
23 substantive change.

24 CHAPTER 6. LOCAL AGENCIES

25 § 21150. Allocation of funds for local projects

26 21150. State agencies, boards, and commissions, responsible for allocating state
27 or federal funds on a project-by-project basis to local agencies for any project
28 which may have a significant effect on the environment, shall require from the
29 responsible local governmental agency a detailed statement setting forth the
30 matters specified in Section 21100 prior to the allocation of any funds other than
31 funds solely for projects involving only feasibility or planning studies for possible
32 future actions which the agency, board, or commission has not approved,
33 adopted, or funded.

34 **Comment.** Section 21150 continues former Public Resources Code Section 21150 without
35 change.

36 § 21151. Environmental impact report by local agency

37 21151. (a) All local agencies shall prepare, or cause to be prepared by contract,
38 and certify the completion of, an environmental impact report on any project that
39 they intend to carry out or approve which may have a significant effect on the

1 environment. When a report is required by Section 65402 of the Government
2 Code, the environmental impact report may be submitted as a part of that report.

3 (b) For purposes of this section, any significant effect on the environment shall
4 be limited to substantial, or potentially substantial, adverse changes in physical
5 conditions which exist within the area as defined in Section 21060.5.

6 (c) When an environmental impact report is certified by a local lead agency's
7 decisionmaking body which is not elected, that certification may be appealed to
8 the agency's elected decisionmaking body, if any.

9 **Comment.** Section 21151 continues former Public Resources Code Section 21151 without
10 change.

11 **§ 21151.1. Hazardous waste facilities and base reuse plans**

12 21151.1. (a) Notwithstanding paragraph (6) of subdivision (b) of Section 21080,
13 or Section 21080.5 or 21084, or any other provision of law, except as provided in
14 this section, a lead agency shall prepare or cause to be prepared by contract, and
15 certify the completion of, an environmental impact report or, if appropriate, a
16 modification, addendum, or supplement to an existing environmental impact
17 report, for any project involving any of the following:

18 (1)(A) The burning of municipal wastes, hazardous waste, or refuse-derived fuel,
19 including, but not limited to, tires, if the project is either of the following:

20 (i) The construction of a new facility.

21 (ii) The expansion of an existing facility that burns hazardous waste that would
22 increase its permitted capacity by more than 10 percent.

23 (B) This paragraph does not apply to any project exclusively burning
24 hazardous waste, for which a final determination under Section 21080.1 has been
25 made prior to July 14, 1989.

26 (2) The initial issuance of a hazardous waste facilities permit to a land disposal
27 facility, as defined in subdivision (d) of Section 25199.1 of the Health and Safety
28 Code.

29 (3) The initial issuance of a hazardous waste facilities permit pursuant to Section
30 25200 of the Health and Safety Code to an offsite large treatment facility, as
31 defined pursuant to subdivision (d) of Section 25205.1 of the Health and Safety
32 Code.

33 (4) A base reuse plan as defined in Section 21096.8 or 21096.9. The Legislature
34 hereby finds that no reimbursement is required pursuant to Section 6 of Article
35 XIII B of the California Constitution for an environmental impact report for a base
36 reuse plan if an environmental impact report is otherwise required for that base
37 reuse plan pursuant to any other provision of this division.

38 (b) For purposes of clause (ii) of subparagraph (A) of paragraph (1) of
39 subdivision (a), the amount of expansion of an existing facility shall be calculated
40 by comparing the proposed facility capacity with whichever of the following is
41 applicable:

1 (1) The facility capacity authorized in the facility's hazardous waste facilities
2 permit pursuant to Section 25200 of the Health and Safety Code or its grant of
3 interim status pursuant to Section 25200.5 of the Health and Safety Code, or the
4 facility capacity authorized in any state or local agency permit allowing the
5 construction or operation of a facility for the burning of hazardous waste, granted
6 before January 1, 1990.

7 (2) The facility capacity authorized in the facility's original hazardous waste
8 facilities permit, grant of interim status, or any state or local agency permit
9 allowing the construction or operation of a facility for the burning of hazardous
10 waste, granted on or after January 1, 1990.

11 (c) For purposes of paragraphs (2) and (3) of subdivision (a), the initial issuance
12 of a hazardous waste facilities permit does not include the issuance of a closure or
13 postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of
14 Division 20 of the Health and Safety Code.

15 (d) Paragraph (1) of subdivision (a) does not apply to any project that does any
16 of the following:

17 (1) Exclusively burns digester gas produced from manure or any other solid or
18 semisolid animal waste.

19 (2) Exclusively burns methane gas produced from a disposal site, as defined in
20 Section 40122 of the Public Resources Code, that is used only for the disposal of
21 solid waste, as defined in Section 40191 of the Public Resources Code.

22 (3) Exclusively burns forest, agricultural, wood, or other biomass wastes.

23 (4) Exclusively burns hazardous waste in an incineration unit that is
24 transportable and that is either at a site for not longer than three years or is part of
25 a remedial or removal action. For purposes of this paragraph, "transportable"
26 means any equipment that performs a "treatment" as defined in Section 66216 of
27 Title 22 of the California Code of Regulations, and that is transported on a
28 vehicle as defined in Section 66230 of Title 22 of the California Code of
29 Regulations.

30 (5) Exclusively burns refinery waste in a flare on the site of generation.

31 (6) Exclusively burns in a flare methane gas produced at a municipal sewage
32 treatment plant.

33 (7) Exclusively burns hazardous waste, or exclusively burns hazardous waste
34 as a supplemental fuel, as part of a research, development, or demonstration
35 project that, consistent with federal regulations implementing the Resource
36 Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et
37 seq.), has been determined to be innovative and experimental by the Department
38 of Toxic Substances Control and that is limited in type and quantity of waste to
39 that necessary to determine the efficacy and performance capabilities of the
40 technology or process; provided, however, that any facility that operated as a
41 research, development, or demonstration project and for which an application is
42 thereafter submitted for a hazardous waste facility permit for operation other than
43 as a research, development, or demonstration project shall be considered a new

1 facility for the burning of hazardous waste and shall be subject to subdivision (a)
2 of Section 21151.1.

3 (8) Exclusively burns soils contaminated only with petroleum fuels or the
4 vapors from these soils.

5 (9) Exclusively treats less than 3,000 pounds of hazardous waste per day in a
6 thermal processing unit operated in the absence of open flame, and submits a
7 worst-case health risk assessment of the technology to the Department of Toxic
8 Substances Control for review and distribution to the interested public. This
9 assessment shall be prepared in accordance with guidelines set forth in the Air
10 Toxics Assessment Manual of the California Air Pollution Control Officers
11 Association.

12 (10) Exclusively burns less than 1,200 pounds per day of medical waste, as
13 defined in Section 117690 of the Health and Safety Code, on hospital sites.

14 (11) Exclusively burns chemicals and fuels as part of firefighter training.

15 (12) Exclusively conducts open burns of explosives subject to the requirements
16 of the air pollution control district or air quality management district and in
17 compliance with OSHA and Cal-OSHA regulations.

18 (13) Exclusively conducts onsite burning of less than 3,000 pounds per day of
19 fumes directly from a manufacturing or commercial process.

20 (14) Exclusively conducts onsite burning of hazardous waste in an industrial
21 furnace that recovers hydrogen chloride from the flue gas if the hydrogen
22 chloride is subsequently sold, distributed in commerce, or used in a manufacturing
23 process at the site where the hydrogen chloride is recovered, and the burning is in
24 compliance with the requirements of the air pollution control district or air quality
25 management district and the Department of Toxic Substances Control.

26 (e) Paragraph (1) of subdivision (a) does not apply to any project for which the
27 State Energy Resources Conservation and Development Commission has
28 assumed jurisdiction under Chapter 6 (commencing with Section 25500) of
29 Division 15 of the Public Resources Code.

30 (f) Paragraphs (2) and (3) of subdivision (a) shall not apply if the facility only
31 manages hazardous waste that is identified or listed pursuant to Section 25140 or
32 25141 on or after January 1, 1992, but not before that date, or only conducts
33 activities that are regulated pursuant to Chapter 6.5 (commencing with Section
34 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992,
35 but not before that date.

36 (g) This section does not exempt any project from any other requirement of this
37 division.

38 (h) For purposes of this section, offsite facility means a facility that serves more
39 than one generator of hazardous waste.

40 **Comment.** Section 21151.1 continues former Public Resources Code Section 21151.1
41 without substantive change.

1 **§ 21151.2. School sites**

2 21151.2. (a) To promote the safety of pupils and comprehensive community
3 planning the governing board of each school district before acquiring title to
4 property for a new school site or for an addition to a present school site, shall give
5 the planning commission having jurisdiction notice in writing of the proposed
6 acquisition. The planning commission shall investigate the proposed site and
7 within 30 days after receipt of the notice shall submit to the governing board a
8 written report of the investigation and its recommendations concerning
9 acquisition of the site.

10 (b) The governing board shall not acquire title to the property until the report of
11 the planning commission has been received. If the report does not favor the
12 acquisition of the property for a school site, or for an addition to a present school
13 site, the governing board of the school district shall not acquire title to the
14 property until 30 days after the commission's report is received.

15 **Comment.** Section 21151.2 continues former Public Resources Code Section 21151.2
16 without substantive change.

17 **§ 21151.4. Facility in vicinity of school**

18 21151.4. No environmental impact report or negative declaration shall be
19 approved for any project involving the construction or alteration of a facility
20 within 1/4 of a mile of a school which might reasonably be anticipated to emit
21 hazardous or acutely hazardous air emission, or which would handle acutely
22 hazardous material or a mixture containing acutely hazardous material in a
23 quantity equal to or greater than the quantity specified in subdivision (a) of
24 Section 25536 of the Health and Safety Code, which may pose a health or safety
25 hazard to persons who would attend or would be employed at the school, unless
26 both of the following occur:

27 (a) The lead agency preparing the environmental impact report or negative
28 declaration has consulted with the school district having jurisdiction regarding
29 the potential impact of the project on the school.

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

33 **Comment.** Section 21151.4 continues former Public Resources Code Section 21151.4
34 without change.

35 **§ 21151.5. Time limits**

36 21151.5. (a)(1) For projects described in subdivision (c) of Section 21065, each
37 local agency shall establish, by ordinance or resolution, time limits that do not
38 exceed the following:

39 (A) One year for completing and certifying environmental impact reports.

40 (B) One hundred eighty days for completing and adopting negative
41 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.

Comment. Section 21151.5 continues former Public Resources Code Section 21151.5 without change.

§ 21151.7. Open mining pit operations

21151.7. 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) of the Public Resources Code and utilizes a cyanide heap-leaching process for the purpose of producing gold or other precious metals.

Comment. Section 21151.7 continues former Public Resources Code Section 21151.7 without substantive change.

§ 21151.8. Schoolsite purchase or construction

21151.8. (a) No environmental impact report or negative declaration shall be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

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

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

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

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

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

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

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

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

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

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

32 (4) Each administering agency, air pollution control district, or air quality
33 management district receiving written notification from a lead agency to identify
34 facilities pursuant to paragraph (2) shall provide the requested information and
35 provide a written response to the lead agency within 30 days of receiving the
36 notification. The environmental impact report or negative declaration shall be
37 conclusively presumed to comply with this section as to the area of responsibility
38 of any agency which does not respond within 30 days.

39 (b) If a lead agency has carried out the consultation required by paragraph (2)
40 of subdivision (a), the environmental impact report or the negative declaration
41 shall be conclusively presumed to comply with this section, notwithstanding any
42 failure of the consultation to identify an existing facility specified in paragraph (2)
43 of subdivision (a).

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

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

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

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

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

(5) “Hazardous air emissions” means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(6) “Administering agency” means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) “Handle” means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

Comment. Section 21151.8 continues former Public Resources Code Section 21151.8 without change.

§ 21151.9. Water projects

21151.9. Whenever a city or county determines that an environmental impact report is required in connection with a project, as defined in Section 10913, and described in Section 10910, of the Water Code, it shall comply with Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code.

Comment. Section 21151.9 continues former Public Resources Code Section 21151.9 without change.

§ 21152. Public notice

21152. (a) Whenever a local agency approves or determines to carry out a project which is subject to this division, it shall file notice of the approval or the determination within five working days after the approval or determination becomes final, with the county clerk of each county in which the project will be located. The notice shall indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division. The notice shall also include certification that the final environmental impact report, if one was prepared, together with comments and responses, is available to the general public.

(b) Whenever a local agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21097.3 or 21172, and it approves or determines to carry out the project, it, or the person specified in subdivision (b) or (c) of Section 21065, may file a notice of the determination with the county clerk of each county in which the project will be located. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the local agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21097.3 or 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the local agency.

(c) All notices filed pursuant to this section shall be available for public inspection, and shall be posted within 24 hours of receipt in the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than nine months.

Comment. Section 21152 continues former Public Resources Code Section 21152 without substantive change.

§ 21153. Consultation by local lead agency

21153. (a) Prior to completing an environmental impact report, every local lead agency shall consult with, and obtain comments from, each responsible agency, any public agency that has jurisdiction by law with respect to the project, and any city or county that borders on a city or county within which the project is located unless otherwise designated annually by agreement between the local lead agency and the city or county, and may consult with any person who has special expertise with respect to any environmental impact involved. In the case of a project described in subdivision (c) of Section 21065, the local lead agency shall, upon the request of the project applicant, provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. The local lead agency may consult with persons identified by the project applicant that the applicant believes will be concerned with the environmental effects of the project and may consult with members of the public who have made written request to be consulted on the project. A request by the project applicant for early consultation shall be made not later than 30 days after the date that the determination required by Section 21080.1 was made with respect to the project. The local lead agency may charge and collect a fee from the project applicant in an amount that does not exceed the actual costs of the consultations.

(b) In the case of a project described in subdivision (a) of Section 21065, the lead agency may provide for early consultation to identify the range of actions,

alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. At the request of the lead agency, the Office of Planning and Research shall ensure that each responsible agency, and any public agency that has jurisdiction by law with respect to the project, is notified regarding any early consultation.

(c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in a project that are within an area of expertise of the agency or that are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation.

Comment. Section 21153 continues former Public Resources Code Section 21153 without change.

§ 21154. Order of state agency

21154. Whenever any state agency, board, or commission issues an order which requires a local agency to carry out a project which may have a significant effect on the environment, any environmental impact report which the local agency may prepare shall be limited to consideration of those factors and alternatives which will not conflict with such order.

Comment. Section 21154 continues former Public Resources Code Section 21154 without change.

CHAPTER 7. STREAMLINED ENVIRONMENTAL REVIEW

Article 1. Findings

§ 21156. Legislative intent

21156. It is the intent of the Legislature in enacting this chapter that a master environmental impact report shall evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment of subsequent projects to the greatest extent feasible. The Legislature further intends that the environmental review of subsequent projects be substantially reduced to the extent that the project impacts have been reviewed and appropriate mitigation measures are set forth in a certified master environmental impact report.

Comment. Section 21156 continues former Public Resources Code Section 21156 without change.

Uncodified statutory provisions applicable to former Public Resources Section 21156 now apply to Section 21156 of the Environment Code. See 1993 Cal. Stat. ch. 1130, § 1:

This act shall be known, and may be cited as, the Dills, Allen, Sher California Environmental Quality Act Revision Act of 1993.

Article 2. Master Environmental Impact Report

§ 21157. Coverage and contents

21157. (a) A master environmental impact report may be prepared for any one of the following projects:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **Comment.** Section 21157 continues former Public Resources Code Section 21157 without
5 change.

6 **§ 21157.1. Limited review**

7 21157.1. The preparation and certification of a master environmental impact
8 report, if prepared and certified consistent with this division, may allow for the
9 limited review of subsequent projects that were described in the master
10 environmental impact report as being within the scope of the report, in
11 accordance with the following requirements:

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

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

19 (c) If the lead agency, based on the initial study, determines that a proposed
20 subsequent project will have no additional significant effect on the environment,
21 as defined in subdivision (d) of Section 21158, that was not identified in the
22 master environmental impact report and that no new or additional mitigation
23 measures or alternatives may be required, the lead agency shall make a written
24 finding based upon the information contained in the initial study that the
25 subsequent project is within the scope of the project covered by the master
26 environmental impact report. No new environmental document nor findings
27 pursuant to Section 21081 shall be required by this division. Prior to approving or
28 carrying out the proposed subsequent project, the lead agency shall provide
29 notice of this fact pursuant to Section 21092 and incorporate all feasible
30 mitigation measures or feasible alternatives set forth in the master environmental
31 impact report which are appropriate to the project. Whenever a lead agency
32 approves or determines to carry out any subsequent project pursuant to this
33 section, it shall file a notice pursuant to Section 21108 or 21152.

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

37 **Comment.** Section 21157.1 continues former Public Resources Code Section 21157.1
38 without change.

39 **§ 21157.5. Mitigated negative declaration**

40 21157.5. (a) A proposed mitigated negative declaration shall be prepared for
41 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.

Comment. Section 21157.5 continues former Public Resources Code Section 21157.5 without change.

§ 21157.6. Limitations on use of master environmental impact report

21157.6. The master environmental impact report shall not be used for the purposes of this chapter if (1) the certification of the report occurred more than five years prior to the filing of an application for the subsequent project, or (2) if the approval of a project that was not described in the report may affect the adequacy of the environmental review in the report for any subsequent project, unless the lead agency reviews the adequacy of the master environmental impact report and does either of the following:

(a) Finds that no substantial changes have occurred with respect to the circumstances under which the master environmental impact report was certified or that no new information, which was not known and could not have been known at the time that the master environmental impact report was certified as complete, has become available.

(b) Certifies a subsequent or supplemental environmental impact report which has been either incorporated into the previously certified master environmental impact report or references any deletions, additions, or any other modifications to the previously certified master environmental impact report.

Comment. Section 21157.6 continues former Public Resources Code Section 21157.6 without change.

Article 3. Focused Environmental Impact Report

§ 21158. Use of focused environmental impact report

21158. (a) A focused environmental impact report is an environmental impact report on a subsequent project identified in a master environmental impact report. A focused environmental impact report may be utilized only if the lead agency finds that the analysis in the master environmental impact report of cumulative impacts, growth inducing impacts, and irreversible significant effects on the

environment is adequate for the subsequent project. The focused environmental impact report shall incorporate, by reference, the master environmental impact report and analyze only the subsequent project's additional significant effects on the environment, as defined in subdivision (d), and any new or additional mitigation measures or alternatives that were not identified and analyzed by the master environmental impact report.

(b) The focused environmental impact report need not examine those effects which the lead agency finds were one of the following:

(1) Mitigated or avoided pursuant to 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.

Comment. Section 21158 continues former Public Resources Code Section 21158 without change.

§ 21158.1. Application of 21080.5

21158.1. When a lead agency is required to prepare an environmental impact report pursuant to subdivision (d) of Section 21157.1 or is authorized to prepare a focused environmental impact report pursuant to Section 21158, the lead agency may not rely on subdivision (a) of Section 21080.5 for that purpose even though

1 the lead agency's regulatory program is otherwise certified in accordance with
2 Section 21080.5.

3 **Comment.** Section 21158.1 continues former Public Resources Code Section 21158.1
4 without change.

5 **§ 21158.5. Real property developments**

6 21158.5. (a) Where a project consists of multiple-family residential development
7 of not more than 100 units or a residential and commercial or retail mixed-use
8 development of not more than 100,000 square feet which complies with all of the
9 following, a focused environmental impact report shall be prepared,
10 notwithstanding that the project was not identified in a master environmental
11 impact report:

12 (1) Is consistent with a general plan, specific plan, community plan, or zoning
13 ordinance for which an environmental impact report was prepared within five
14 years of the certification of the focused environmental impact report.

15 (2) The lead agency cannot make the finding described in subdivision (c) of
16 Section 21157.1, a negative declaration or mitigated negative declaration cannot
17 be prepared pursuant to Section 21080, 21157.5, or 21158, and Section 21166
18 does not apply.

19 (3) Meets one or more of the following conditions:

20 (A) The parcel on which the project is to be developed is surrounded by
21 immediately contiguous urban development.

22 (B) The parcel on which the project is to be developed has been previously
23 developed with urban uses.

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

26 (b) A focused environmental impact report prepared pursuant to this section
27 shall be limited to a discussion of potentially significant effects on the
28 environment specific to the project, or which substantial new information shows
29 will be more significant than described in the prior environmental impact report.
30 No discussion shall be required of alternatives to the project, cumulative impacts
31 of the project, or the growth inducing impacts of the project.

32 **Comment.** Section 21158.5 continues former Public Resources Code Section 21158.5
33 without change.

34 Article 4. Expedited Environmental Review for Environmentally Mandated
35 Projects

36 **§ 21159. Environmental analysis**

37 21159. (a) An agency listed in Section 21159.4 shall perform, at the time of the
38 adoption of a rule or regulation requiring the installation of pollution control
39 equipment, or a performance standard or treatment requirement, an environmental
40 analysis of the reasonably foreseeable methods of compliance. In the preparation
41 of this analysis, the agency may utilize numerical ranges or averages where

1 specific data is not available; however, the agency shall not be required to engage
2 in speculation or conjecture. The environmental analysis shall, at minimum,
3 include, all of the following:

4 (1) An analysis of the reasonably foreseeable environmental impacts of the
5 methods of compliance.

6 (2) An analysis of reasonably foreseeable feasible mitigation measures.

7 (3) An analysis of reasonably foreseeable alternative means of compliance with
8 the rule or regulation.

9 (b) The preparation of an environmental impact report at the time of adopting a
10 rule or regulation pursuant to this division shall be deemed to satisfy the
11 requirements of this section.

12 (c) The environmental analysis shall take into account a reasonable range of
13 environmental, economic, and technical factors, population and geographic areas,
14 and specific sites.

15 (d) Nothing in this section shall require the agency to conduct a project level
16 analysis.

17 (e) For purposes of this article, the term “performance standard” includes
18 process or raw material changes or product reformulation.

19 (f) Nothing in this section is intended, or may be used, to delay the adoption of
20 any rule or regulation for which an analysis is required to be performed pursuant
21 to this section.

22 **Comment.** Section 21159 continues former Public Resources Code Section 21159 without
23 change.

24 **§ 21159.1. Eligibility for focused environmental impact report**

25 21159.1. (a) A focused environmental impact report may be utilized if a project
26 meets all of the following requirements:

27 (1) The project consists solely of the installation of pollution control equipment
28 required by a rule or regulation of an agency listed in Section 21159.4 and other
29 components necessary to complete the installation of that equipment.

30 (2) The agency certified an environmental impact report on the rule or
31 regulation or reviewed it pursuant to a certified regulatory program, and, in either
32 case, the review included an assessment of growth inducing impacts and
33 cumulative impacts of, and alternatives to, the project.

34 (3) The environmental review required by paragraph (2) was completed within
35 five years of certification of the focused environmental impact report.

36 (4) An environmental impact report is not required pursuant to Section 21166.

37 (b) The discussion of significant effects on the environment in the focused
38 environmental impact report shall be limited to project-specific potentially
39 significant effects on the environment of the project which were not discussed in
40 the environmental analysis of the rule or regulation required pursuant to
41 subdivision (a) of Section 21159. No discussion of growth-inducing impacts or
42 cumulative impacts shall be required in the focused environmental impact report,

1 and the discussion of alternatives shall be limited to a discussion of alternative
2 means of compliance, if any, with the rule or regulation.

3 **Comment.** Section 21159.1 continues former Public Resources Code Section 21159.1
4 without change.

5 **§ 21159.2. Use of environmental analysis**

6 21159.2. (a) If a project consists solely of compliance with a performance
7 standard or treatment requirement imposed by an agency listed in Section
8 21159.4, the lead agency for the compliance project shall, to the greatest extent
9 feasible, utilize the environmental analysis required pursuant to subdivision (a) of
10 Section 21159 in the preparation of a negative declaration, mitigated negative
11 declaration, or environmental impact report on the compliance project or in
12 otherwise fulfilling its responsibilities under this division. The use of numerical
13 averages or ranges in an environmental analysis shall not relieve a lead agency of
14 its obligations under this division to identify and evaluate the environmental
15 effects of a compliance project.

16 (b) If the lead agency determines that an environmental impact report on the
17 compliance project is required, the lead agency shall prepare an environmental
18 impact report which addresses only the project-specific issues related to the
19 compliance project or other issues that were not discussed in sufficient detail in
20 the environmental analysis to enable the lead agency to fulfill its responsibilities
21 under Section 21100 or 21151, as applicable. The mitigation measures imposed by
22 the lead agency for the project shall relate only to the significant effects on the
23 environment to be mitigated. The discussion of alternatives shall be limited to a
24 discussion of alternative means of compliance, if any, with the rule or regulation.

25 **Comment.** Section 21159.2 continues former Public Resources Code Section 21159.2
26 without change.

27 **§ 21159.3. Time limitations**

28 21159.3. In the preparation of any environmental impact report pursuant to
29 Section 21159.1 or 21159.2, the following deadlines shall apply:

30 (a) A lead agency shall determine whether an environmental impact report
31 should be prepared within 30 days of its determination that the application for
32 the project is complete.

33 (b) If the environmental impact report will be prepared under contract to the
34 lead agency pursuant to Section 21082.1, the lead agency shall issue a request for
35 proposals for preparation of the environmental impact report as soon as it has
36 enough information to prepare a request for proposals, and in any event, not later
37 than 30 days after the time for response to the notice of preparation has expired.
38 The contract shall be awarded within 30 days of the response date for the request
39 for proposals.

40 **Comment.** Section 21159.3 continues former Public Resources Code Section 21159.3
41 without change.

1 **§ 21159.4. Agencies covered**

2 21159.4. This article applies to the following agencies:

- 3 (a) The State Air Resources Board.
- 4 (b) Any district as defined in Section 39025 of the Health and Safety Code.
- 5 (c) The State Water Resources Control Board.
- 6 (d) A California regional water quality control board.
- 7 (e) The Department of Toxic Substances Control.
- 8 (f) The California Integrated Waste Management Board.

9 **Comment.** Section 21159.4 continues former Public Resources Code Section 21159.4
10 without substantive change.

11 Article 5. Public Assistance Program

12 **§ 21159.9. Implementation by Office of Planning and Research**

13 21159.9. On or before March 1, 1994, the Office of Planning and Research shall
14 implement, utilizing existing resources, a public assistance and information
15 program, to ensure efficient and effective implementation of this division, to do
16 both of the following:

- 17 (a) Establish a public education and training program for planners, developers,
18 and other interested parties to assist them in implementing this division.
- 19 (b) Establish a data base to assist in the preparation of environmental
20 documents.

21 **Comment.** Section 21159.9 continues former Public Resources Code Section 21159.9
22 without change.

23 CHAPTER 8. SUBMISSION OF INFORMATION

24 **§ 21160. Submission of necessary data and information**

25 21160. (a) Whenever any person applies to any public agency for a lease,
26 permit, license, certificate, or other entitlement for use, the public agency may
27 require that person to submit data and information which may be necessary to
28 enable the public agency to determine whether the proposed project may have a
29 significant effect on the environment or to prepare an environmental impact
30 report.

31 (b) If any or all of the information so submitted is a “trade secret” as defined in
32 Section 6254.7 of the Government Code by those submitting that information, it
33 shall not be included in the impact report or otherwise disclosed by any public
34 agency. This section shall not be construed to prohibit the exchange of properly
35 designated trade secrets between public agencies who have lawful jurisdiction
36 over the preparation of the impact report.

37 **Comment.** Section 21160 continues former Public Resources Code Section 21160 without
38 substantive change.

1 **§ 21161. Notice of completion**

2 21161. Whenever a public agency has completed an environmental impact
3 report, it shall cause a notice of completion of that report to be filed with the
4 Office of Planning and Research. The notice of completion shall briefly identify
5 the project and shall indicate that an environmental impact report has been
6 prepared. Failure to file the notice required by this section shall not affect the
7 validity of a project.

8 **Comment.** Section 21161 continues former Public Resources Code Section 21161 without
9 change.

10 **§ 21162. Information to legislators**

11 21162. A copy of the notice of completion of an environmental impact report
12 on a project shall be provided, by the State Clearinghouse, to any legislator in
13 whose district the project has an environmental impact, if the legislator requests
14 the notice and the State Clearinghouse has received it.

15 **Comment.** Section 21162 continues former Public Resources Code Section 21162 without
16 change.

17 CHAPTER 9. LIMITATIONS AND JUDICIAL REVIEW

18 **§ 21165. Lead agency**

19 21165. When a project is to be carried out or approved by two or more public
20 agencies, the determination of whether the project may have a significant effect
21 on the environment shall be made by the lead agency; and such agency shall
22 prepare, or cause to be prepared by contract, the environmental impact report for
23 the project, if such a report is required by this division. In the event that a dispute
24 arises as to which is the lead agency, any public agency, or in the case of a project
25 described in subdivision (c) of Section 21065 the applicant for such project, may
26 submit the question to the Office of Planning and Research, and the Office of
27 Planning and Research shall designate, within 21 days of receiving such request,
28 the lead agency, giving due consideration to the capacity of such agency to
29 adequately fulfill the requirements of this division.

30 **Comment.** Section 21165 continues former Public Resources Code Section 21165 without
31 change.

32 **§ 21166. Subsequent or supplemental impact report**

33 21166. When an environmental impact report has been prepared for a project
34 pursuant to this division, no subsequent or supplemental environmental impact
35 report shall be required by the lead agency or by any responsible agency, unless
36 one or more of the following events occurs:

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

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

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

7 **Comment.** Section 21166 continues former Public Resources Code Section 21166 without
8 change.

9 **§ 21166.1. Report for geographical area or group of projects**

10 21166.1. The decision of a lead agency to prepare an environmental impact
11 report with respect to environmental impacts within a geographic area or for a
12 group of projects shall not be a basis for determining that an environmental
13 document prepared for an individual project within that area or group is
14 inadequate.

15 **Comment.** Section 21166.1 continues former Public Resources Code Section 21166.1
16 without change.

17 **§ 21167. Time for commencement of proceedings**

18 21167. Any action or proceeding to attack, review, set aside, void, or annul the
19 following acts or decisions of a public agency on the grounds of noncompliance
20 with this division shall be commenced as follows:

21 (a) An action or proceeding alleging that a public agency is carrying out or has
22 approved a project which may have a significant effect on the environment
23 without having determined whether the project may have a significant effect on
24 the environment shall be commenced within 180 days from the date of the public
25 agency's decision to carry out or approve the project, or, if a project is
26 undertaken without a formal decision by the public agency, within 180 days from
27 the date of commencement of the project.

28 (b) Any action or proceeding alleging that a public agency has improperly
29 determined whether a project may have a significant effect on the environment
30 shall be commenced within 30 days from the date of the filing of the notice
31 required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

32 (c) Any action or proceeding alleging that an environmental impact report does
33 not comply with this division shall be commenced within 30 days from the date of
34 the filing of the notice required by subdivision (a) of Section 21108 or
35 subdivision (a) of Section 21152 by the lead agency.

36 (d) Any action or proceeding alleging that a public agency has improperly
37 determined that a project is not subject to this division pursuant to subdivision (b)
38 of Section 21080 or pursuant to Section 21097.3 or 21172 shall be commenced
39 within 35 days from the date of the filing by the public agency, or person
40 specified in subdivision (b) or (c) of Section 21065, of the notice authorized by
41 subdivision (b) of Section 21108 or subdivision (b) of Section 21152. If the notice

1 has not been filed, the action or proceeding shall be commenced within 180 days
2 from the date of the public agency's decision to carry out or approve the project,
3 or, if a project is undertaken without a formal decision by the public agency,
4 within 180 days from the date of commencement of the project.

5 (e) Any action or proceeding alleging that any other act or omission of a public
6 agency does not comply with this division shall be commenced within 30 days
7 from the date of the filing of the notice required by subdivision (a) of Section
8 21108 or subdivision (a) of Section 21152.

9 (f) If a person has made a written request to the public agency for a copy of the
10 notice specified in Section 21108 or 21152 prior to the date on which the agency
11 approves or determines to carry out the project, then not later than five days from
12 the date of the agency's action, the public agency shall deposit a written copy of
13 the notice addressed to that person in the United States mail, first-class postage
14 prepaid. The date upon which this notice is mailed shall not affect the time
15 periods specified in subdivisions (b), (c), (d), and (e).

16 **Comment.** Section 21167 continues former Public Resources Code Section 21167 without
17 substantive change.

18 **§ 21167.1. Trial preference**

19 21167.1. (a) In all actions or proceedings brought pursuant to Sections 21167,
20 21168, and 21168.5, including the hearing of an action or proceeding on appeal
21 from a decision of a lower court, all courts in which the action or proceeding is
22 pending shall give the action or proceeding preference over all other civil actions,
23 in the matter of setting the action or proceeding for hearing or trial, and in hearing
24 or trying the action or proceeding, so that the action or proceeding shall be
25 quickly heard and determined. The court shall regulate the briefing schedule so
26 that, to the extent feasible, the court shall commence hearings on an appeal within
27 one year of the date of the filing of the appeal.

28 (b) To ensure that actions or proceedings brought pursuant to Sections 21167,
29 21168, and 21168.5 may be quickly heard and determined in the lower courts, the
30 superior courts in all counties with a population of more than 200,000 shall
31 designate one or more judges to develop expertise in this division and related
32 land use and environmental laws, so that those judges will be available to hear,
33 and quickly resolve, actions or proceedings brought pursuant to Sections 21167,
34 21168, and 21168.5.

35 (c) In any action or proceeding filed pursuant to this chapter that is joined with
36 any other cause of action, the court, upon a motion by any party, may grant
37 severance of the actions. In determining whether to grant severance, the court
38 shall consider such matters as judicial economy, administrative economy, and
39 prejudice to any party.

40 **Comment.** Section 21167.1 continues former Public Resources Code Section 21167.1
41 without substantive change.

1 **§ 21167.2. Failure to timely commence proceedings**

2 21167.2. If no action or proceeding alleging that an environmental impact
3 report does not comply with the provisions of this division is commenced during
4 the period prescribed in subdivision (c) of Section 21167, the environmental
5 impact report shall be conclusively presumed to comply with the provisions of
6 this division for purposes of its use by responsible agencies, unless the provisions
7 of Section 21166 are applicable.

8 **Comment.** Section 21167.2 continues former Public Resources Code Section 21167.2
9 without change.

10 **§ 21167.3. Presumption of compliance**

11 21167.3. (a) If an action or proceeding alleging that an environmental impact
12 report or a negative declaration does not comply with the provisions of this
13 division is commenced during the period described in subdivision (b) or (c) of
14 Section 21167, and if an injunction or stay is issued prohibiting the project from
15 being carried out or approved pending final determination of the issue of such
16 compliance, responsible agencies shall assume that the environmental impact
17 report or the negative declaration for the project does comply with the provisions
18 of this division and shall issue a conditional approval or disapproval of such
19 project according to the timetable for agency action in Article 5 (commencing
20 with Section 65950) of Chapter 4.5 of Division 1 of Title 7 of the Government
21 Code. A conditional approval shall constitute permission to proceed with a
22 project when and only when such action or proceeding results in a final
23 determination that the environmental impact report or negative declaration does
24 comply with the provisions of this division.

25 (b) In the event that an action or proceeding is commenced as described in
26 subdivision (a) but no injunction or similar relief is sought and granted,
27 responsible agencies shall assume that the environmental impact report or
28 negative declaration for the project does comply with the provisions of this
29 division and shall approve or disapprove the project according to the timetable
30 for agency action in Article 5 (commencing with Section 65950) of Chapter 4.5
31 of Division 1 of Title 7 of the Government Code. Such approval shall constitute
32 permission to proceed with the project at the applicant's risk pending final
33 determination of such action or proceeding.

34 **Comment.** Section 21167.3 continues former Public Resources Code Section 21167.3
35 without change.

36 **§ 21167.4. Time for hearing**

37 21167.4. (a) In any action or proceeding alleging noncompliance with this
38 division, the petitioner shall request a hearing within 90 days from the date of
39 filing the petition or shall be subject to dismissal on the court's own motion or on
40 the motion of any party interested in the action or proceeding.

1 (b) The petitioner shall serve a notice of the request for a hearing on all parties
2 at the time that the petitioner files the request for a hearing.

3 (c) Upon the filing of a request by the petitioner for a hearing and upon
4 application by any party, the court shall establish a briefing schedule and a
5 hearing date. In the absence of good cause, briefing shall be completed within 90
6 days from the date that the request for a hearing is filed, and the hearing, to the
7 extent feasible, shall be held within 30 days thereafter. Good cause may include,
8 but shall not be limited to, the conduct of discovery, determination of the
9 completeness of the record of proceedings, the complexity of the issues, and the
10 length of the record of proceedings and the timeliness of its production. The
11 parties may stipulate to a briefing schedule or hearing date that differs from the
12 schedule set forth in this subdivision if the stipulation is approved by the court.

13 **Comment.** Section 21167.4 continues former Public Resources Code Section 21167.4
14 without change.

15 **§ 21167.5. Proof of service**

16 21167.5. Proof of prior service by mail upon the public agency carrying out or
17 approving the project of a written notice of the commencement of any action or
18 proceeding described in Section 21167 identifying the project shall be filed
19 concurrently with the initial pleading in such action or proceeding.

20 **Comment.** Section 21167.5 continues former Public Resources Code Section 21167.5
21 without change.

22 **§ 21167.6. Record for judicial review**

23 21167.6. Notwithstanding any other provision of law, in all actions or
24 proceedings brought pursuant to Section 21167, except those involving the
25 Public Utilities Commission, all of the following shall apply:

26 (a) At the time that the action or proceeding is filed, the plaintiff or petitioner
27 shall file a request that the respondent public agency prepare the record of
28 proceedings relating to the subject of the action or proceeding. The request,
29 together with the complaint or petition, shall be served upon the public agency
30 not later than 10 business days from the date that the action or proceeding was
31 filed.

32 (b)(1) The public agency shall prepare and certify the record of proceedings not
33 later than 60 days from the date that the request specified in subdivision (a) was
34 served upon the public agency. Upon certification, the public agency shall lodge
35 a copy of the record of proceedings with the court and shall serve on the parties
36 notice that the record of proceedings has been certified and lodged with the
37 court. The parties shall pay any costs or fees imposed for the preparation of the
38 record of proceedings in conformance with any law or rule of court.

39 (2) The plaintiff or petitioner may elect to prepare the record of proceedings or
40 the parties may agree to an alternative method of preparation of the record of

1 proceedings, subject to certification of its accuracy by the public agency, within
2 the time limit specified in this subdivision.

3 (c) The time limit established by subdivision (b) may be extended only upon the
4 stipulation of all parties who have been properly served in the action or
5 proceeding or upon order of the court. Extensions shall be liberally granted by
6 the court when the size of the record of proceedings renders infeasible
7 compliance with that time limit. There is no limit on the number of extensions
8 which may be granted by the court, but no single extension shall exceed 60 days
9 unless the court determines that a longer extension is in the public interest.

10 (d) If the public agency fails to prepare and certify the record within the time
11 limit established in subdivision (b), or any continuances of that time limit, the
12 plaintiff or petitioner may move for sanctions, and the court may, upon that
13 motion, grant appropriate sanctions.

14 (e) The record of proceedings shall include, but is not limited to, all of the
15 following items:

16 (1) All project application materials.

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

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

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

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

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

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

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

42 (9) The documentation of the final public agency decision, including the final
43 environmental impact report, mitigated negative declaration, or negative

1 declaration, and all documents, in addition to those referenced in paragraph (3),
2 cited or relied on in the findings or in a statement of overriding considerations
3 adopted pursuant to this division.

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

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

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

18 (g) The clerk of the superior court shall prepare and certify the clerk's transcript
19 on appeal not later than 60 days from the date that the notice designating the
20 papers or records to be included in the clerk's transcript was filed with the
21 superior court, if the party or parties pay any costs or fees for the preparation of
22 the clerk's transcript imposed in conformance with any law or rules of court.
23 Nothing in this subdivision precludes an election to proceed by appendix, as
24 provided in Rule 5.1 of the California Rules of Court.

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

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

36 **Comment.** Section 21167.6 continues former Public Resources Code Section 21167.6
37 without change.

38 **§ 21167.7. Attorney general**

39 21167.7. Every person who brings an action pursuant to Section 21167 shall
40 comply with the requirements of Section 389.6 of the Code of Civil Procedure.
41 Every such person shall also furnish pursuant to Section 389.6 of the Code of
42 Civil Procedure a copy of any amended or supplemental pleading filed by such

1 person in such action to the Attorney General. No relief, temporary or permanent,
2 shall be granted until a copy of the pleading has been furnished to the Attorney
3 General in accordance with such requirements.

4 **Comment.** Section 21167.7 continues former Public Resources Code Section 21167.7
5 without change.

6 **§ 21167.8. Settlement**

7 21167.8. (a) Not later than 20 days from the date of service upon a public
8 agency of a petition or complaint brought pursuant to Section 21167, the public
9 agency shall file with the court a notice setting forth the time and place at which
10 all parties shall meet and attempt to settle the litigation. The meeting shall be
11 scheduled and held not later than 45 days from the date of service of the petition
12 or complaint upon the public agency. The notice of the settlement meeting shall
13 be served by mail upon the counsel for each party. If the public agency does not
14 know the identity of counsel for any party, the notice shall be served by mail
15 upon the party for whom counsel is not known.

16 (b) At the time and place specified in the notice filed with the court, the parties
17 shall meet and confer regarding anticipated issues to be raised in the litigation and
18 shall attempt in good faith to settle the litigation and the dispute which forms the
19 basis of the litigation. The settlement meeting discussions shall be comprehensive
20 in nature and shall focus on the legal issues raised by the parties concerning the
21 project that is the subject of the litigation.

22 (c) The settlement meeting may be continued from time to time without
23 postponing or otherwise delaying other applicable time limits in the litigation. The
24 settlement meeting is intended to be conducted concurrently with any judicial
25 proceedings.

26 (d) If the litigation is not settled, the court, in its discretion, may, or at the request
27 of any party, shall, schedule a further settlement conference before a judge of the
28 superior court. If the petition or complaint is later heard on its merits, the judge
29 hearing the matter shall not be the same judge conducting the settlement
30 conference, except in counties that have only one judge of the superior court.

31 (e) The failure of any party, who was notified pursuant to subdivision (a), to
32 participate in the litigation settlement process, without good cause, may result in
33 an imposition of sanctions by the court.

34 (f) Not later than 30 days from the date that notice of certification of the record
35 of proceedings was filed and served in accordance with Section 21167.6, the
36 petitioner or plaintiff shall file and serve on all other parties a statement of issues
37 which the petitioner or plaintiff intends to raise in any brief or at any hearing or
38 trial. Not later than 10 days from the date on which the respondent or real party in
39 interest has been served with the statement of issues from the petitioner or
40 plaintiff, each respondent and real party in interest shall file and serve on all other
41 parties a statement of issues which that party intends to raise in any brief or at
42 any hearing or trial.

1 **Comment.** Section 21167.8 continues former Public Resources Code Section 21167.8
2 without change.

3 **§ 21167.9. Exhaustion of administrative remedies**

4 21167.9. (a) No action or proceeding may be brought pursuant to Section
5 21167 unless the alleged grounds for noncompliance with this division were
6 presented to the public agency orally or in writing by any person during the
7 public comment period provided by this division or prior to the close of the public
8 hearing on the project before the issuance of the notice of determination.

9 (b) No person shall maintain an action or proceeding unless that person
10 objected to the approval of the project orally or in writing during the public
11 comment period provided by this division or prior to the close of the public
12 hearing on the project before the issuance of the notice of determination.

13 (c) This section does not preclude any organization formed after the approval of
14 a project from maintaining an action pursuant to Section 21167 if a member of
15 that organization has complied with subdivision (b).

16 (d) This section does not apply to the Attorney General.

17 (e) This section does not apply to any alleged grounds for noncompliance with
18 this division for which there was no public hearing or other opportunity for
19 members of the public to raise those objections orally or in writing prior to the
20 approval of the project, or if the public agency failed to give the notice required
21 by law.

22 **Comment.** Section 21167.9 continues former Public Resources Code Section 21177
23 without change.

24 **§ 21168. Administrative mandamus**

25 21168. (a) Any action or proceeding to attack, review, set aside, void or annul a
26 determination, finding, or decision of a public agency, made as a result of a
27 proceeding in which by law a hearing is required to be given, evidence is required
28 to be taken and discretion in the determination of facts is vested in a public
29 agency, on the grounds of noncompliance with the provisions of this division
30 shall be in accordance with the provisions of Section 1094.5 of the Code of Civil
31 Procedure.

32 (b) In any such action, the court shall not exercise its independent judgment on
33 the evidence but shall only determine whether the act or decision is supported by
34 substantial evidence in the light of the whole record.

35 **Comment.** Section 21168 continues former Public Resources Code Section 21168 without
36 substantive change.

37 **§ 21168.5. Standard of review**

38 21168.5. In any action or proceeding, other than an action or proceeding under
39 Section 21168, to attack, review, set aside, void or annul a determination, finding,
40 or decision of a public agency on the grounds of noncompliance with this
41 division, the inquiry shall extend only to whether there was a prejudicial abuse of

1 discretion. Abuse of discretion is established if the agency has not proceeded in a
2 manner required by law or if the determination or decision is not supported by
3 substantial evidence.

4 **Comment.** Section 21168.5 continues former Public Resources Code Section 21168.5
5 without change.

6 **§ 21168.6. Public Utilities Commission**

7 21168.6. In any action or proceeding under Sections 21168 or 21168.5 against
8 the Public Utilities Commission the writ of mandate shall lie only from the
9 Supreme Court to such commission.

10 **Comment.** Section 21168.6 continues former Public Resources Code Section 21168.6
11 without change.

12 **§ 21168.7. Provisions declaratory of existing law**

13 21168.7. Sections 21168 and 21168.5 are declaratory of existing law with
14 respect to the judicial review of determinations or decisions of public agencies
15 made pursuant to this division.

16 **Comment.** Section 21168.7 continues former Public Resources Code Section 21168.7
17 without change.

18 **§ 21168.9. Remedies**

19 21168.9. (a) If a court finds, as a result of a trial, hearing, or remand from an
20 appellate court, that any determination, finding, or decision of a public agency has
21 been made without compliance with this division, the court shall enter an order
22 that includes one or more of the following:

23 (1) A mandate that the determination, finding, or decision be voided by the
24 public agency, in whole or in part.

25 (2) If the court finds that a specific project activity or activities will prejudice
26 the consideration or implementation of particular mitigation measures or
27 alternatives to the project, a mandate that the public agency and any real parties
28 in interest suspend any or all specific project activity or activities, pursuant to the
29 determination, finding, or decision, that could result in an adverse change or
30 alteration to the physical environment, until the public agency has taken any
31 actions that may be necessary to bring the determination, finding, or decision into
32 compliance with this division.

33 (3) A mandate that the public agency take specific action as may be necessary
34 to bring the determination, finding, or decision into compliance with this division.

35 (b) Any order pursuant to subdivision (a) shall include only those mandates
36 which are necessary to achieve compliance with this division and only those
37 specific project activities in noncompliance with this division. The order shall be
38 made by the issuance of a peremptory writ of mandate specifying what action by
39 the public agency is necessary to comply with this division. However, the order
40 shall be limited to that portion of a determination, finding, or decision or the
41 specific project activity or activities found to be in noncompliance only if a court

1 finds that (1) the portion or specific project activity or activities are severable, (2)
2 severance will not prejudice complete and full compliance with this division, and
3 (3) the court has not found the remainder of the project to be in noncompliance
4 with this division. The trial court shall retain jurisdiction over the public agency's
5 proceedings by way of a return to the peremptory writ until the court has
6 determined that the public agency has complied with this division.

7 (c) Nothing in this section authorizes a court to direct any public agency to
8 exercise its discretion in any particular way. Except as expressly provided in this
9 section, nothing in this section is intended to limit the equitable powers of the
10 court.

11 **Comment.** Section 21168.9 continues former Public Resources Code Section 21168.9
12 without change.

13 CHAPTER 10. TRANSITIONAL PROVISIONS AND RELATION TO OTHER LAW

14 **§ 21169. Prospective application**

15 21169. Any project defined in subdivision (c) of Section 21065 undertaken,
16 carried out or approved on or before December 5, 1972, and the issuance by any
17 public agency of any lease, permit, license, certificate or other entitlement for use
18 executed or issued on or before December 5, 1972, notwithstanding a failure to
19 comply with this division, if otherwise legal and valid, is hereby confirmed,
20 validated and declared legally effective. Any project undertaken by a person
21 which was supported in whole or part through contracts with one or more public
22 agencies on or before December 5, 1972, notwithstanding a failure to comply
23 with this division, if otherwise legal and valid, is hereby confirmed, validated and
24 declared legally effective.

25 **Comment.** Section 21169 continues former Public Resources Code Section 21169 without
26 substantive change.

27 **§ 21170. Pending proceedings**

28 21170. (a) Section 21169 shall not operate to confirm, validate or give legal
29 effect to any project the legality of which was being contested in a judicial
30 proceeding in which proceeding the pleadings, prior to December 5, 1972, alleged
31 facts constituting a cause of action for, or raised the issue of, a violation of this
32 division and which was pending and undetermined on December 5, 1972;
33 provided, however, that Section 21169 shall operate to confirm, validate or give
34 legal effect to any project to which this subdivision applies if, prior to the
35 commencement of judicial proceedings and in good faith and in reliance upon the
36 issuance by a public agency of any lease, permit, license, certificate or other
37 entitlement for use, substantial construction has been performed and substantial
38 liabilities for construction and necessary materials have been incurred.

39 (b) Section 21169 shall not operate to confirm, validate or give legal effect to
40 any project which had been determined in any judicial proceeding, on or before

December 5, 1972, to be illegal, void or ineffective because of noncompliance with this division.

Comment. Section 21170 continues former Public Resources Code Section 21170 without substantive change.

§ 21171. Phase-in period

21171. (a) 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 December 5, 1972. 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.

(b) This section shall not prohibit or prevent a public agency, prior to the 121st day after December 5, 1972, from considering environmental factors in connection with the approval or disapproval of a project and from imposing reasonable fees in connection therewith.

Comment. Section 21171 continues former Public Resources Code Section 21171 without substantive change.

§ 21172. Application during state of emergency

21172. This division shall not apply to any project undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1, Title 2 of the Government Code.

Comment. Section 21172 continues former Public Resources Code Section 21172 without change.

§ 21172.5. Aspects of phase-in

21172.5. (a) Until the 121st day after December 5, 1972, 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.

(b) Any environmental impact report which has been completed or on which substantial work has been performed on or before the 121st day after December 5, 1972, 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.

Comment. Section 21172.5 continues former Public Resources Code Section 21172.5 without substantive change.

1 **§ 21174. Effect on other law**

2 21174. No provision of this division is a limitation or restriction on the power or
3 authority of any public agency in the enforcement or administration of any
4 provision of law which it is specifically permitted or required to enforce or
5 administer, including, but not limited to, the powers and authority granted to the
6 California Coastal Commission pursuant to Division 20 (commencing with
7 Section 30000) of the Public Resources Code. To the extent of any inconsistency
8 or conflict between the provisions of the California Coastal Act of 1976 (Division
9 20 (commencing with Section 30000) of the Public Resources Code) and the
10 provisions of this division, the provisions of Division 20 (commencing with
11 Section 30000) of the Public Resources Code shall control.

12 **Comment.** Section 21174 continues former Public Resources Code Section 21174 without
13 substantive change.

14 **§ 21175. Effect on project approved by local agency formation commission**

15 21175. In the event that a local agency formation commission, acting pursuant
16 to the provisions of Chapter 6.6 (commencing with Section 54773) of Part 1 of
17 Division 2 of Title 5 of, or pursuant to Division 1 (commencing with Section
18 56000) of Title 6 of, the Government Code, has approved a project without
19 complying with this division, such approval is hereby confirmed, validated, and
20 declared legally effective notwithstanding the failure to comply with this division;
21 provided, that such approval shall have occurred prior to February 7, 1975.

22 **Comment.** Section 21175 continues former Public Resources Code Section 21175 without
23 change.

24 **§ 21176. Effect of § 21175**

25 21176. (a) Section 21175 shall not operate to confirm, validate, or give legal
26 effect to any project, the legality of which was being contested in a judicial
27 proceeding in which proceeding the pleadings, prior to February 7, 1975, alleged
28 facts constituting a cause of action for, or raised the issue of, a violation of this
29 division, and which was pending and undetermined on February 7, 1975.

30 (b) Section 21175 shall not operate to confirm, validate, or give legal effect to
31 any project which had been determined in any judicial proceeding, on or before
32 July 5, 1975, to be illegal, void, or ineffective because of noncompliance with this
33 division.

34 **Comment.** Section 21176 continues former Public Resources Code Section 21176 without
35 change.

Disposition of Existing Law

Note. This table shows the disposition of sections in the Public Resources Code, in effect on January 27, 1998, that are to be repealed in connection with the Environment Code legislation. For further detail, see the Comment to the appropriate section in the attached staff draft.

PUBLIC RESOURCES CODE

Pub. Res. Code	Env't Code	Pub. Res. Code	Env't Code
21000	21000	21080.18	21080.18
21001	21001	21080.19	21080.19
21001.1	21001.1	21080.2	21080.2
21002	21002	21080.21	21080.21
21002.1	21002.1	21080.22	21080.22
21003	21003	21080.23	21080.23
21003.1	21003.1	21080.24	21080.24
21004	21004	21080.26	21080.26
21005	21005	21080.3	21080.3
21050	21050	21080.32	21080.32
21060	21060	21080.33	21080.33
21060.1	21060.1	21080.4	21080.4
21060.3	21060.3	21080.5	21080.5
21060.5	21060.5	21080.7	21080.7
21061	21061	21080.8	21080.8
21061.1	21061.1	21080.9	21080.9
21061.2	21061.2	21081	21081
21062	21062	21081.5	21081.5
21063	75	21081.6	21081.6
21064	21064	21081.7	21081.7
21064.5	21064.5	21082	21082
21065	21065	21082.1	21082.1
21065.5	21065.5	21082.2	21082.2
21066	70	21083	21083
21067	21067	21083.1	21083.1
21068	21068	21083.2	21096.2
21068.5	21068.5	21083.3	21096.3
21069	21069	21083.5	21096.5
21080	21080	21083.6	21096.6
21080.01	21080.01	21083.7	21096.7
21080.02	21080.02	21083.8	21096.8
21080.03	21080.03	21083.8.1	21096.9
21080.04	21080.04	21083.9	21097
21080.05	21080.05	21084	21084
21080.07	21080.07	21084.1	21097.1
21080.08	21080.08	21084.2	21097.2
21080.09	21080.09	21085	21097.3
21080.1	21080.1	21086	21086
21080.10	21080.10	21087	21087
21080.11	21080.11	21088	21088
21080.12	21080.12	21089	21089
21080.13	21080.13	21090	21090
21080.14	21080.14	21090.1	21090.1
21080.17	21080.17	21091	21091

Note: This table is sorted in decimal order. Some sections occur in serial order in the codes.

Pub. Res. Code	Env't Code	Pub. Res. Code	Env't Code
21092	21092	21158.1	21158.1
21092.1	21092.1	21158.5	21158.5
21092.2	21092.2	21159	21159
21092.3	21092.3	21159.1	21159.1
21092.4	21092.4	21159.2	21159.2
21092.5	21092.5	21159.3	21159.3
21092.6	21092.6	21159.4	21159.4
21093	21093	21159.9	21159.9
21094	21094	21160	21160
21095	21095	21161	21161
21096	21096	21162	21162
21100	21100	21165	21165
21100.1	21100.1	21166	21166
21100.2	21100.2	21166.1	21166.1
21101	21101	21167	21167
21102	21102	21167.1	21167.1
21104	21104	21167.2	21167.2
21104.2	21104.2	21167.3	21167.3
21105	21105	21167.4	21167.4
21106	21106	21167.5	21167.5
21108	21108	21167.6	21167.6
21150	21150	21167.7	21167.7
21151	21151	21167.8	21167.8
21151.1	21151.1	21168	21168
21151.2	21151.2	21168.5	21168.5
21151.4	21151.4	21168.6	21168.6
21151.5	21151.5	21168.7	21168.7
21151.7	21151.7	21168.9	21168.9
21151.8	21151.8	21169	21169
21151.9	21151.9	21170	21170
21152	21152	21171	21171
21153	21153	21172	21172
21154	21154	21172.5	21172.5
21156	21156	21173	12
21157	21157	21174	21174
21157.1	21157.1	21175	21175
21157.5	21157.5	21176	21176
21157.6	21157.6	21177	21167.9
21158	21158		

Note: This table is sorted in decimal order. Some sections occur in serial order in the codes.