32

CEQA

The California Environmental Quality Act

Responsible Agency Adopts a Statement of Overriding Considerations

What is a Statement of Overriding Considerations?

- A statement of the responsible agency's views on the ultimate balancing of the merits of approving a project despite its environmental damage.

When Does a Responsible Agency Adopt a Statement of Overriding Considerations?

- When the agency decides to approve a project that will cause one or more significant environmental effects, the responsible agency shall prepare a statement of overriding considerations which reflects the ultimate balancing of competing public objectives (including environmental, legal, technical, social, and economic factors).

What Standard Must a Responsible Agency Follow in Adopting a Statement of Overriding Considerations?

- The statement must:
- be in writing and;
- state specific reasons supporting agency action based on the final EIR or other substantial evidence in the record.
- Responsible agency is responsible for considering only the effects of those activities involved in a project over which the responsible agency has jurisdiction.

What Constitutes Substantial Evidence?

21082.2

- Substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinions supported by facts.
- Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment.

Selected Statutory References

- Approval of Project | Public Resources Code §21002
- Use of EIRs | Public Resources Code §21002.1
- Findings of Overriding Considerations | Public Resources Code §21081(b)
- Determination of Significant Effect on the Environment | Public Resources Code §21082.2

Selected Guidelines References

- Duty to Minimize Environmental Damage | 14 Cal. Code Regs § 15021(d)
- Findings Requirements | 14 Cal. Code Regs. §15091
- Statement of Overriding Considerations | 14 Cal. Code Regs §15093

Selected Cases .

- *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212: Court held that a statement of overriding considerations must be supported by substantial evidence in the record or contained in the final EIR.

- *Resources Defense Fund v. Local Agency Formation Commission of Santa Cruz County* (1987) 191 Cal.App.3d 886: Appellate court reversed trial court's decision and held that failure by Commission to prepare a written finding stating reasons for infeasibility of alternatives and failure to prepare an adequate statement of overriding considerations was more than a "harmless error".

- *Laurel Hills Homeowners' Ass'n. v. City Council* (1978) 83 Cal.App.3d 515: Court suggested that an impact can be substantially lessened but still remain significant.

Return to Decision on Permit page

Go to NOD index page

| CERES | CEQA Home | CEQA Flowchart | Environmental Law | Wetlands | LUPIN |

CEQA

The California Environmental Quality Act

Chapter 2.6: General

§ 21080. Division application to discretionary projects; nonapplication; negative declarations; environmental impact report preparation

(a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.
(b) This division does not apply to any of the following activities:
(1) Ministerial projects proposed to be carried out or approved by public agencies.
(2) Emergency repairs to public service facilities necessary to maintain service.
(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.
(4) Specific actions necessary to prevent or mitigate an emergency.
(5) Projects which a public agency rejects or disapproves.
(6) Actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report, negative declaration, or other document, prepared pursuant to a regulatory program certified pursuant to Section 21080.5, which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located if the environmental impact report, negative declaration, or document includes the environmental impact, if any, of the action described in this paragraph.
(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for the Olympic games.
(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for capital projects necessary to maintain service within existing service areas, or (E) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.
(9) All classes of projects designated pursuant to Section 21084.
(10) A project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities.
(11) A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and

parking facilities.
(12) Facility extensions not to exceed four miles in length which are required for the transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.
(13) A project for the development of a regional transportation improvement program, the state transportation improvement program, or a congestion management program prepared pursuant to Section 65089 of the Government Code.
(14) Any project or portion thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state. Any emissions or discharges that would have a significant effect on the environment in this state are subject to this division.
(15) Projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5. Any site-specific effect of the project which was not analyzed as a significant effect on the environment in the plan or other written documentation required by Section 21080.5 is subject to this division.
(c) If a lead agency determines that a proposed project, not otherwise exempt from this division, would not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. The negative declaration shall be prepared for the proposed project in either of the following circumstances:
(1) There is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.
(2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.
(d) If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared.
(e)(1) For the purposes of this section and this division, substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.
(2) Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.
(f) As a result of the public review process for a mitigated negative declaration, including administrative decisions and public hearings, the lead agency may conclude that certain mitigation measures identified pursuant to paragraph (2) of subdivision (c) are infeasible or otherwise undesirable. In those circumstances, the lead agency, prior to approving the project, may delete those mitigation measures and substitute for them other mitigation measures that the lead agency finds, after holding a public hearing on the matter, are equivalent or more effective in mitigating significant effects on the environment to a less than significant level and that do not cause any potentially significant effect on the environment. If those new mitigation measures are made conditions of project approval or are otherwise made part of the project approval, the deletion of the former measures and the substitution of the new mitigation measures shall not constitute an action or circumstance requiring recirculation of the mitigated negative declaration.
(g) Nothing in this section shall preclude a project applicant or any other person from challenging, in an administrative or judicial proceeding, the legality of a condition of project approval imposed by the lead agency. If, however, any condition of project approval set aside by either an administrative body or court was necessary to avoid or lessen the likelihood of the occurrence of a significant effect on the environment, the lead agency's approval of the negative declaration and project shall be invalid and a new environmental review process shall be conducted before the project can be reapproved, unless the lead agency substitutes a new condition that the lead agency finds, after holding a public hearing on the matter, is equivalent to, or more effective in, lessening or avoiding significant effects on the environment and that does not cause any potentially significant effect on the environment.

§ 21080.01. California Men's Colony West Facility in San Luis Obispo County; inapplicability of division to reopening and operation

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

§ 21080.02. Kings County; vicinity of Corcoran; new prison facilities; application of division

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

§ 21080.03. Kings and Amador (Ione) Counties; prisons; application of division

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

§ 21080.04. Rocktram-Krug passenger rail service project; application of division; lead agency; legislative intent

(a) Notwithstanding paragraph (10) of subdivision (b) of Section 21080, this division applies to a project for the institution of passenger rail service on a line paralleling State Highway 29 and running from Rocktram to Krug in the Napa Valley. With respect to that project, and for the purposes of this division, the Public Utilities Commission is the lead agency.
(b) It is the intent of the Legislature in enacting this section to abrogate the decision of the California Supreme Court "that Section 21080, subdivision (b)(11), exempts Wine Train's institution of passenger service on the Rocktram- Krug line from the requirements of CEQA" in Napa Valley Wine Train, Inc. v. Public Utilities Com., 50 Cal.3d 370.
(c) Nothing in this section is intended to affect or apply to, or to confer jurisdiction upon the Public Utilities Commission with respect to, any other project involving rail service.

§ 21080.05. San Francisco Peninsula commute service project between San Francisco and San Jose; application of division

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

§ 21080.07. Riverside and Del Norte Counties; planning and construction of new prison facilities; application of division

This division shall not apply to any activity or approval necessary for or incidental to planning, design, site acquisition, construction, operation, or maintenance of the new prison facilities located in any of the following places:
(a) The County of Riverside.
(b) The County of Del Norte.

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

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

§ 21080.09. Public higher education; campus location; long range development plans

(a) For purposes of this section, the following definitions apply:
(1) "Public higher education" has the same meaning as specified in Section 66010 of the Education Code.
(2) "Long range development plan" means a physical development and land use plan to meet the academic and institutional objectives for a particular campus or medical center of public higher education.
(b) The selection of a location for a particular campus and the approval of a long range development plan are subject to this division and require the preparation of an environmental impact report. Environmental effects relating to changes in enrollment levels shall be considered for each campus or medical center of public higher education in the environmental impact report prepared for the long range development plan for the campus or medical center.
(c) The approval of a project on a particular campus or medical center of public higher education is subject to this division and may be addressed, subject to the other provisions of this division, in a tiered environmental analysis based upon a long range development plan environmental impact report.
(d) Compliance with this section satisfies the obligations of public higher education pursuant to this division to consider the environmental impact of academic and enrollment plans as they affect campuses or medical centers, provided that any such plans shall become effective for a campus or medical center only after the environmental effects of those plans have been analyzed as required by this division in a long range development plan environmental impact report or tiered analysis based upon that environmental impact report for that campus or medical center, and addressed as required by this division.

§ 21080.1. Environmental impact report or negative declaration; determination by lead agency; finality; consultation

(a) The lead agency shall be responsible for determining whether an environmental impact report, a negative declaration, or a mitigated negative declaration shall be required for any project which is subject to this division. That determination shall be final and conclusive on all persons, including responsible agencies, unless challenged as provided in Section 21167.
(b) In the case of a project described in subdivision (c) of Section 21065, the lead agency shall, upon the request of a potential applicant, provide for consultation prior to the filing of the application regarding the range of actions, potential alternatives, mitigation measures, and any potential and significant effects on the environment of the project.

§ 21080.2. Issuance of lease, permit, license, certificate or other entitlement; determination by lead agency; time

In the case of a project described in subdivision (c) of Section 21065, the determination required by Section 21080.1 shall be made within 30 days from the date on which an application for a project has been received and accepted as complete by the lead agency. This period may be extended 15 days upon the consent of the lead agency and the project applicant.

§ 21080.2. Issuance of lease, permit, license, certificate or other entitlement; determination by lead agency; time

In the case of a project described in subdivision (c) of Section 21065, the determination required by Section 21080.1 shall be made within 30 days from the date on which an application for a project has been received and accepted as complete by the lead agency. This period may be extended 15 days upon the consent of the lead agency and the project applicant.

§ 21080.3. Consultation with responsible agencies; assistance by office of planning and research

(a) Prior to determining whether a negative declaration or environmental impact report is required for a project, the lead agency shall consult with all responsible agencies and with any other public agency which has jurisdiction by law over natural resources affected by the project which are held in trust for the people of the State of California. Prior to that required consultation, the lead agency may informally contact any such agency.
(b) In order to expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist the lead agency in determining the various responsible agencies for a proposed project. In the case of a project described in subdivision (c) of Section 21065, the request may also be made by the project applicant.

§ 21080.4. Environmental impact report; requirement determined by lead agency; duties of responsible agencies and certain public agencies; consultation; assistance by office of planning and research

(a) If a lead agency determines that an environmental impact report is required for a project, the lead agency shall immediately send notice of that determination by certified mail or an equivalent procedure to each responsible agency, the Office of Planning and Research, and those public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California. Upon receipt of the notice, each responsible agency, the office, and each public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California shall specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency, the office, or the public agency in connection with the proposed project and which, pursuant to the requirements of this division, shall be included in the environmental impact report. The information shall be specified in writing and shall be communicated to the lead agency by certified mail or equivalent procedure not later than 30 days after the date of receipt of the notice of the lead agency's determination. The lead agency shall request similar guidance from appropriate federal agencies.
(b) To expedite the requirements of subdivision (a), the lead agency, any responsible agency, the Office of Planning and Research, or a public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, may request one or more meetings between representatives of those agencies and the office for the purpose of assisting the lead agency to determine the scope and content of the environmental information that any of those responsible agencies, the office, or the public agencies may require. In the case of a project described in subdivision (c) of Section 21065, the request may also be made by the project applicant. The meetings shall be convened by the lead agency as soon as possible, but not later than 30 days after the date that the meeting was requested.
(c) To expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist the lead agency in determining the various responsible agencies, public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, and any federal agencies that have responsibility for carrying out or approving a proposed project. In the case of a project described in subdivision (c) of Section 21065, that request may also be made by the project applicant.
(d) With respect to the Department of Transportation, and with respect to any state agency that is a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California, subject to the requirements of subdivision (a), the Office of Planning and Research shall ensure that the information required by subdivision (a) is transmitted to the lead agency, and that affected agencies are notified regarding meetings to be held upon request pursuant to subdivision (b), within the required time period.

§ 21080.5. Plan or other written documentation; submission in lieu of impact report; regulatory programs; criteria; certification; proposed changes; review; commencement of actions; state agencies

(a) Except as provided in Section 21158.1, when the regulatory program of a state agency requires a plan or other written documentation, containing environmental information and complying with paragraph (3) of subdivision (d), to be submitted in support of any activity listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section.
(b) This section applies only to regulatory programs or portions thereof which involve either of the following:
(1) The issuance to a person of a lease, permit, license, certificate, or other entitlement for use.
(2) The adoption or approval of standards, rules, regulations, or plans for use in the

regulatory program.
(c) A regulatory program certified pursuant to this section is exempt from Chapter 3 (commencing with Section 21100), Chapter 4 (commencing with Section 21150), and Section 21167, except as provided in Article 2 (commencing with Section 21157) of Chapter 4.5.
(d) To qualify for certification pursuant to this section, a regulatory program shall require the utilization of an interdisciplinary approach that will ensure the integrated use of the natural and social sciences in decisionmaking and which shall meet all of the following criteria:
(1) The enabling legislation of the regulatory program does both of the following:
(A) Includes protection of the environment among its principal purposes.
(B) Contains authority for the administering agency to adopt rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation.
(2) The rules and regulations adopted by the administering agency for the regulatory program do all of the following:
(A) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.
(B) Include guidelines for the orderly evaluation of proposed activities and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program.
(C) Require the administering agency to consult with all public agencies which have jurisdiction, by law, with respect to the proposed activity.
(D) Require that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process.
(E) Require the filing of a notice of the decision by the administering agency on the proposed activity with the Secretary of the Resources Agency. Those notices shall be available for public inspection, and a list of the notices shall be posted on a weekly basis in the Office of the Resources Agency. Each list shall remain posted for a period of 30 days.
(F) Require notice of the filing of the plan or other written documentation to be made to the public and to any person who requests, in writing, notification. The notification shall be made in a manner that will provide the public or any person requesting notification with sufficient time to review and comment on the filing.
(3) The plan or other written documentation required by the regulatory program does both of the following:
(A) Includes a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse effect on the environment of the activity.
(B) Is available for a reasonable time for review and comment by other public agencies and the general public.
(e)(1) The Secretary of the Resources Agency shall certify a regulatory program which the secretary determines meets all the qualifications for certification set forth in this section, and withdraw certification on determination that the regulatory program has been altered so that it no longer meets those qualifications. Certification and withdrawal of certification shall occur only after compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.
(2) In determining whether or not a regulatory program meets the qualifications for certification set forth in this section, the inquiry of the secretary shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The inquiry shall not extend to individual decisions to be reached under the regulatory program, including the nature of specific alternatives or mitigation measures which might be proposed to lessen any significant adverse effect on the environment of the activity.
(3) If the secretary determines that the regulatory program submitted for certification does not meet the qualifications for certification set forth in this section, the secretary shall adopt findings setting forth the reasons for the determination.
(f) After a regulatory program has been certified pursuant to this section, any proposed change in the program which could affect compliance with the qualifications for certification specified in subdivision (d) may be submitted to the Secretary of the Resources Agency for review and comment. The scope of the secretary's review shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The review shall not extend to individual decisions to be reached under the regulatory program,

including specific alternatives or mitigation measures which might be proposed to lessen any significant adverse effect on the environment of the activity. The secretary shall have 30 days from the date of receipt of the proposed change to notify the state agency whether the proposed change will alter the regulatory program so that it no longer meets the qualification for certification established in this section and will result in a withdrawal of certification as provided in this section.
(g) Any action or proceeding to attack, review, set aside, void, or annul a determination or decision of a state agency approving or adopting a proposed activity under a regulatory program which has been certified pursuant to this section on the basis that the plan or other written documentation prepared pursuant to paragraph (3) of subdivision (d) does not comply with this section shall be commenced not later than 30 days from the date of the filing of notice of the approval or adoption of the activity.
(h)(1) Any action or proceeding to attack, review, set aside, void, or annul a determination of the Secretary of the Resources Agency to certify a regulatory program pursuant to this section on the basis that the regulatory program does not comply with this section shall be commenced within 30 days from the date of certification by the secretary.
(2) In any action brought pursuant to paragraph (1), the inquiry shall extend only to whether there was a prejudicial abuse of discretion by the secretary. Abuse of discretion is established if the secretary has not proceeded in a manner required by law or if the determination is not supported by substantial evidence.
(i) For purposes of this section, any county agricultural commissioner is a state agency.
(j) For purposes of this section, any air quality management district or air pollution control district is a state agency, except that the approval, if any, by such a district of a nonattainment area plan is subject to this section only if, and to the extent that, the approval adopts or amends rules or regulations.

§ 21080.7. Environmental impact report or negative declaration; exemption for construction of housing or neighborhood commercial facilities; lead agency determinations; notice

(a) No environmental impact report or negative declaration is required for any project involving the construction of housing or neighborhood commercial facilities in an urbanized area if the lead agency does all of the following:
(1) Finds, after giving notice pursuant to subdivision (c) or (d) of Section 21092 and following the procedure prescribed by law or regulation which would be necessary to make a determination pursuant to Section 21080.1, all of the following:
(A) The project is consistent with a comprehensive regulatory document which has been adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Title 7 of the Government Code or, in the coastal zone, a local coastal program certified pursuant to Article 2 (commencing with Section 30510) of Chapter 6 of Division 20.
(B) For purposes of this section, the plan or program was adopted pursuant to the procedure established by Article 8 (commencing with Section 65450) of Chapter 3 of Title 7 of the Government Code not more than five years prior to the finding made pursuant to this section.
(C) The plan or program has been the subject of an environmental impact report.
(D) The environmental impact report is sufficiently detailed so that the significant effects on the environment of the project and measures necessary to mitigate or avoid those effects can be determined, including any significant physical effects on existing structures and neighborhoods of historical or aesthetic significance that exist in the area covered by the plan or program and measures necessary to mitigate or avoid those effects.
(2) Makes one or more of the findings as required pursuant to Section 21081.
(3) Files a notice of the decision on the proposed activity with the county clerk. Those notices shall be available for public inspection, and a list of the notices shall be posted on a weekly basis in the office of the county clerk. Each list shall remain posted for a period of 30 days.
(b) As used in this section:
(1) "Neighborhood commercial facilities" means those commercial facilities which are an integral part of a project involving the construction of housing and which will serve the residents of the housing.

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

§ 21080.8. Application of division; conversion of existing rental mobilehome park to resident initiated subdivision, cooperative, or condominium for mobilehomes

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

§ 21080.9. Local coastal programs or long-range land use development; university or governmental activities and approvals; application of division

This division shall not apply to activities and approvals by any local government, as defined in Section 30109, or any state university or college, as defined in Section 30119, as necessary for the preparation and adoption of a local coastal program or long-range land use development plan pursuant to Division 20 (commencing with Section 30000); provided, however, that certification of a local coastal program or long-range land use development plan by the California Coastal Commission pursuant to Chapter 6 (commencing with Section 30500) of Division 20 shall be subject to the requirements of this division. For the purpose of Section 21080.5, a certified local coastal program or long-range land use development plan constitutes a plan for use in the California Coastal Commission's regulatory program.

§ 21080.10. Application of division; general plans; low- or moderate- income or residential housing; agricultural employee housing

This division does not apply to any of the following:
(a) An extension of time, granted pursuant to Section 65361 of the Government Code, for the preparation and adoption of one or more elements of a city or county general plan.
(b) Actions taken by the Department of Housing and Community Development or the California Housing Finance Agency to provide financial assistance or insurance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, if the project which is the subject of the application for financial assistance or insurance will be reviewed pursuant to this division by another public agency.
(c)(1) Any development project which consists of the construction, conversion, or use of residential housing for agricultural employees, as defined in paragraph (2), that is affordable to lower-income households, as defined in Section 50079.5 of the Health and Safety Code, if there is no public financial assistance for the development project and the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower-income households for a period of at least 15 years, or any development project that consists of the construction, conversion, or use of residential housing for agricultural employees, as defined in paragraph (2) that is ***housing for very low***, low-, ***or*** moderate-income households, as defined in

paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, if there is public financial assistance for the development project and the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least 15 years, if either type of development project meets all of the following requirements:
(A)(i) If the development project is proposed for an urbanized area, it is located on a project site which is adjacent, on at least two sides, to land that has been developed, and consists of not more than 45 units, or is housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.
(ii) If the development project is proposed for a nonurbanized area, it is located on a project site zoned for general agricultural use, and consists of not more than 20 units, or is housing for a total of 20 or fewer agricultural workers if the housing consists of dormitories, barracks, or other group living facilities.
(B) The development project is consistent with the jurisdiction's general plan as it existed on the date that the application was deemed complete.
(C) The development project is consistent with the zoning designation, as specified in the zoning ordinance as it existed on the date that the application was deemed complete, unless the zoning is inconsistent with the general plan because the local agency has not rezoned the property to bring it into conformity with the general plan.
(D) The development project site is not more than five acres in area, except that a project site located in an area with a population density of at least 1,000 persons per square mile shall not be more than two acres in area.
(E) The development project site can be adequately served by utilities.
(F) The development project site has no value as a wildlife habitat.
(G) The development project site is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.
(H) The development project will not involve the demolition of, or any substantial adverse change, in any structure that is listed, or is determined to be eligible for listing, in the California Register of Historic Resources.
(2) As used in paragraph (1), "residential housing for agricultural employees" means housing accommodations for an agricultural employee, as defined in subdivision (b) of Section 1140.4 of the Labor Code.
(3) As used paragraph (1), "urbanized area" means either of the following:
(A) An area with a population density of at least 1,000 persons per square mile.
(B) An area with a population density of less than 1,000 persons per square mile that is identified as an urban area in a general plan adopted by a local government, and was not designated, on the date that the application was deemed complete, as an area reserved for future urban growth.
(4) This division shall apply to any development project described in this subdivision if a public agency which is carrying out or approving the development project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances, or that the cumulative impact of successive projects of the same type in the same area over time would be significant.

§ 21080.11. Application of division; settlements by state lands commission

This division shall not apply to settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection with those settlements.

§ 21080.13. Railroad grade separation projects; application of division

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

§ 21080.14. Affordable lower income residential housing development projects in urbanized areas; application of division

(a) Except as provided in subdivision (c), this division does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of not more than 100 units in an urbanized area that is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, if the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years, or that is ***housing for very low***, low-, ***or*** moderate- income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, if the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households at monthly housing costs as determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, the developer provides sufficient legal commitments to ensure continued availability of units for the lower income households for 30 years as provided in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, and the development project meets all of the following requirements:
(1) The development project is consistent with the jurisdiction's general plan or any applicable specific plan or local coastal program as it existed on the date that the application was deemed complete.
(2) The development project is consistent with the zoning designation, as specified in the zoning ordinance as it existed on the date that the application was deemed complete, unless the zoning is inconsistent with the general plan because the local agency has not rezoned the property to bring it into conformity with the general plan.
(3) The project site is an infill site that has been previously developed for urban uses, or the immediately contiguous properties surrounding the project site are, or previously have been, developed for urban uses.
(4) The project site is not more than five acres in area.
(5) The project site can be adequately served by utilities.
(6) The project site has no value as a wildlife habitat.
(7) The project site is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.
(8) The project site is subject to an assessment prepared by a California registered environmental assessor to determine the presence of hazardous contaminants on the site and the potential for exposure of site occupants to significant health hazards from nearby properties and activities. If hazardous contaminants on the site are found, the contaminants shall be removed or any significant effects of those contaminants shall be mitigated to a level of insignificance. If the potential for exposure to significant health hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance.
(9) The project will not involve the demolition of, or any substantial adverse change in, any district, landmark, object, building, structure, site, area, or place that is listed, or determined to be eligible for listing, in the California Register of Historical Resources.
(b) As used in subdivision (a), "urbanized area" means an area that has a population density of at least 1,000 persons per square mile.
(c) Notwithstanding subdivision (a), this division does apply to a development project described in subdivision (a) if there is a reasonable possibility that the development project would have a significant effect on the environment or the residents of the development project due to unusual circumstances or due to related or cumulative impacts of reasonably foreseeable projects in the vicinity of the development project.

§ 21080.17. Application of division to ordinances implementing law relating to construction of dwelling units and second units

This division does not apply to the adoption of an ordinance by a city or county to implement the provisions of Section 65852.1 or Section 65852.2 of the Government Code.

§ 21080.18. Application of division to closing of public school maintaining kindergarten or any of grades 1 through 12

This division does not apply to the closing of any public school in which kindergarten or any of grades 1 through 12 is maintained or the transfer of students from that public school to another school if the only physical changes involved are categorically exempt under Chapter 3 (commencing with Section 15000) of Division 6 of Title 14 of the California Administrative Code.

§ 21080.19. Restriping of streets or highways; application of division

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

§ 21080.21. Application of division to public right-of-way pipeline projects less than one mile in length

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

§ 21080.22. Local governments; preparation of general plan amendments; application of division

(a) This division does not apply to activities and approvals by a local government necessary for the preparation of general plan amendments pursuant to Section 29763, except that the approval of general plan amendments by the Delta Protection Commission is subject to the requirements of this division.
(b) For purposes of Section 21080.5, a general plan amendment is a plan required by the regulatory program of the Delta Protection Commission.

§ 21080.23. Pipeline projects; application of division

(a) This division does not apply to any project which consists of the inspection, maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing pipeline, as defined in subdivision (a) of Section 51010.5 of the Government Code, or any valve, flange, meter, or other piece of equipment that is directly attached to the pipeline, if the project meets all of the following conditions:
(1)(A) The project is less than eight miles in length.
(B) Notwithstanding subparagraph (A), actual construction and excavation activities undertaken to achieve the maintenance, repair, restoration, reconditioning, relocation, replacement, or removal of an existing pipeline are not undertaken over a length of more than one-half mile at any one time.
(2) The project consists of a section of pipeline that is not less than eight miles from any section of pipeline that has been subject to an exemption pursuant to this section in the past 12 months.
(3) The project is not solely for the purpose of excavating soil that is contaminated by hazardous materials, and, to the extent not otherwise expressly required by law, the party undertaking the project immediately informs the lead agency of the discovery of contaminated soil.
(4) To the extent not otherwise expressly required by law, the person undertaking the project has, in advance of undertaking the project, prepared a plan that will result in notification of the appropriate agencies so that they may take action, if determined to be necessary, to provide for the emergency evacuation of members of the public who may be located in close proximity to the project.
(5) Project activities are undertaken within an existing right-of-way and the right-of-way is restored to its condition prior to the project.
(6) The project applicant agrees to comply with all conditions otherwise authorized by law, imposed by the city or county planning department as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and to otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and other applicable state laws, and with all applicable federal laws.
(b) If a project meets all of the requirements of subdivision (a), the person undertaking the project shall do all of the following:
(1) Notify, in writing, any affected public agency, including, but not limited to, any public agency having permit, land use, environmental, public health protection, or emergency response authority of the exemption of the project from this division by subdivision (a).
(2) Provide notice to the public in the affected area in a manner consistent with paragraph (3) of subdivision (b) of Section 21092.
(3) In the case of private rights-of-way over private property, receive from the underlying property owner permission for access to the property.
(4) Comply with all conditions otherwise authorized by law, imposed by the city or county planning department as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and other applicable state laws, and with all applicable federal laws.
(c) Prior to January 1, 1999, this section shall not apply to ARCO Pipeline Company's crude oil pipelines designated as Crude Oil Line 1, from Tejon Station south to its terminus, and Crude Oil Line 90.
(d) This section does not apply to either of the following:
(1) A project in which the diameter of the pipeline is increased.
(2) A project undertaken within the boundaries of an oil refinery.

§ 21080.24. Permits; issuance, modification, amendment, or renewal; application of law

This division does not apply to the issuance, modification, amendment, or renewal of any permit by an air pollution control district or air quality management district pursuant to Title V, as defined in Section 39053.3 of the Health and Safety Code, or pursuant to a district Title V program established under Sections 42301.10, 42301.11, and 42301.12 of the Health and Safety Code, unless the issuance, modification, amendment, or renewal authorizes a physical or operational change to a source or facility.
(b) [FN1] Nothing in this section is intended to result in the application of this division to any physical or operational change which, prior to January 1, 1995, was not subject to this division.

§ 21080.26. Fluoridation; application of division; minor alterations

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

§ 21080.32. Exemption of specified actions by publicly owned transit agencies; implementation of budget reductions

(a) This section shall only apply to publicly owned transit agencies, but shall not apply to any publicly owned transit agency created pursuant to Section 130050.2 of the Public Utilities Code.
(b) Except as provided in subdivision (c), and in accordance with subdivision (d), this division does not apply to actions taken on or after July 1, 1995, by a publicly owned transit agency to implement budget reductions caused by the failure of agency revenues to adequately fund agency programs and facilities.
(c) This section does not apply to any action to reduce or eliminate a transit service, facility, program, or activity that was approved or adopted as a mitigation measure in any environmental document authorized by this division or the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.) or to any state or federal requirement that is imposed for the protection of the environment.
(d)(1) This section applies only to actions taken after the publicly owned transit agency has made a finding that there is a fiscal emergency caused by the failure of agency revenues to adequately fund agency programs and facilities, and after the publicly owned transit agency has held a public hearing to consider those actions. A publicly owned transit agency that has held such a hearing shall respond within 30 days at a regular public meeting to suggestions made by the public at the initial public hearing. Those actions shall be limited to projects defined in subdivision (a) or (b) of Section 21065 which initiate or increase fees, rates, or charges charged for any existing public service, program, or activity; or reduce or eliminate the availability of an existing publicly owned transit service, facility, program, or activity.
(2) For purposes of this subdivision, "fiscal emergency," when applied to a publicly owned transit agency, means that the agency is projected to have negative working capital within one year from the date that the agency makes the finding that there is a fiscal emergency pursuant to this section. Working capital shall be determined by adding together all unrestricted cash, unrestricted short-term investments, and unrestricted short-term accounts receivable and then subtracting unrestricted accounts payable. Employee retirement funds, including Internal Revenue Code Section 457 deferred compensation plans and Section 401 (k) plans, health insurance reserves, bond payment reserves, workers' compensation reserves, and insurance reserves, shall not be factored into the formula for working capital.

§ 21080.33. Emergency projects to maintain, repair or restore

existing highways; application of division; exceptions

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

§ 21080.35. Carrying out or approving a project; definition

For the purposes of Section 21069, the phrase "carrying out or approving a project" shall include the carrying out or approval of a plan for a project that expands or enlarges an existing publicly owned airport by any political subdivision, as described in Section 21661.6 of the Public Utilities Code.

§ 21081. Necessary findings where environmental impact report identifies effects

Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:
(a) The public agency makes one or more of the following findings with respect to each significant effect:
(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

§ 21081.5. Feasibility of mitigation measures or project alternatives; basis for findings

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

§ 21081.6. Findings or negative declarations; reporting or monitoring project changes; effect on environment; conditions

(a) When making the findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:
(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.
(2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.
(b) A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design.
(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

§ 21081.7. Transportation information; submission of report to transportation planning agency

Transportation information resulting from the reporting or monitoring program required to be adopted by a public agency pursuant to Section 21081.6 shall be submitted to the transportation planning agency in the region where the project is located and to the Department of Transportation ***for a*** project of statewide, regional, or areawide significance according to criteria developed pursuant to Section 21083. The transportation planning agency and the Department of Transportation shall adopt guidelines for the submittal of those reporting or monitoring programs.

§ 21082. Public agencies; adoption of objectives, criteria and procedures; consistency with guidelines

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

§ 21082.1. Draft environmental impact report, environmental impact report, or negative declaration; preparation by public agency

(a) Any draft environmental impact report, environmental impact report, or negative declaration prepared pursuant to the requirements of this division shall be prepared directly by, or under contract to, a public agency.
(b) This section is not intended to prohibit, and shall not be construed as prohibiting, any person from submitting information or other comments to the public agency responsible for preparing an environmental impact report, draft environmental impact report, or negative declaration. The information or other comments may be submitted in any format, shall be considered by the public agency, and may be included, in whole or in part, in any report or declaration.
(c) The lead agency shall do all of the following:
(1) Independently review and analyze any report or declaration required by this division.
(2) Circulate draft documents which reflect its independent judgment.
(3) As part of the adoption of a negative declaration or certification of an environmental impact report, find that the report or declaration reflects the independent judgment of the lead agency.

§ 21082.2. Significant effect on environment; determination; environmental impact report preparation

(a) The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record.
(b) The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.
(c) Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.
(d) If there is substantial evidence, in light of the whole record before the lead agency, that a project may have a significant effect on the environment, an environmental impact report shall be prepared.
(e) Statements in an environmental impact report and comments with respect to an environmental impact report shall not be deemed determinative of whether the project may have a significant effect on the environment.

§ 21083. Office of planning and research; preparation and development of guidelines; conditions

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:
(a) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.
(b) The possible effects of a project are individually limited but cumulatively considerable. As used in this subdivision, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.
(c) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.
The guidelines shall also include procedures for determining the lead agency pursuant to Section 21165.
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.
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.

§ 21083.1. Legislative intent; interpretation by courts

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

§ 21083.2. Archaeological resources; determination of effect of project; EIR or negative declaration; mitigation measures

(a) [Determination of significant effect on archaeological resources; EIR and negative declarations] As part of the determination made pursuant to Section 21080.1, the lead agency shall determine whether the project may have a significant effect on archaeological resources. If the lead agency determines that the project may have a significant effect on unique archaeological resources, the environmental impact report shall address the issue of those resources. An environmental impact report, if otherwise necessary, shall not address the issue of nonunique archaeological resources. A negative declaration shall be issued with

respect to a project if, but for the issue of nonunique archaeological resources, the negative declaration would be otherwise issued.
(b) [Preservation or nondisturbance requirements] If it can be demonstrated that a project will cause damage to a unique archaeological resource, the lead agency may require reasonable efforts to be made to permit any or all of these resources to be preserved in place or left in an undisturbed state. Examples of that treatment, in no order of preference, may include, but are not limited to, any of the following:
(1) Planning construction to avoid archaeological sites.
(2) Deeding archaeological sites into permanent conservation easements.
(3) Capping or covering archaeological sites with a layer of soil before building on the sites.
(4) Planning parks, greenspace, or other open space to incorporate archaeological sites.
(c) [Mitigation measures] To the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, mitigation measures shall be required as provided in this subdivision. The project applicant shall provide a guarantee to the lead agency to pay one-half the estimated cost of mitigating the significant effects of the project on unique archaeological resources. In determining payment, the lead agency shall give due consideration to the in-kind value of project design or expenditures that are intended to permit any or all archaeological resources or California Native American culturally significant sites to be preserved in place or left in an undisturbed state. When a final decision is made to carry out or approve the project, the lead agency shall, if necessary, reduce the specified mitigation measures to those which can be funded with the money guaranteed by the project applicant plus the money voluntarily guaranteed by any other person or persons for those mitigation purposes. In order to allow time for interested persons to provide the funding guarantee referred to in this subdivision, a final decision to carry out or approve a project shall not occur sooner than 60 days after completion of the recommended special environmental impact report required by this section.
(d) [Excavation as mitigation] Excavation as mitigation shall be restricted to those parts of the unique archaeological resource that would be damaged or destroyed by the project. Excavation as mitigation shall not be required for a unique archaeological resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the resource, if this determination is documented in the environmental impact report.
(e) [Amount paid for mitigation measures] In no event shall the amount paid by a project applicant for mitigation measures required pursuant to subdivision (c) exceed the following amounts:
(1) An amount equal to one-half of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a commercial or industrial project.
(2) An amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a housing project consisting of a single unit.
(3) If a housing project consists of more than a single unit, an amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of the project for the first unit plus the sum of the following:
(A) Two hundred dollars ($200) per unit for any of the next 99 units.
(B) One hundred fifty dollars ($150) per unit for any of the next 400 units.
(C) One hundred dollars ($100) per unit in excess of 500 units.
(f) [Field excavation phase of mitigation plan] Unless special or unusual circumstances warrant an exception, the field excavation phase of an approved mitigation plan shall be completed within 90 days after final approval necessary to implement the physical development of the project or, if a phased project, in connection with the phased portion to which the specific mitigation measures are applicable. However, the project applicant may extend that period if he or she so elects. Nothing in this section shall nullify protections for Indian cemeteries under any other provision of law.
(g) [Unique archaeological resource; definition] As used in this section, "unique archaeological resource" means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:
(1) Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information.
(2) Has a special and particular quality such as being the oldest of its type or the best

available example of its type.
(3) Is directly associated with a scientifically recognized important prehistoric or historic event or person.
(h) [Nonunique archaeological resource; definition] As used in this section, "nonunique archaeological resource" means an archaeological artifact, object, or site which does not meet the criteria in subdivision (g). A nonunique archaeological resource need be given no further consideration, other than the simple recording of its existence by the lead agency if it so elects.
(i) [Accidental discoveries of archaeological sites; provisions by lead agency] As part of the objectives, criteria, and procedures required by Section 21082 or as part of conditions imposed for mitigation, a lead agency may make provisions for archaeological sites accidentally discovered during construction. These provisions may include an immediate evaluation of the find. If the find is determined to be a unique archaeological resource, contingency funding and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures may be required under the provisions set forth in this section. Construction work may continue on other parts of the building site while archaeological mitigation takes place.
(j) [Application to specified projects] This section does not apply to any project described in subdivision (a) or (b) of Section 21065 if the lead agency elects to comply with all other applicable provisions of this division. This section does not apply to any project described in subdivision (c) of Section 21065 if the applicant and the lead agency jointly elect to comply with all other applicable provisions of this division.
(k) [Additional costs to local agencies] Any additional costs to any local agency as a result of complying with this section with respect to a project of other than a public agency shall be borne by the project applicant.
(l) [Application of section] Nothing in this section is intended to affect or modify the requirements of Section 21084 or 21084.1.

§ 21083.3. Application of division to approval of subdivision map or other project; limitation; mitigation measures under prior environmental impact report; public hearing; finding

(a) If a parcel has been zoned to accommodate a particular density of development or has been designated in a community plan to accommodate a particular density of development and an environmental impact report was certified for that zoning or planning action, the application of this division to the approval of any subdivision map or other project that is consistent with the zoning or community plan shall be limited to effects upon the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report.
(b) If a development project is consistent with the general plan of a local agency and an environmental impact report was certified with respect to that general plan, the application of this division to the approval of that development project shall be limited to effects on the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report.
(c) Nothing in this section affects any requirement to analyze potentially significant offsite impacts and cumulative impacts of the project not discussed in the prior environmental impact report with respect to the general plan. However, all public agencies with authority to mitigate the significant effects shall undertake or require the undertaking of any feasible mitigation measures specified in the prior environmental impact report relevant to a significant effect which the project will have on the environment or, if not, then the provisions of this section shall have no application to that effect. The lead agency shall make a finding, at a public hearing, as to whether those mitigation measures will be undertaken.
(d) An effect of a project upon the environment shall not be considered peculiar to the parcel or to the project, for purposes of this section, if uniformly applied development policies or

standards have been previously adopted by the city or county, with a finding based upon substantial evidence, which need not include an environmental impact report, that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.
(e) Where a community plan is the basis for application of this section, any rezoning action consistent with the community plan shall be a project subject to exemption from this division in accordance with this section. As used in this section, "community plan" means a part of the general plan of a city or county which (1) applies to a defined geographic portion of the total area included in the general plan, (2) complies with Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code by including or referencing each of the mandatory elements specified in Section 65302 of the Government Code, and (3) contains specific development policies adopted for the area included in the community plan and identifies measures to implement those policies, so that the policies which will apply to each parcel can be determined.
(f) No person shall have standing to bring an action or proceeding to attack, review, set aside, void, or annul a finding of a public agency made at a public hearing pursuant to subdivision (a) with respect to the conformity of the project to the mitigation measures identified in the prior environmental impact report for the zoning or planning action, unless he or she has participated in that public hearing. However, this subdivision shall not be applicable if the local agency failed to give public notice of the hearing as required by law. For purposes of this subdivision, a person has participated in the public hearing if he or she has either submitted oral or written testimony regarding the proposed determination, finding, or decision prior to the close of the hearing.
(g) Any community plan adopted prior to January 1, 1982, which does not comply with the definitional criteria specified in subdivision (e) may be amended to comply with that criteria, in which case the plan shall be deemed a "community plan" within the meaning of subdivision (e) if (1) an environmental impact report was certified for adoption of the plan, and (2) at the time of the conforming amendment, the environmental impact report has not been held inadequate by a court of this state and is not the subject of pending litigation challenging its adequacy.

§ 21083.5. Environmental impact statement or report; submission in lieu of impact report; compliance by adoption of Tahoe regional plan; public review and notice requirements

(a) The guidelines prepared and adopted pursuant to Section 21083 shall provide that, when an environmental impact statement has been, or will be, prepared for the same project pursuant to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) and implementing regulations, or an environmental impact report has been, or will be, prepared for the same project pursuant to the requirements of the Tahoe Regional Planning Compact (Section 66801 of the Government Code) and implementing regulations, all or any part of that statement or report may be submitted in lieu of all or any part of an environmental impact report required by this division, if that statement or report, or the part which is used, complies with the requirements of this division and the guidelines adopted pursuant thereto.
(b) Notwithstanding subdivision (a), compliance with this division may be achieved for the adoption in a city or county general plan, without any additions or change, of all or any part of the regional plan prepared pursuant to the Tahoe Regional Planning Compact and implementing regulations by reviewing environmental documents prepared by the Tahoe Regional Planning Agency addressing the plan, providing an analysis pursuant to this division of any significant effect on the environment not addressed in the environmental documents, and proceeding in accordance with Section 21081. This subdivision does not exempt a city or county from complying with the public review and notice requirements of this division.

§ 21083.6. Combined environmental impact report and statement; time limits

In the event that a project requires both an environmental impact report prepared pursuant to the requirements of this division and an environmental impact statement prepared pursuant to the requirements of the National Environmental Policy Act of 1969, an applicant may request and the lead agency may waive the time limits established pursuant to Section 21100.2 or 21151.5 if it finds that additional time is required to prepare a combined environmental impact report-environmental impact statement and that the time required to prepare such a combined document would be shorter than that required to prepare each document separately.

§ 21083.7. Use of impact statement as the impact report; consultations

(a) In the event that a project requires both an environmental impact report prepared pursuant to the requirements of this division and an environmental impact statement prepared pursuant to the requirements of the National Environmental Policy Act of 1969, the lead agency shall, whenever possible, use the environmental impact statement as such environmental impact report as provided in Section 21083.5 .
(b) In order to implement this section, each lead agency to which this section is applicable shall do both of the following, as soon as possible:
(1) Consult with the federal agency required to prepare such environmental impact statement.
(2) Notify the federal agency required to prepare the environmental impact statement regarding any scoping meeting for the proposed project.

§ 21083.8.1. Reuse plans

(a)(1) For purposes of this section, "reuse plan" for a military base or reservation has the same meaning as the term as defined in paragraph (1) of subdivision (a) of Section 21083.8, except that the reuse plan shall also consist of a statement of development policies, include a diagram or diagrams illustrating its provisions, and make the designation required in paragraph (2) of this section.
(2) The reuse plan shall designate the proposed general distribution and general location of development intensity for housing, business, industry, open space, recreation, natural resources, public buildings and grounds, roads and other transportation facilities, infrastructure, and other categories of public and private uses of land.
(b)(1) When preparing and certifying an environmental impact report for a reuse plan, including when utilizing an environmental impact statement pursuant to Section 21083.5, in addition to the procedure authorized pursuant to subdivision (b) of Section 21083.8, 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 applicable general plan, specific plan, and redevelopment plan, and including other applicable provisions of adopted congestion management plans, habitat conservation or natural communities conservation plans, integrated waste management plans, and county hazardous waste management plans.
(D) At the close of the hearing, the lead agency shall state, in writing, the specific economic or social reasons, including, but not limited to, new job creation, opportunities for employment of skilled workers, availability of low and moderate income housing, and economic continuity, which support the selection of the baseline.
(d)(1) Nothing in this section shall in any way limit the scope of a review or determination of significance of the presence of hazardous or toxic wastes, substances, or materials including, but not limited to, contaminated soils and groundwater, nor shall the regulation of hazardous or toxic wastes, substances, or materials be constrained by prior levels of activity that existed at the time that the federal agency decision to close the military base or reservation became final.
(2) This section does not apply to any project undertaken pursuant to Chapter 6.5 (commencing with Section 25100) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of the Health and Safety Code, or pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).
(3) This section may apply to any reuse plan environmental impact report for which a notice of preparation pursuant to subdivision (a) of Section 21092 is issued within one year from the date that the federal record of decision was rendered for the military base or reservation closure or realignment and reuse, or prior to January 1, 1997, whichever is later, if the *environmental impact report is completed and certified within five years from the date that* the federal record of decision was rendered.
(e) All subsequent development at the military base or reservation site shall be subject to all applicable federal, state, or local laws, including, but not limited to, those relating to air quality, water quality, traffic, threatened and endangered species, noise, and hazardous or toxic wastes, substances, or materials.

§ 21083.9. Scoping meetings

(a) Notwithstanding Section 21080.4, 21104, or 21153, a lead agency shall call at least one scoping meeting for any of the following:

(1) A proposed project that may affect highways or other facilities under the jurisdiction of the Department of Transportation if the meeting is requested by the department. The lead agency shall call the scoping meeting as soon as possible, but not later than 30 days after receiving the request from the Department of Transportation.
(2) A project of statewide, regional, or areawide significance.
(b) The lead agency shall provide notice of at least one scoping meeting held pursuant to paragraph (2) of subdivision (a) to all of the following:
(1) Any county or city that borders on a county or city within which the project is located, unless otherwise designated annually by agreement between the lead agency and the county or city.
(2) Any responsible agency.
(3) Any public agency that has jurisdiction by law with respect to the project.
(4) Any organization or individual who has filed a written request for the notice.
(c) For any entity, organization, or individual that is required to be provided notice of a lead agency public meeting, the requirement for notice of a scoping meeting pursuant to subdivision (b) may be met by including the notice of a scoping meeting in the public meeting notice.

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

(a) The guidelines prepared and adopted pursuant to Section 21083 shall include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from this division. In adopting the guidelines, the Secretary of the Resources Agency shall make a finding that the listed classes of projects referred to in this section do not have a significant effect on the environment.
(b) No project which may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway designated as an official state scenic highway, pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, shall be exempted from this division pursuant to subdivision (a). This subdivision does not apply to improvements as mitigation for a project for which a negative declaration has been approved or an environmental impact report has been certified.
(c) No project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code shall be exempted from this division pursuant to subdivision (a).
(d) The changes made to this section by Chapter 1212 of the Statutes of 1991 apply only to projects for which applications have not been deemed complete on or before January 1, 1992, pursuant to Section 65943 of the Government Code.
(e) No project that may cause a substantial adverse change in the significance of an historical resource, as specified in Section 21084.1, shall be exempted from this division pursuant to subdivision (a).

§ 21084.1. Historical resource; substantial adverse change

A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources. Historical resources included in a local register of historical resources, as defined in subdivision (k) of Section 5020.1, or deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1, are presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. The fact that a resource is not listed in, or determined to be eligible for listing in,

the California Register of Historical Resources, not included in a local register of historical resources, or not deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1 shall not preclude a lead agency from determining whether the resource may be an historical resource for purposes of this section.

§ 21084.2. Medical waste treatment; steam sterilization; determination of application of regulations

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

§ 21085. Housing developments; reduction of units as mitigation measure or project alternative

With respect to a project which includes housing development, a public agency shall not, pursuant to this division, reduce the proposed number of housing units as a mitigation measure or project alternative for a particular significant effect on the environment if it determines that there is another feasible specific mitigation measure or project alternative that would provide a comparable level of mitigation. This section shall not affect any other requirement regarding the residential density of that project.

§ 21085.7. Airport projects at specified airport; environmental impact reports; mitigation measures relating to salt ponds

(a)(1) If an environmental impact report for a project at an airport that is owned by a city and county and that is located in another county identifies as a proposed mitigation measure the acquisition, enhancement, and restoration of salt ponds and the lead agency proposes the payment of funds to one or more public agencies to mitigate the impacts of the proposed project and the public agency or agencies propose to use those funds to acquire, enhance, and restore land, the lead agency shall include in the environmental impact report on the proposed project a detailed statement of the mitigation measure, including all of the following:
(A) An analysis of the relationship between the impacts of the proposed project and the benefits of the proposed acquisition, enhancement, and restoration of land that the payment of funds would allow.
(B) An analysis of the feasibility of the proposed acquisition, enhancement, and restoration.
(C) A discussion of the expected impacts of the proposed acquisition, enhancement, and restoration.
(2) The detailed statement of the mitigation measure shall consist of the following:

(A) Information in existence at the time the environmental impact report is prepared, including the restoration goals specific to salt ponds as identified in the San Francisco Estuary Baylands Ecosystem Goals Report published in 1999.
(B) Information that is reasonably obtainable, including, but not limited to, a hydrodynamic analysis of potential flood impacts, and analyses regarding the potential for the following:
(i) Changes to the waters and tidal currents of the southern portions of the San Francisco Bay.
(ii) Potential alterations to the San Francisco Bay floor.
(iii) Related impacts on water quality.
(3) If, at the time of the publication of the draft environmental impact report, a restoration plan has not been adopted by a public agency with jurisdiction to carry out the restoration project, the lead agency for the airport project need not prepare a detailed restoration plan or analyze the impacts of a restoration plan for the lands proposed for acquisition, enhancement, and restoration; however, the lead agency shall evaluate a conceptual restoration plan, and shall fully evaluate a potentially feasible alternate mitigation measure that does not depend on the salt ponds.
(b) If the lead agency for the airport project approves the proposed project and approves the payment of funds for the acquisition, enhancement, and restoration of land as a mitigation measure, it shall make both such approvals contingent upon an agreement between the lead agency and the public agency or agencies wherein the public agency or agencies agree to use the funds solely for the following purposes:
(1) The acquisition, enhancement, and restoration of the lands identified by the lead agency in its detailed statement of the mitigation measure.
(2) The preparation and implementation of a restoration plan that, at a minimum, mitigates the significant impact that would be substantially lessened or avoided by implementation of the mitigation measure as identified in the final environmental impact report certified by the lead agency.
(c) The agreement described in subdivision (b) shall identify a feasible alternative mitigation measure to be implemented if the restoration of all or a portion of the salt ponds proves to be infeasible, as determined by the lead agency.
(d) Nothing in this section shall be interpreted to assess or assign liability with respect to the salt ponds.
(e) Funds for the costs of mitigation shall include the costs of the environmental reviews conducted by a state agency of the restoration plan prepared by a state agency.
(f) This section shall only apply to the acquisition, enhancement, and restoration of salt ponds located in the southerly portion of the San Francisco Bay.
(g) As used in this section, "acquisition, enhancement, and restoration" also includes acquisition, enhancement, or restoration.
(h) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

§ 21086. Addition or deletion of exempt classes of projects; procedure

A public agency may, at any time, request the addition or deletion of a class of projects, to the list designated pursuant to Section 21084. Such a request shall be made in writing to the Office of Planning and Research and shall include information supporting the public agency's position that such class of projects does, or does not, have a significant effect on the environment.
The Office of Planning and Research shall review each such request and, as soon as possible, shall submit its recommendation to the Secretary of the Resources Agency.
Following the receipt of such recommendation, the Secretary of the Resources Agency may add or delete the class of projects to the list of classes of projects designated pursuant to Section 21084 which are exempt from the requirements of this division.
The addition or deletion of a class of projects, as provided in this section, to the list specified in Section 21084 shall constitute an amendment to the guidelines adopted pursuant to

Section 21083 and shall be adopted in the manner prescribed in Sections 21083, 21084, and 21087.

§ 21087. Review of guidelines; changes or amendments

(a) The Office of Planning and Research shall, at least once every two years, review the guidelines adopted pursuant to Section 21083 and shall recommend proposed changes or amendments to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt guidelines, and any amendments thereto, at least once every two years, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, guidelines shall not be adopted or amended without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.
(b) Within six months of the enactment of AB 314 of the 1993-94 Regular Session of the Legislature, the Office of Planning and Research shall recommend proposed changes and the Secretary of the Resources Agency shall certify and adopt revisions to the guidelines pursuant to Section 21083 to reflect the changes to this division enacted during the 1993-94 Regular Session of the Legislature.

§ 21088. Distribution of guidelines, amendments and changes; notice

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

§ 21089. Fees

(a) A lead agency may charge and collect a reasonable fee from any person proposing a project subject to this division in order to recover the estimated costs incurred by the lead agency in preparing a negative declaration or an environmental impact report for the project and for procedures necessary to comply with this division on the project. Litigation expenses, costs, and fees incurred in actions alleging noncompliance with this division under Section 21167 are not recoverable under this section.
(b) The Department of Fish and Game may charge and collect filing fees, as provided in Section 711.4 of the Fish and Game Code. Notwithstanding Section 21080.1, a finding required under Section 21081, or any project approved under a certified regulatory program authorized pursuant to Section 21080.5 is not operative, vested, or final until the filing fees required pursuant to Section 711.4 of the Fish and Game Code are paid.

§ 21090. Redevelopment plan deemed single project

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 deemed separate and distinct from field development project

For all purposes of this division, a geothermal exploratory project shall be deemed to be separate and distinct from any subsequent geothermal field development project as defined in Section 65928.5 of the Government Code.

§ 21091. Draft environmental impact reports and negative declarations; review periods

(a) The public review period for a draft environmental impact report shall not be less than 30 days. If the draft environmental impact report is submitted to the State Clearinghouse for review, the review period shall be at least 45 days.
(b) The public review period for a proposed negative declaration shall not be less than 20 days. If the proposed negative declaration is submitted to the State Clearinghouse for review, the review period shall be at least 30 days.
(c) Notwithstanding subdivisions (a) and (b), if a draft environmental impact report or a proposed negative declaration is submitted to the State Clearinghouse for review and the period of review by the State Clearinghouse is longer than the public review period established pursuant to subdivision (a) or (b), whichever is applicable, the public review period shall be at least as long as the period of review by the State Clearinghouse.
(d)(1) The lead agency shall consider any comments it receives on a draft environmental impact report or on a proposed negative declaration, which are received within the public review period.
(2)(A) With respect to the consideration of comments received on a draft environmental impact report, the lead agency shall evaluate any comments on environmental issues that are received from persons who have reviewed the draft and shall prepare a written response pursuant to subparagraph (B). The lead agency may also respond to comments that are received after the close of the public review period.
(B) The written response shall describe the disposition of any significant environmental issue that is raised by commenters. The responses shall be prepared consistent with Section 15088 of Title 14 of the California Code of Regulations, as those regulations existed on June 1, 1993.
(e)(1) Criteria for shorter review periods by the State Clearinghouse for documents which must be submitted to the State Clearinghouse shall be set forth in the written guidelines issued by the Office of Planning and Research and made available to the public.
(2) Those shortened review periods shall not be less than 30 days for a draft environmental impact report and 20 days for a negative declaration.
(3) Any request for a shortened review period shall only be made in writing by the decisionmaking body of the lead agency to the Office of Planning and Research. The decisionmaking body may designate by resolution or ordinance a person authorized to request a shortened review period. Any designated person shall notify the decisionmaking body of this request.
(4) Any request approved by the State Clearinghouse shall be consistent with the criteria set forth in the written guidelines of the Office of Planning and Research.
(5) A shortened review period shall not be approved by the Office of Planning and Research for any proposed project of statewide, regional, or areawide environmental significance as determined pursuant to Section 21083.
(6) Any approval of a shortened review period shall be given prior to, and reflected in, the public notice required pursuant to Section 21092.
(f) Prior to carrying out or approving a project for which a negative declaration has been adopted, the lead agency shall consider the negative declaration together with any

comments that were received and considered pursuant to paragraph (1) of subdivision (d).

§ 21091.5. Public review period for draft environmental impact report; publicly owned airports

Notwithstanding subdivision (a) of Section 21091, or any other provision of this division, the public review period for a draft environmental impact report prepared for a proposed project involving the expansion or enlargement of a publicly owned airport requiring the acquisition of any tide and submerged lands or other lands subject to the public trust for commerce, navigation, or fisheries, or any interest therein, shall be not less than 120 days.

§ 21092. Public notice of preparation of environmental impact report or negative declaration; publication

(a) Any lead agency which is preparing an environmental impact report or a negative declaration or making a determination pursuant to Section 21157 shall provide public notice of that fact within a reasonable period of time prior to certification of the environmental impact report or adoption of the negative declaration.
(b)(1) The notice shall specify the period during which comments will be received on the draft environmental report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, and the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review.
(2) This section shall not be construed in any manner which results in the invalidation of an action because of the alleged inadequacy of the notice content, provided that there has been substantial compliance with the notice content requirements of this section.
(3) The notice required by this section shall be given to the last known name and address of all organizations and individuals who have previously requested notice and shall also be given by at least one of the following procedures:
(A) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.
(B) Posting of notice by the lead agency on- and off-site in the area where the project is to be located.
(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.
(c) For any project involving the burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, meeting the qualifications of subdivision (d), notice shall be given to all organizations and individuals who have previously requested notice and shall also be given by at least the procedures specified in subparagraphs (A), (B), and (C) of paragraph (3) of subdivision (b). In addition, notification shall be given by direct mailing to the owners and occupants of property within one- fourth of a mile of any parcel or parcels on which is located a project subject to this subdivision. This subdivision does not apply to any project for which notice has already been provided as of July 14, 1989, in compliance with this section as it existed prior to July 14, 1989.
(d) The notice requirements of subdivision (c) apply to both of the following:
(1) The construction of a new facility.
(2) The expansion of an existing facility which burns hazardous waste which would increase its permitted capacity by more than 10 percent. For purposes of this paragraph, the amount of expansion of an existing facility shall be calculated by comparing the proposed facility

capacity with whichever of the following is applicable:
(A) The facility capacity approved in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted before January 1, 1990.
(B) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.
(e) The notice requirements specified in subdivision (b) or (c) shall not preclude a public agency from providing additional notice by other means if the agency so desires, or from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

§ 21092.1. Addition of new information; notice and consultation

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

§ 21092.2. Requests for certain notices

The notices required pursuant to Sections 21080.4, ***21083.9***, 21092, 21108, and 21152 shall be mailed to any person who has filed a written request for notices with either the clerk of the governing body or, if there is no governing body, the director of the agency. The request may also be filed with any other person designated by the governing body or director to receive these requests. The agency may require requests for notices to be annually renewed. The public agency may charge a fee, except to other public agencies, ***that*** is reasonably related to the costs of providing this service. This section ***may*** not be construed in any manner ***that*** results in the invalidation of an action because of the failure of a person to receive a requested notice, provided that there has been substantial compliance with the requirements of this section.

§ 21092.3. Posting of certain notices

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

§ 21092.4. Consultation with transportation planning agencies and public agencies

(a) For a project of statewide, regional, or areawide significance, the lead agency shall consult with transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project. Consultation shall be conducted in the same manner as for responsible agencies pursuant to this division, and shall be for the purpose of the lead agency obtaining information concerning the project's effect on major local arterials, public transit, freeways, highways, and rail transit service within the jurisdiction of a transportation planning agency or a public agency which is consulted by the lead agency. A transportation planning agency or public agency which provides information to the lead agency shall be notified of, and provided with copies of, environmental documents pertaining to the project.
(b) As used in this section, "transportation facilities" includes major local arterials and public transit within five miles of the project site and freeways, highways, and rail transit service within 10 miles of the project site.

§ 21092.5. Proposed response to public agency comments received by lead agency; notice to agency commenting on negative declaration; untimely comments

(a) At least 10 days prior to certifying an environmental impact report, the lead agency shall provide a written proposed response to a public agency on comments made by that agency which conform with the requirements of this division. Proposed responses shall conform with the legal standards established for responses to comments on draft environmental impact reports. Copies of responses or the environmental document in which they are contained, prepared in conformance with other requirements of this division and the guidelines adopted pursuant to Section 21083, may be used to meet the requirements imposed by this section.
(b) The lead agency shall notify any public agency which comments on a negative declaration, of the public hearing or hearings, if any, on the project for which the negative declaration was prepared. If notice to the commenting public agency is provided pursuant to Section 21092, the notice shall satisfy the requirement of this subdivision.
(c) Nothing in this section requires the lead agency to respond to comments not received within the comment periods specified in this division, to reopen comment periods, or to delay acting on a negative declaration or environmental impact report.

§ 21092.6. Application of Govt. C. § 65962.5; duties of lead agency; notice by environmental protection agency of failure to specify

(a) The lead agency shall consult the lists compiled pursuant to Section 65962.5 of the Government Code to determine whether the project and any alternatives are located on a site which is included on any list. The lead agency shall indicate whether a site is on any list not already identified by the applicant. The lead agency shall specify the list and include the information in the statement required pursuant to subdivision (f) of Section 65962.5 of the Government Code, in the notice required pursuant to Section 21080.4, a negative declaration, and a draft environmental impact report. The requirement in this section to specify any list shall not be construed to limit compliance with this division.
(b) If a project or any alternatives are located on a site which is included on any of the lists compiled pursuant to Section 65962.5 of the Government Code and the lead agency did not accurately specify or did not specify any list pursuant to subdivision (a), the California Environmental Protection Agency shall notify the lead agency specifying any list with the site when it receives notice pursuant to Section 21080.4, a negative declaration, and a draft environmental impact report. The California Environmental Protection Agency shall not be liable for failure to notify the lead agency pursuant to this subdivision.
(c) This section applies only to projects for which applications have not been deemed complete pursuant to Section 65943 of the Government Code on or before January 1, 1992.

§ 21093. Legislative findings and declaration; public agencies may tier environmental impact reports

(a) The Legislature finds and declares that tiering of environmental impact reports will promote construction of needed housing and other development projects by (1) streamlining regulatory procedures, (2) avoiding repetitive discussions of the same issues in successive environmental impact reports, and (3) ensuring that environmental impact reports prepared for later projects which are consistent with a previously approved policy, plan, program, or ordinance concentrate upon environmental effects which may be mitigated or avoided in connection with the decision on each later project. The Legislature further finds and declares that tiering is appropriate when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous environmental impact reports.
(b) To achieve this purpose, environmental impact reports shall be tiered whenever feasible, as determined by the lead agency.

§ 21094. Later projects; tiered environmental impact reports; initial study; use of prior reports

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

§ 21095. Amendment to state guidelines to provide optional methodology to evaluate environmental effects of agricultural land conversions

(a) The Resources Agency, in consultation with the Office of Planning and Research, shall develop an amendment to Appendix G of the state guidelines, for adoption pursuant to Section 21083, to provide lead agencies an optional methodology to ensure that significant effects on the environment of agricultural land conversions are quantitatively and consistently considered in the environmental review process.
(b) The Department of Conservation, in consultation with the United States Department of Agriculture pursuant to Section 658.6 of Title 7 of the Code of Federal Regulations, and in consultation with the Resources Agency and the Office of Planning and Research, shall develop a state model land evaluation and site assessment system, contingent upon the availability of funding from non-General Fund sources. The department shall seek funding for that purpose from non-General Fund sources, including, but not limited to, the United States Department of Agriculture.
(c) In lieu of developing an amendment to Appendix G of the state guidelines pursuant to subdivision (a), the Resources Agency may adopt the state model land evaluation and site assessment system developed pursuant to subdivision (b) as that amendment to Appendix G.

§ 21096. Airport-related safety hazards and noise problems; projects within airport comprehensive land use plan boundaries or within two nautical miles of airport; preparation of environmental impact reports

(a) If a lead agency prepares an environmental impact report for a project situated within airport 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.
(b) A lead agency shall not adopt a negative declaration for a project described in subdivision (a) unless the lead agency considers whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

5846