County of Marin
Regulatory Improvements Advisory Committee
Meeting 4: CEQA
January 30, 2013

Time: Info Session - 1:00 – 1:25 pm
RIAC Meeting - 1:30 – 3:30pm

Location: Marin County Civic Center Administration Building, Conference Room 410B

CEQA Info Session – NOTE: This is to provide an overview of CEQA and County guidelines and procedures. If you are not interested in this piece of the meeting, please arrive at 1:30.

1:00 – 1:25 (25 mins.) Overview of local CEQA policy and procedures (Staff)

- Preparation of CEQA documents
- Processing and noticing
- Distribution to outside agencies
- Responding to comments
- Mitigation monitoring

RIAC Meeting Agenda (1:30 – 3:30):

1:30 (5 mins.) Welcome and overview of meeting agenda (LWC)

1:35 (10 mins.) Review notes from Meeting 3

1:45 (30 mins.) Committee discussion of meeting procedures and deliverables

- Generating more productive discussion
- Reviewing and evaluating case studies
- Engaging practitioners and the development community

2:15 (70 mins.) CEQA implementation discussion (Staff and outside CEQA practitioners)

- What are the community's primary goals for CEQA implementation?
- Where is the CEQA process working well for the County?
- Where can CEQA implementation be improved?

3:25 (5 mins.) Next steps and adjourn

MARIN COUNTY

ENVIRONMENTAL IMPACT REVIEW GUIDELINES (EIR GUIDELINES)

POLICY AND PROCEDURES FOR IMPLEMENTATION OF THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT
(CEQA)

Marin County Community Development Agency
Planning Division, Room 308
3501 Civic Center Drive
San Rafael, California 94903

Adopted May 17, 1994
Marin County Board of Supervisors

MARIN COUNTY ENVIRONMENTAL REVIEW GUIDELINES

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MARIN COUNTY PROCEDURES
FOR IMPLEMENTATION OF THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT

I. Purpose and Objective

The purpose of these regulations is to provide a guide for County Agencies and Departments in carrying out their responsibilities under the California Environmental Quality Act (CEQA). These procedures do not replace the State requirements under CEQA, rather, they are intended to conform with and supplement State procedures by providing local process for the County. County Agencies and Departments must follow these procedures in addition to the State requirements for implementing CEQA.

The overall objective in adopting these procedures is to comply with the policies the legislature and courts have established for preserving and enhancing the environment. CEQA and the State CEQA Guidelines, as amended, are incorporated by reference into these County procedures as if they were set forth in full. In those instances where the County Procedures refer to CEQA or State CEQA Guidelines Sections, the section number may be given to facilitate reference to that section. It should be recognized that CEQA and the State CEQA Guidelines are amended from time to time which may change the number of the section referenced in these County procedures depending on printing date.

In the event any part or provision of these procedures is determined to be invalid, the remaining portions thereof which can be separated from the invalid portions, shall nevertheless continue in full force and effect.

II. Definitions

A. Definitions Adopted. Those definitions set forth in Title 14, Article 4 (beginning with Section 15350) of the California Administrative Code, (hereinafter cited as "State CEQA Guidelines") are hereby adopted and included verbatim.

B. Additional Definitions by Marin County.

1. Board. Board means the Marin County Board of Supervisors.

2. County. County means the County of Marin.

3. Environmental Coordinator. Environmental Coordinator means the County Community Development Agency Director (CDA Director) or the person appointed by the CDA Director for the purpose of determining whether or not a project (either public or private) will have a significant effect on the environment and whether or not environmental review of the project is required pursuant to CEQA. The Environmental Coordinator has the principal responsibility for implementing project environmental review pursuant to CEQA, State CEQA Guidelines and these procedures.

4. Club List. Club List means a mailing list for environmental notices sent by the Lead County Department pursuant to these EIR Guidelines. The club list includes public agencies, private organizations, and individuals who either have jurisdiction, purview, or interest in a project or the area within which it is located and who have submitted a written request and required fees for being placed on the club list.

5. County Agency. County Agency means any County officer, employee, department, commission, or division, or the Board of Supervisors. County Agency does not mean a County-wide organization of which the County is only one member.

6. County Decision Making Body. County Decision Making Body means any County Agency which has the discretionary authority to approve a project.

7. County Permit. County Permit means a decision to issue a County governmental permit, license, grant, certificate, lease, general plan or zoning amendment, local coastal plan amendment, design review approval, building permit, authorization pursuant to a zoning, subdivision, or grading ordinance, regulation or statute, or other entitlement in regard to a project.

8. Director. Director means the Director of any County Department.

9. Draft Negative Declaration. Draft Negative Declaration means a Negative Declaration which has been prepared by the Responsible Department, but has not yet been adopted by the decision making body.

10. Environmental Assessment. Environmental Assessment means a composite development constraints and capabilities analysis prepared for undeveloped, agricultural or redevelopment lands and adjacent water areas located within the Bayfront Conservation Zone pursuant to Marin County Code Chapter 22.50. An Environmental Assessment as defined herein is not an environmental assessment as defined in the National Environmental Policy Act (NEPA).

11. Lead County Department. Lead County Department means the County Department responsible for preparation of the environmental documents in accordance with the Lead Agency concept specified in State CEQA Guidelines and these procedures.

12. Mitigated Negative Declaration. Mitigated Negative Declaration means a Negative Declaration prepared for a project when the initial study has identified potentially significant effects on the environment but revisions made by or agreed to by the applicant before the proposed Negative Declaration is released for public review would avoid the effects or mitigate the effects to an insignificant level, and there is no substantial evidence before the County that the project as revised may have a significant effect on the environment.

13. Planning Commission. Planning Commission means the Marin County Planning Commission.

14. CDA Director. CDA Director means the Director of the Marin County Community Development Agency.

15. Project. Project means and includes both private and public projects.

    a. Private Project. Private project means the whole of an action which has a potential for resulting in a physical impact on the environment, directly or ultimately, that is any of the following:

        (1) An activity undertaken by a non-governmental entity which is supported in whole or in part through public agency contracts, grants, subsidies, loans or other forms of assistance from one or more public agencies.

        (2) An activity involving the issuance of a County permit, as defined in Item Number 6 above, to a non-governmental entity.

        (3) An activity wherein a non-governmental entity requests the enactment or amendment of zoning or subdivision regulations or amendment of the general plan or its elements.

    b. Public Project. Public project means the whole of an action directly undertaken by a County Agency which has a potential for physical impact on the environment, directly or ultimately, including but not limited to public works construction and related activities, clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local general plans or elements thereof, pursuant to Government Code Sections 65100-65700 (Local Planning). This also includes applications for grants which might lead to any of the aforementioned activities. Public project also means an activity involving a discretionary action, approval, or issuance of a mutual agreement, permit or other entitlement to any public agency by the County Agency.

16. Responsible Department. Responsible Department means any County Department or Agency whose budget contains or would contain County funds necessary to undertake a proposed public project; or any County Department or Agency which has the authority to grant or deny discretionary entitlements for private projects.

17. State CEQA Guidelines. State CEQA Guidelines means that document entitled "Guidelines for Implementation of the California Environmental Quality Act of 1970", as amended; these regulations being found in California Administrative Code, Title 14, Division 6, Chapter 3.

18. Project EIR. A Project EIR, as described more fully in the State CEQA Guidelines, Article 11, means an EIR on a specific development project covering all phases of the project planning, construction, and operation.

19. Supplement to EIR. A Supplement to an EIR, as described more fully in the State CEQA Guidelines, Article 11, means minor technical changes or additions to a previous EIR to make the EIR apply to project revisions or changes in circumstances surrounding the project. A Supplement to an EIR need only contain information which addresses those topical issues which are relevant to the project revisions or changed circumstances.

20. Subsequent EIR. A Subsequent EIR, as described more fully in the State CEQA Guidelines, Article 11, means an EIR prepared after certification of a previous project EIR to address changes to a project or environment affected by the project.

21. Multiple and Phased Project EIR. A Multiple or Phased Project EIR, as more fully described in the State CEQA Guidelines, Article 11, means a program EIR prepared for individual projects or a phased project which is undertaken and where the total undertaking comprises a project with a significant environmental effect.

22. Program EIR. A Program EIR, as more fully described in the State CEQA Guidelines, Article 11, means an EIR prepared for a series of actions that can be characterized as one large project.

23. Staged EIR. A Staged EIR, as more fully described in the State CEQA Guidelines, Article 11, is an EIR prepared for a large capital project that will require a number of discretionary approvals from government agencies and one of the approvals will occur more than two years before construction will begin.

24. General Plan EIR. A General Plan EIR, as more fully described in the State CEQA Guidelines, Article 11, is an EIR prepared for the Countywide Plan, element, or amendment thereof whereby the Countywide Plan or element thereof may serve the requirements for preparation of an EIR, in which case no separate EIR need be prepared.

25. Joint EIR/EIS. A Joint EIR/EIS, as more fully described in the State CEQA Guidelines, Articles 11 and 14, is a joint document prepared for a project sponsored by or requiring discretionary approval or funding from both the County and a Federal agency which meets the requirements of both CEQA and NEPA.

26. Addenda to EIR. An Addendum to an EIR, as more fully described in the State CEQA Guidelines, Articles 11, is a document which makes minor technical changes or additions to an EIR. An Addendum to an EIR may be attached to the Final EIR and need not be recirculated prior to certification of the Final EIR and approval of the project.

27. Trustee Agency. Trustee Agency means a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State. Trustee Agencies include the California Department of Fish and Game, the State Lands Commission, the State Department of Parks and Recreation, and the University of California with respect to sites within the Natural Land and Water Reserves System.

III. Environmental Coordinator Duties

A. Authority. The Environmental Coordinator shall be the CDA Director or Community Development Agency staff person appointed by the CDA Director for the purpose of determining whether or not 1) an action is a project subject to environmental review pursuant to CEQA, and 2) whether or not a project will have a significant effect on the environment. The Environmental Coordinator shall have the principal responsibility for implementation of CEQA, the State CEQA Guidelines and these procedures. The Environmental Coordinator shall have the authority to determine the type of environmental documents required for a project and the adequacy and objectivity of environmental documents.

B. Determination of Environmental Effect. The Environmental Coordinator shall determine, in accordance with CEQA, State CEQA Guidelines Sections 15060 and 15061, and these procedures, whether or not public and private projects are exempt from the aforementioned regulations, as so provided therein. Where it is determined that the project is not exempt from CEQA, the Environmental Coordinator shall conduct an Initial Study in accordance with State CEQA Guidelines Sections 15063, 15064 and 15065 to arrive at a determination of whether or not the project may have a significant effect on the environment, and whether a Negative Declaration or an Environmental Impact Report (EIR) is required. If the Environmental Coordinator can determine that an EIR will clearly be required for the project, an Initial Study is not required, but may still be desirable for purposes of focusing the EIR on the effects determined to be significant. The Environmental Coordinator may review and adopt an Initial Study submitted by the Lead County Department. The Environmental Coordinator shall consult with all Responsible Agencies and any Trustee Agencies responsible for natural resources affected by the project prior to determining whether a Negative Declaration or an EIR is required. The Environmental Coordinator shall also solicit comments from other public agencies and individuals with respect to projects when it would be beneficial in the determination of whether or not a project may have a significant environmental impact.

C. Results of Determination. In the event that the Environmental Coordinator determines that a project will have no significant effect on the environment, the Environmental Coordinator shall notify the Director of the Responsible Department of the finding and require that a Negative Declaration or Mitigated Negative Declaration be prepared. In the event that the project may have a significant effect on the environment, the Environmental Coordinator shall notify the Director of the Responsible Department of the findings and require that an EIR be prepared. The determination to require an EIR may specify a subsequent or supplemental EIR, program, tiered, staged, or other type EIR pursuant to State CEQA Guidelines Sections 15160 et seq.

The Environmental Coordinator shall determine whether a Negative Declaration, Mitigated Negative Declaration, or an EIR is required within 30 days of the date that the project application is accepted as complete. Records of determinations shall be kept and be made available for public review. The Environmental Coordinator shall provide the CDA Director with regular status reports summarizing the progress of EIRs, Negative Declarations, and exemption determinations.

D. Appeal. A decision of the Environmental Coordinator may be appealed. Appeals must be in accordance with Article X of this procedure. Such appeals shall be considered by the Planning Commission or other appropriate County Decision Making Body if the Planning Commission is not the hearing body for the determination of environmental effect.

IV. Environmental Impact Evaluation Procedure

A. General. Every County Agency has the obligation to comply with the provisions of the California Environmental Quality Act (CEQA). CEQA applies to the projects, as defined in Article II of this procedure, of County agencies as well as private parties. Generally, CEQA applies to governmental actions as indicated in State CEQA Guidelines Section 15002 (b) and (c), and does not apply to private action unless the action involves governmental participation, financing, or approval.

No public or private project shall be approved or granted until the requirements of CEQA have been satisfied in accordance with the procedures set forth herein.

B. Timing of Environmental Review. County agencies are required to comply with CEQA procedures when they propose to carry out or approve an activity. Environmental review should be carried out as early as feasible in the project planning process. Early review is a useful planning and management tool which enables environmental constraints and opportunities to be considered before project plans and programs are finalized. In the case of public projects, environmental review shall be initiated and, if possible, completed prior to requests for authorization or funding for projects from the Board of Supervisors. All parties responsible for CEQA implementation should carry out the review process as efficiently as possible so that resources may be applied to effective mitigation of environmental impacts.

In the case of private projects where a County Department is required to make a decision on permits within time limits that are so short that review of the project under CEQA would be difficult, in order to comply with the permit statute and CEQA, the application for a project shall not be deemed received for filing under the permit statute until the environmental documentation required by CEQA has been completed. This provision will apply when any of the following conditions occur:

1. The enabling legislation for a program requires a County Department to take action on an application within a specified period of time that is six months or less, and

2. The enabling legislation provides that the project will become approved by operation of law if the County Department fails to take action within the specified time period, and

3. The project involves the issuance of a County permit. (An example of this provision is action by the County on a tentative subdivision map within 50 days pursuant to Article 2, commencing with Section 66452, of Chapter 3, Division 2, Title 2, of the Government Code.) In all cases, environmental review shall be accomplished in compliance with the time requirements of State CEQA Guidelines Sections 15100 et seq., as applicable. For private projects, except as otherwise provided, County Agencies shall complete and certify an EIR in not more than one year, or complete a Negative Declaration in not more than 105 days, measured from the date on which an application requesting approval for the project is received and accepted as complete for CEQA processing by the Department. Completion of a Negative Declaration within the 105 day period need not include approval by the decision making body. Prior to approving a project, the decision making body shall consider and approve the Negative Declaration.

C. Responsibility for Environmental Review.

1. Responsibility of the Community Development Agency. The Environmental Coordinator shall be responsible for directing the overall implementation of CEQA for the County of Marin. However, each department shall ensure that all requirements of CEQA, the State CEQA Guidelines and this procedure are complied with for each project under its jurisdiction.

2. Responsibility of County Department. All County departments shall establish procedures for ensuring that all public projects for which they are the Responsible Department, as defined in Article II of this procedure, are submitted to the

Environmental Coordinator for environmental review pursuant to CEQA. All County departments shall also ensure adequate environmental review of all discretionary permits on private projects which they administer. Each department shall submit private project permit requests to the Environmental Coordinator for a determination as to whether each such permit is exempt from CEQA or a Negative Declaration or EIR is required.

3. Administrative Assistance and Fees. The responsibility to carry out project evaluations and to prepare all environmental documents, as required by CEQA, the State CEQA Guidelines and this procedure for public and private projects shall rest with the Lead County Department. The Environmental Coordinator shall assist the Lead County Departments by providing administrative assistance in the review, noticing, recording and distribution of all documents prepared, the selection of EIR consultants, and the holding of required meetings and public hearings. The Lead County Department shall prepare, or cause to be prepared, Notices of Exemption, Initial Studies, Negative Declarations and EIRs in accordance with these procedures. However, in those instances where an expanded Initial Study leading to either a Negative Declaration or EIR, or in any case where an EIR prepared by a consultant is required, the Environmental Coordinator shall prepare, or cause to be prepared, the expanded Initial Study, Negative Declaration or EIR on behalf of and in coordination with the Lead County Department. In this case, the Community Development Agency shall represent the Lead County Department and shall receive the administrative overhead and processing fees for preparing and processing the required environmental document, pursuant to Article XIV of these procedures.

D. Determination of Environmental Impact.

1. Description of the Ultimate Project. All public and private applications that seek a County permit or entitlement must contain a complete description of the whole and/or ultimate project proposal, from which it can be determined whether the project may have a significant effect on the environment. All phases of project planning, implementation and operation must be included in the project description. Also, the project description must contain a statement of the purpose, goals, rationale for and the objectives sought by the proposed project, as well as a general description of the project's technical, economic and environmental characteristics, considering the principal engineering proposals if any, and supporting public service facilities. In order to be deemed complete for processing pursuant to Government Code 65943, the application must include sufficient data from which impacts may be assessed. Separately entitled environmental data submission documents may be filed with the application. Substantial projects may require technical or statistical data (e.g., geologic, hydrologic, biologic, archaeologic, traffic, visual, demographics, etc.), in addition to the usual environmental questionnaire information required of the applicant.

2. Adequacy of Descriptions. Applications will be reviewed first by the Lead County Department for completeness. Project descriptions which may have some effect on the environment must satisfy requirements for the preparation of an Initial Study. The original filing may be adequate if the Lead County Department can determine therefrom whether or not the project will have any effect on the environment. In order to be determined complete, an application must satisfy the criteria specified in the application forms and ordinances for the specific entitlement and/or permit being sought as well as the criteria for environmental review specified in these procedures.

To be found complete, an application must contain sufficient information to permit a determination of impacts of the project. An application for which an EIR is required shall not be determined to be finally complete until EIR consultant selection is confirmed and a contract prepared for approval, and all fees for preparation and processing of the EIR have been submitted by the project sponsor.

Staff of the Lead County Department shall notify applicant(s) of the finding of a complete or incomplete application in writing within 30 calendar days of the filing of the application (or refiling or resubmittal where the original application was determined not complete). Staff of the Lead County Department shall indicate which part(s) of the application are incomplete, and shall provide a written list to the project sponsor specifying the manner in which the application can be made complete. Applicant(s) may appeal a decision that an application is incomplete by filing a written notice and required appeal fees with the Lead County Department within ten (10) days of notification thereof. Acceptance of an application as complete does not limit the authority of the County to require additional information needed for environmental evaluation of the project.

3. Initiation of Review - Private Project. Persons seeking a County permit or entitlement through a Responsible Department for a proposed private project or seeking a change thereto, shall, at the time of application for same, complete an Environmental Questionnaire on a form prepared by the Environmental Coordinator and may be required to submit additional data and information necessary for an evaluation of the possible environmental impact of the proposed private project. The format for this information is contained in Appendix O, Environmental Review Submission Form. On request of the project sponsor, the Environmental Coordinator in coordination with the Lead County Department, will provide CEQA compliance consultation regarding the potential range of alternatives, impacts, and mitigations for the project, prior to filing of an application.

   Applicant(s) for private projects may submit only technical information in support of environmental documents. The County reserves the preparation of environmental documents to its own efforts or through contract with a consultant. Persons having financial interests in a project are not eligible for the County contract. The County requires independent verification through its own efforts, or by contract, of information submitted by an applicant.

4. Initiation of Review - Public Project. Upon determination by any County Department that a public project, as defined in Article II of this procedure, should be considered for implementation, or during preliminary study leading to such determination, whichever occurs first, the Responsible Department shall so advise the Environmental Coordinator. The Responsible Department shall complete an Environmental Questionnaire in a form prepared by the Environmental Coordinator (see Appendix O) and may be required to submit additional data and information necessary for an evaluation of the possible environmental impact of the proposed public project.

5. Environmental Assessment. Prior to filing an application for undeveloped, agricultural or redevelopment lands located within the combining Bayfront Conservation zoning district, an Environmental Assessment (EA) shall be prepared pursuant to Marin County Code Chapter 22.50, unless the requirement for an EA is waived by the CDA Director. The EA is a preliminary evaluation of site resources, conditions and plan policy considerations that affect site development. It is intended to provide the

property owner and public agencies with a clear understanding of existing constraints and opportunities to guide preparation of future site development plans and assist in public agency review of such plans. The EA may also serve as a detailed "environmental setting" section for an EIR/EIS that may be prepared following the filing of development applications. The EA shall include a composite definition of the appropriate Bayfront Conservation subzone(s) described in Marin County Code Section 22.50.040 and map delineation for the parcel(s) proposed for development based upon the conclusion and recommendations of the EA. The EA shall be initiated by written request of the property owner to the Environmental Coordinator and may be prepared either by a qualified consultant(s) under contract with the property owner or by a consultant(s) retained and overseen by the Lead County Department. The procedures for preparation of EAs are more fully described in a typical EA notification letter provided in Appendix P (EA Notification and Procedures) of these EIR Guidelines.

6. Preliminary Review. Immediately after determining the application is complete, the Lead County Department shall transmit the required project description and environmental data to the Environmental Coordinator in the Community Development Agency for preliminary review. If the Lead County Department initially concludes that a project should be exempted from CEQA review, the Lead County Department shall fill out a Notice of Exemption form for preliminary review (see Appendix C). The Environmental Coordinator shall review the project and make the following determination:

   a. Determine if the activity is a project as defined in these procedures and Section 15378 of the State CEQA Guidelines.

   b. Determine if the project can be exempted by statute, including, but not limited to, ministerial and emergency projects (see Article 18, commencing with Section 15260 of the State CEQA Guidelines) or by categorical exemption (see Article 19, commencing with Section 15300 of the State CEQA Guidelines). A list of projects which are normally determined to be ministerial is provided in Appendix N of these EIR guidelines.

   c. Determine if the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, it is not subject to CEQA pursuant to State CEQA Guidelines Section 15060 and these procedures.

   d. Determine those instances where an existing EIR or Negative Declaration is adequate to cover a project, and no additional EIR need be prepared, pursuant to State CEQA Guidelines Sections 15153, 15162, 15163 and 15164 and these procedures. Included in this determination are those projects specified in Article 12 "Special Situations", CEQA Guidelines Sections 15180 - 15185. This includes Redevelopment project EIRs which shall be treated as a program EIR and housing and neighborhood commercial facilities consistent with a comprehensive regulatory document adopted subject to an EIR which address the impacts of the facilities. Also included in this determination are those projects subject to a Master EIR as specified in Chapter 4.5 of CEQA and Article V, D of these procedures.

e. Determine if the project is subject to State CEQA Guidelines Section 15270 and these procedures which provide that CEQA does not apply to projects which a public agency rejects or disapproves.

If a project does not appear to substantially conform to established County Planning policies and/or ordinances, and it appears that such policies and/or ordinances would require denial of the application, the project should be referred to the relevant decision making body for appropriate action on the project within 60 days of application completeness. In connection with any such referral, the Lead County Department shall specifically identify all County ordinances, regulations, and general plan policies with which the project is inconsistent.

If the decision making body finds, based on substantial evidence in the record, that the project does substantially conform with County Planning policies and/or ordinances, the project shall be returned to the Lead County Department for environmental review and processing in accordance with the provisions of these procedures.

A preliminary review determination may be appealed to the Planning Commission or other County decision making body pursuant to Article IX of these procedures.

7. Notice of Exemption. A Notice of Exemption shall be filed with the County Clerk for all projects in Marin County which are exempted from CEQA review. If the Environmental Coordinator determines that a project is exempt from CEQA, the Environmental Coordinator or the Lead County Department shall file the Notice of Exemption, as provided in Section 15062 of the State CEQA Guidelines, after the project is approved. The project applicant may also file a Notice of Exemption pursuant to the special rules provided in Section 15062 of the State CEQA Guidelines.

8. Initial Study. Where required by the Environmental Coordinator, an Initial Study will be prepared. An Initial Study will include the description of the ultimate project, describe the particular setting and special problems of the area of the project, and analyze the possible environmental impacts of the project. The Lead County Department will prepare the Initial Study within thirty (30) days from the date on which the application for the project was accepted as complete, and the Environmental Coordinator will determine, based on the Initial Study, whether an EIR, Negative Declaration, Mitigated Negative Declaration, or Categorical Exemption is appropriate. This time period shall not apply where conditions exist as specified in State CEQA Guidelines Section 15109, 15110 and 15111. This time limit may be extended with the consent of the applicant for 15 days. Completion of an Initial Study shall be based on the following considerations:

   a. If after accepting the application as complete, the Lead County Department initially concludes that a project may have a significant effect on the environment and cannot be exempted from CEQA review, the Department may immediately begin preparation of an Initial Study for review by the Environmental Coordinator.

   b. If the Lead County Department concludes that an EIR will clearly be required for the project, an Initial Study may not be required by the Environmental Coordinator.

c. The applicant shall provide a description of the project and an environmental questionnaire. The format for this information is contained in Appendix O. The applicant may also submit any additional information to aid in the determination of environmental impacts. The Environmental Coordinator may request, and the applicant shall provide, any additional information needed to prepare adequate environmental documents. Such information may be necessary and required after the application has been accepted as complete.

d. Based upon the Environmental Review Submission data and other data which may be available, the staff member in the Lead County Department assigned to the project will complete an Environmental Checklist using the form provided in Appendix K. The project description, together with the Environmental Questionnaire and/or Environmental Review Submission and the Environmental Checklist, comprise the Initial Study.

e. As soon as it is determined that an Initial Study will be required and/or prior to commencing an Initial Study, the Lead County Department shall consult with all Responsible Agencies and Trustee Agencies responsible for areas affected by the project to obtain their recommendations on the scope of significant environmental impact issues and mitigations, and whether an EIR, Negative Declaration, or Mitigated Negative Declaration should be prepared. This consultation shall be confirmed in writing to the relevant agency(s). Prior to this required consultation, any such agency(s) may be informally contacted.

f. The Lead County Department may consult with the project sponsor/applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the Initial Study. The Lead County Department may also consult with interested parties, neighborhood or environmental groups, or others who may have knowledge or special expertise with respect to the project or possible significant effects.

g. Preparation of an Initial Study shall be the responsibility of the Lead County Department. However, an Initial Study or expanded Initial Study and/or technical reports may also be prepared by a consultant retained by the County. The Environmental Coordinator will assist staff of the Lead County Department in selecting a consultant. The consultant shall be chosen from a list of qualified consultants approved in accordance with Article V, B-4, and Appendix A of these procedures. Project sponsor/applicant shall pay the cost of such an Initial Study.

h. The requirement for an Initial Study or any determination made based on a project Initial Study may be appealed to the Planning Commission or other decision making body pursuant to Article X of these procedures.

V. Preparation of Environmental Impact Reports

A. EIR Required. Whenever it has been determined by the Environmental Coordinator that a proposed project may have a significant environmental impact based on substantial evidence in light of the whole record, an EIR shall be prepared. Substantial evidence requires enough relevant information and reasonable inferences from the information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Substantial evidence must include facts, fact related reasonable assumptions, and expert

opinion. It does not include rumor, argument, speculation, unsubstantiated opinion or narrative, clearly inaccurate or erroneous evidence, or social or economic impacts or public controversy not linked to physical environmental effects.

The EIR shall be prepared in accordance with the State CEQA Guidelines and these procedures. An EIR for a private project shall be completed and certified within one year of the date of acceptance of the project application as complete, unless the conditions specified in State CEQA Guidelines Sections 15109 or 15110 exist.

B. EIR Preparation.

1. Public and Private Projects. The preparation of Draft EIRs and Final EIRs for all public and private projects shall be the ultimate responsibility of the Lead County Department for the project. Preparation and processing of the EIR shall be coordinated under direction of the Environmental Coordinator. If the EIR is prepared by a consultant, the Environmental Coordinator shall secure a County contract with an approved consultant for the preparation of the EIR and shall oversee preparation and processing of the EIR on behalf of and in coordination with the Lead Department. The Department responsible for preparation of the EIR shall be designated as the Lead Department.

2. Private Projects. Draft EIRs and Final EIRs for private projects shall reflect the independent analysis and judgment of the County. Requirements for independent County evaluation and analysis set forth in the State CEQA Guidelines and these procedures shall be met.

3. Consultant Selection for EIRs. The Lead County Department may choose to use staff to prepare the EIR under direction of the Environmental Coordinator. If the Lead County Department decides to use a consultant for the preparation of the EIR, the Lead County Department shall request the Environmental Coordinator to undertake consultant selection, contract preparation and approval and preparation and processing of the EIR as specified in Article IV, C-3, and Appendix A of these procedures. All costs of EIR preparation shall be paid for by the project applicant who shall deposit necessary fees into the Community Development Agency environmental revenue account prior to execution of a contract between the County and the EIR consultant. EIR administration, overhead, and processing fees shall be paid prior to execution of a contract in an amount as prescribed in the County Code. All consultants invited to bid on an EIR contract shall be selected from a list of approved consultants maintained by the Community Development Agency.

   EIR consultants will be selected based solely on their written proposal submitted in response to the County's request for proposals. The Environmental Coordinator will circulate proposals to staff of appropriate departments or agencies for internal review and rating, utilizing the rating criteria specified in Appendix A. Staff recommendations will be forwarded to the Environmental Coordinator for consideration of final selection and contract negotiation in coordination with the Lead County Department. To ensure objectivity and prevent conflicts of interest, consultant proposals and ratings shall not be made available for public review until after contract approval. The project sponsor shall be notified of consultant selection and provided a copy of the selected consultant's proposal, with a request for funding of the EIR preparation. The project sponsor shall fund preparation of the EIR or may reject County's selection and/or appeal the decision to the Decision Making Body. The

Environmental Coordinator will prepare a contract with the EIR consultant which incorporates the proposal. The contract shall be considered for approval by the Board of Supervisors, or if under $5,000, by the County Administrator. A contract shall be executed within 45 days from the date of project application completeness. A project application for which an EIR is required shall not be determined to be finally complete until EIR consultant selection is confirmed and a contract prepared for approval and all fees for preparation and processing of the EIR have been submitted by the project sponsor.

4. List of Approved Consultants. The Community Development Agency shall maintain a list of consulting firms which have been approved by the Environmental Coordinator for the preparation of EIRs for projects which have been proposed in the County. The Environmental Coordinator shall periodically update the list through solicitation and review of qualified firm's "Statements of Qualifications" (SOQ).

5. Conflict of Interest. Persons or firms having a conflict of interest or financial interest in approval of the project shall not be selected for preparation of the EIR. Persons or firms previously employed by the project sponsor/applicant for other work may also not be selected, depending upon the circumstances of such work. Consultant's proposals shall contain a statement signed by a principal of the firm disclosing any prior work by the consultant or subconsultants for the project sponsor/applicant.

C. Contents of Environmental Impact Reports. Environmental Impact Reports shall contain the information outlined in State CEQA Guidelines Article 9 and in Appendix A of these procedures, Guidelines for Selecting Consultants. Whenever feasible, a standard format and typeface shall be used in the preparation of EIRs. The format shall adhere to the criteria outlined in the State Guidelines and these procedures. EIRs shall focus on those issues identified in preliminary project review, Initial Study, Notice of Preparation responses, public scoping, or other consultation which are relevant, as determined by the Environmental Coordinator. EIRs shall include an analysis of all relevant environmental policies and standards and conclude in definitive terms the degree of impact associated with each policy and standard. Conclusions lacking precise definition, such as "partially consistent" or "partially inconsistent" shall not be used. The draft EIR shall also contain a draft mitigation monitoring program prepared pursuant to AB 3180. The mitigation monitoring program shall be summarized in the body of the EIR document and included in its entirety in the Appendix to the EIR. Cumulative analysis for an individual project does not have to consider projects for which information is first available after completion of the Draft EIR. Previously approved land use documents, including general and specific plans and local coastal plans may be used in cumulative analysis.

D. Master EIR and Focused EIRs. In addition to the use of tiered EIRs, earlier EIRs, staged EIRs, and Program EIRs (as provided in CEQA and the State CEQA Guidelines) the use of Master EIRs and Focused EIRs as specified in Chapter 4.5 of CEQA, is specifically encouraged whenever feasible. A Master EIR should be prepared if an EIR is required for a project that is: 1) subject to County Zoning Ordinance criteria for a Master Plan, 2) a project consisting of smaller individual projects carried out in phases, 3) a project subject to a development agreement, 4) a General Plan, Element, General Plan Amendment, or Specific Plan, 5) a rule or regulation which will be implemented by subsequent projects, 6) a mass transit project subject to multiple stages of review or approval. Preparation and certification of a Master EIR allows for limited review of subsequent projects that were described in the Master EIR.

An Initial Study shall be prepared for subsequent projects subject to Master EIRs certified within 5 years prior to that subsequent project. If the Environmental Coordinator determines on the basis of an Initial Study that no additional significant effects not identified in the Master EIR and no new mitigations or alternatives are required, a written finding shall be made that the subsequent project is within the scope of the project covered by the Master EIR. No new environmental document or findings required by CEQA for projects with EIRs shall be required. If said finding cannot be made, a mitigated Negative Declaration or a subsequent, supplemental, or focused EIR shall be prepared for the subsequent project.

A focused EIR may be utilized only if it is determined that the analysis in the Master EIR of cumulative impacts, growth inducing impacts, and irreversible significant effects is adequate for the subsequent project. The focused EIR shall incorporate by reference the Master EIR and focus only on the subsequent project's additional significant effects and any new mitigation or alternatives not analyzed in the Master EIR.

A focused EIR shall be prepared, even if the project is not identified in a Master EIR, for projects consisting of multiple family residential development of not more than 100 units or a residential and commercial or retail mixed use development of not more than 100,000 square feet. The focused EIR shall be prepared only if the project is consistent with a General Plan, Specific Plan, Community Plan, or Zoning Ordinance for which an EIR was prepared within five years of the certification of the focused EIR; the project parcel is surrounded by contiguous urban development; the parcel has previously been developed with urban uses, and is within 1/2 mile of an existing rail station. No discussion of alternatives, cumulative impacts, or growth inducing impacts shall be required.

E. The requirement for an EIR or any determination as to the scope, content, or processing of an EIR may be appealed to the Planning Commission pursuant to Article X of these procedures.

VI. Processing of Draft Environmental Impact Reports

A. General. No County Department shall issue a County permit or entitlement for any private project to be conducted within Marin County which may have a significant environmental impact unless an EIR has been prepared and certified in accordance with this procedure. No public works, construction, improvement, or other public project which may have a significant environmental impact shall be undertaken by this County or any Department thereof unless an EIR has been prepared and the Board of Supervisors or other County decision making body has considered and certified it. The Planning Commission, as the Body with the greatest expertise for CEQA environmental review, shall review and make a recommendation to the County decision making body as to certification on all EIRs, excepting those projects reviewed exclusively by the Board of Supervisors. The Planning Commission, Board of Supervisors, or other responsible County decision making body may review and/or certify EIRs prepared for both public and private projects. The responsible County decision making body for public projects shall refer the EIR to the Planning Commission for recommendation for certification, prior to the responsible decision making body proceeding to its own review and certification of the EIR.

B. Early Consultation.

1. Notice of Preparation. Upon deciding that an EIR is required for a project, the Lead County Department shall send a Notice of Preparation to each Responsible Department, by certified mail or other method which provides a record of receipt, and to each responsible agency, stating that an EIR will be prepared. The Notice shall also be sent to every federal agency involved in approving or funding the project and any trustee agency responsible for natural resources affected by the project. The Notice should also be sent to property owners within 300 feet of the project site property, interested parties listed on the "Club List" maintained by the Community Development Agency, and any others who have requested such notice. If the project involves a State responsible or trustee agency, the Notice shall be sent to the State Clearinghouse in the format as described in Appendix F. A copy of the Notice shall be published in a newspaper of general circulation and shall also be posted on a bulletin board adjacent to the Community Development Agency office. The Notice shall be prepared as described in State CEQA Guidelines Section 15082 and Appendix F of these procedures. The Notice shall provide a minimum of 30 days for response. Work may begin on the Draft EIR immediately, but shall not be completed or circulated prior to the expiration of the 30-day response period on the Notice.

2. Other Consultation. Prior to completing the Draft EIR, the Lead County Department may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project. For projects where federal involvement might require preparation of a joint EIR/EIS, the appropriate federal agencies shall be consulted as provided in State CEQA Guidelines Section 15082 and 15083. Preparation of joint documents shall be coordinated in accordance with State CEQA Guidelines Article 14, Section 15220 et seq.

3. Public Scoping Session. Upon determination that an EIR is required for a large scale, complex or controversial project, the Environmental Coordinator may determine that a Public Scoping Session is necessary to solicit consultation from the public concerning the scope of issues to be addressed in the preparation of the EIR. Notice of the Public Scoping Session shall be published in a newspaper of general circulation and should be sent to everyone who received the Notice of Preparation and any other parties who

may be affected by the project. Reasonable effort shall be made to conduct the Public Scoping Session in the evening after normal work hours and in the area of the community where the project would be located. The Environmental Coordinator shall determine whether and how issues identified in the Scoping Session will be addressed in the EIR, prior to completion of the Draft EIR. Scoping will be necessary when preparing an EIR/EIS jointly with a federal agency.

4. Planning Commission Consultation. Upon deciding that an EIR is required for a project, the Lead County Department shall seek informal consultation with the Planning Commission regarding the range of project alternatives being considered and recommendations for refinements, revisions, or amendments to such alternatives. This consultation shall occur by transmittal of a notice from the Lead Agency to the Planning Commission during the EIR scoping process.

C. Review of Administrative Draft EIR. Upon completion of an Administrative Draft EIR (ADEIR) by the preparer, the Environmental Coordinator shall distribute the ADEIR to appropriate County departments for internal review. The review period should be approximately two weeks. At the discretion of the Environmental Coordinator, copies of the ADEIR may be distributed for internal review by staff of other responsible or trustee agencies. The ADEIR is a working draft subject to revision and is not a public document. The ADEIR is not retained on file in the course of project processing and is not made available for public review. Disclosure of the contents of the ADEIR could confuse and mislead the public as to the environmental analysis and conclusions for the project. Disclosure of the contents of the ADEIR to the project sponsor or public could give the appearance of potential bias or influence in the preparation of the EIR, contrary to the express requirements of CEQA and these procedures for independent analysis and objectivity in the preparation of EIRs.

Review of the ADEIR by the project sponsor, if deemed appropriate by the Environmental Coordinator, shall be limited to review for factual accuracy of the project description, environmental settings or technical studies provided by the sponsor for peer review. Comments from the project sponsor related to the disposition of impacts, mitigation measures or alternatives shall not be accepted. Any materials which are made available to the project sponsor will also be available for public review.

The Environmental Coordinator shall be responsible for providing the preparer with a Master Copy of proposed revisions to the ADEIR. If the Environmental Coordinator determines that the document is not adequate, he/she shall specify the specific nature of the deficiencies in the document and return it to the preparer for the needed revisions.

D. Notice of Completion. Upon completion of a Draft EIR by any County Agency, the Environmental Coordinator, in consultation with the Lead County Department, shall determine the adequacy of the Draft for public review. If it is found to be adequate, the Environmental Coordinator shall file a Notice of Completion with the County Clerk and Office of Planning and Research in accordance with State CEQA Guidelines Section 15085 and these procedures, in the format as described in Appendix H. A copy of the Notice of Completion shall also be posted on a bulletin board adjacent to the Community Development Agency. EIRs processed through the State review process handled by the State Clearinghouse, shall be accompanied by the required number of copies of the EIR and the cover form required by the Clearinghouse which will serve as the Notice of Completion. In this case, no Notice of Completion need be sent to the Office of Planning and Research. Public Notice to adjacent Cities and Counties and State responsible agencies and trustee

agencies shall be by certified mail or other method which provides a record of receipt. Notice of Completion of the Draft EIR shall be published in a newspaper of general circulation at the same time that it is sent to the State Clearinghouse. The Notice should also be sent to property owners within 300 feet of the project site property, interested parties listed on the "Club List" and any others who have requested such notice. The Notice shall specify the period during which comments will be received on the Draft EIR, shall include the date, time and place of hearing on the Draft EIR, a brief description of the project, the significant effects on the environment if any, which may result, and the address where copies of the DEIR and all documents referenced in the DEIR are available for review. The Notice shall specify comments will not be received by facsimile transmission (FAX).

E. Review of EIR.

1. Agency Review. After the Draft EIR is completed and approved for distribution, the Lead County Department, in consultation with the Environmental Coordinator, shall distribute copies of the document for review in order to obtain comments from all Responsible Departments and Agencies, any trustee agency responsible for natural resources affected by the project, public agencies having jurisdiction by law with respect to the project, and adjacent cities and counties which may be affected by the project. Copies may also be distributed to any other persons having special expertise with respect to any environmental impact involved.

2. State Agencies Review. When appropriate, pursuant to the State CEQA Guidelines Sections 15085 and 15086 and these procedures, an appropriate number of copies of the Draft EIR shall be sent to the State Clearinghouse for review and comment by State agencies. This will be accomplished according to State Clearinghouse procedures. In addition, those State agencies that are known to be responsible or trustee agencies may be contacted directly to expedite a timely response.

3. Regional Agency Review. A Draft EIR prepared for any project of statewide, regional or area-wide significance shall be forwarded to the appropriate regional planning agency for review. The criteria in Section 15206 of the State CEQA Guidelines shall be followed in making such a determination of significance.

4. Other Public Agency Review. The Community Development Agency maintains a "Club List" of other governmental agencies and organizations which should be consulted depending upon the nature and scope of the Draft EIR.

5. Review by General Public. Public participation in the preparation of EIRs is encouraged in order to receive and evaluate public comments on project environmental issues. Upon completion of a Draft EIR, the Lead County Department shall have copies available and provide a reasonable opportunity for members of the general public to obtain and comment upon the EIR and the environmental impact of the proposed public or private project, in accordance with the State CEQA Guidelines Sections 15087 and 15201. The Department shall take into consideration the magnitude of the project, the level of public interest involved, the complexity of the environmental issues, the number of persons wishing to comment, and other relevant factors. Copies of the Draft EIR shall be made available for review at appropriate public libraries and shall also be available for review at the Community Development Agency. Copies of the DEIR will also be made available to purchase at the cost of production.

6. Review Period. The Notice of Completion shall commence a public review period for the Draft EIR. The review period for local review shall be 30 days. Review periods for EIRs which have a State Responsible Agency shall be 45 days unless a shorter period is approved by the State Clearinghouse. Local review shall be at least as long as State review. Review periods may be extended as deemed appropriate by the County decision making body, but shall not, in any case, be longer than 90 days. Requests for extension of the review period shall be determined by the County decision making body at the time the Draft EIR is considered in public hearing, unless decided sooner at the option of the decision making body.

F. Transmittal of EIR to Planning Commission or Other County Decision Making Body. After the review period has elapsed, the Environmental Coordinator shall transmit the completed EIR and comments thereon to the Planning Commission or other County decision making body for its consideration and appropriate action.

G. Public Hearing. Prior to, or at the close of, the public review period, at least one public hearing on the adequacy of the Draft EIR shall be conducted by the Planning Commission or other County decision making body, in a separate hearing or in conjunction with other proceedings of said body concerning the project. Such environmental hearing shall be held no sooner than 15 days following the posting of the Notice of Completion. At the hearing, anyone may express their views on the adequacy of the Draft EIR, either orally or in writing. Comments received at public hearing are encouraged to be submitted in written form so as to ensure their accurate transmittal to the person preparing the Final EIR. At the conclusion of the public hearing on the Draft EIR, the Planning Commission or other decision making body shall direct staff and/or the EIR consultant to prepare the Final EIR and response to comments in accord with State CEQA Guidelines Sections 15088, 15089, 15132 and these procedures.

H. Response to Comments. All comments received on the Draft EIR shall be expeditiously forwarded to the person preparing the Final EIR for an appropriate response pursuant to the State CEQA Guidelines Section 15088. Responses to comments shall describe the disposition of significant environmental issues raised by the comments.

I. Certification Procedure.

1. General. All Final EIRs shall contain all of the elements and meet the requirements of the State CEQA Guidelines Sections 15088, 15089 and 15132. A mitigation monitoring program, revised as necessary by the Final EIR response to comments, shall be included in the Final EIR Appendix.

2. Certification Review. Notice of the availability of and review period for the Final EIR and the scheduled action by the recommending or certifying body to certify the Final EIR shall be provided to Responsible and Trustee agencies and to all those who commented on the Draft EIR and/or who request a copy of the Final EIR. Notice shall also be given in a newspaper of general circulation and may be combined with any notice of action on the merits of the project for approval. The Environmental Coordinator shall also distribute the completed Final EIR to all those who have commented on the Draft EIR and/or who request a copy of the Final EIR.

   A minimum 10-day period shall be provided for review of the Final EIR prior to any action to certify it. The review of a Final EIR shall exclusively focus on the adequacy of the response to comments on the Draft EIR. A separate public hearing to receive

testimony on the recommendation to certify or certification of a Final EIR shall not be required. Written comments received on the Final EIR response to comments within the review period deadline shall be considered together with any written or oral response from staff or the EIR preparer, at the time action is taken by the certifying or recommending body to certify the Final EIR.

3. Certifying Body. In those cases where the Planning Commission is the decision making body for the project, said Commission shall be the certifying body for EIRs. In those cases where the Board of Supervisors is the decision making body for the project, said Board shall be the certifying body for EIRs. If another County decision making body is responsible for the project, said County decision making body shall be the certifying body for the EIR.

4. Planning Commission Decision. When the Planning Commission acts as the certifying body and is satisfied, at time of hearing, that the Draft EIR plus the comments received and the responses thereto adequately fulfill the intent and requirements of CEQA, the State CEQA Guidelines and these procedures, the Commission shall certify the document and any attachments thereto as the Final EIR, pursuant to State CEQA Guidelines Section 15090. If the Board of Supervisors or other decision making body is the certifying body, the Commission shall forward a recommendation for certification of the EIR to the appropriate body. If the Planning Commission is not satisfied that the Final EIR is adequate, the Commission may return it to the Lead Department for revision and resubmittal to the Commission, or forward it to the appropriate decision making body without recommendation for certification. In forwarding the document, the Commission should state the reasons for its finding of inadequacy.

5. Board of Supervisors Action. When the Board of Supervisors or other decision making body is satisfied that an EIR recommended for certification is adequate, it shall certify the document and any attachments thereto as the Final EIR, pursuant to State CEQA Guidelines Section 15090. If the decision making body is not satisfied that the Final EIR is adequate as recommended, the decision making body may return it to the Lead Department for revision and resubmittal to the decision making body. In forwarding the document, the Board should state the reasons for its finding of inadequacy.

J. Project Approval.

1. General. No action to approve or recommend approval of a project shall be taken until information contained in the certified EIR and any attachments thereto has been reviewed and considered by the appropriate body. If the decision making body decides to approve a project for which significant adverse environmental effects have been identified in an EIR, said body may do so, provided that it complies with the provisions of State CEQA Guidelines Section 15092. No County Department or Body shall approve or carry out a project as proposed unless the significant environmental effects have been reduced to an acceptable level. The term "acceptable level" means that:

   a. All significant effects that can feasibly be avoided have been eliminated or substantially lessened as determined through findings as described in State CEQA Guidelines Sections 15091 and 15092, and

b. Any remaining, unavoidable significant effects have been found acceptable under State CEQA Guidelines Sections 15091, 15092 and 15093. Where the decision making body allows the occurrence of significant effects which are identified in the Final EIR but are not at least substantially mitigated, the decision making body shall state in writing the specific reasons to support the action based on the Final EIR and/or other information in the record. This statement of overriding considerations shall be included in the record of project approval and mentioned in the Notice of Determination.

2. Procedure. When an EIR shows that approval of a project would cause substantial adverse changes in the environment, the decision making body must respond to the information in one or more of the following ways, pursuant to State CEQA Guidelines Section 15002 (h) and 15091:

a. Changing a proposed activity;

b. Imposing conditions on the approval of the activity;

c. Adopting plans or ordinances to control a broader class of activities to avoid the problems;

d. Choosing an alternative way of meeting the same need;

e. Disapproving the project;

f. Finding that changes in, or alteration to, the project are not feasible; or that specific economic, legal, social, technological, or other considerations, including employment for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the Final EIR;

g. Finding that changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency;

h. Finding that the unavoidable, significant environmental effects are acceptable as provided in State CEQA Guidelines Section 15093.

Findings required must be supported by substantial evidence in the record.

K. Retention and Availability of EIRs. A copy of the final certified EIR shall be made a part of the permanent record of the project and shall be available for public inspection.

L. Environmental Data Base. Certified EIRs shall be retained for a minimum of five years from the date of certification and kept in an EIR Data Base file maintained in the Community Development Agency. Said EIRs shall be alphabetically listed by project name and shall be mapped by geographic location of the project area, for future reference in environmental review.

VII. Issuance of Negative Declaration

A. General. A Negative Declaration shall be prepared for a project which could potentially have a significant effect on the environment, but which the Environmental Coordinator finds will not, in the particular case, based on substantial evidence in light of the whole record, have a significant effect on the environment. Negative Declarations shall be prepared and processed in accordance with the State CEQA Guidelines Sections 15070 and 15071 and these procedures. A Negative Declaration for a private project shall be completed and ready for approval within 105 days of the date of acceptance of the project application as complete, unless the conditions specified in State CEQA Guidelines Sections 15109 or 15110 exist. Completion of a Negative Declaration within a 105-day period shall include the conduct of an Initial Study, public review, and the preparation of a document ready for approval by the decision making body.

B. Procedure.

1. Negative Declaration and Mitigated Negative Declaration. A draft Negative Declaration shall be prepared for a project when the Initial Study shows that there is no substantial evidence that the project may have a significant effect on the environment; or

   A draft Mitigated Negative Declaration shall be prepared for a project when the Initial Study identified potentially significant effects, but:

   (a) Revisions to the project plans or proposals made by or agreed to by the applicant before the proposed Negative Declaration is released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

   (b) There is no substantial evidence before the agency that the project as revised may have a significant effect on the environment.

2. Content. A draft Negative Declaration or mitigated Negative Declaration shall consist of a copy of the Initial Study documenting the findings of no significant impact and a description of mitigation measures, if any, and the proposed mitigation monitoring program included in the project.

3. Preparation. Upon receiving notification of the Environmental Coordinator's determination that the preparation of a Negative Declaration or mitigated Negative Declaration is appropriate for a proposed project, the Lead County Department shall prepare same in a format as described in Appendix J, K, L, and O. Responsible Departments shall consult with the Lead County Department during preparation of the draft Negative Declaration to ensure compliance with State CEQA Guidelines Section 15070.

4. Processing. Upon completion of the draft Negative Declaration, the Lead County Department shall provide Public Notice that the County decision making body will consider adoption of the Negative Declaration and that it is available for public review and comment for a specified period as specified in State CEQA Guidelines Sections 15072 and 15073 and Public Resources Code Section 21092(a-e) as amended, and shall post a copy of the document on a bulletin board adjacent to the Community Development Agency office, and post a copy with the County Clerk. The Notice shall be sent to each Responsible Department and to each Responsible Agency and Trustee Agency by certified mail or other method which provides a record of receipt to each

Responsible Agency and/or Trustee Agency. The Notice should also be sent to property owners within 300 feet of the project site property, interested parties listed on the "Club List" maintained by the Community Development Agency and any others who have requested such notice. If the project involves a State Responsible Agency or Trustee Agency, or is determined to be a project of statewide, regional or area-wide significance pursuant to State CEQA Guidelines Section 15206, the Notice shall be sent to the State Clearinghouse and ABAG Clearinghouse. The Notice of Negative Declaration may be combined with notice of hearing for action on the project. The Notice shall specify the period during which comments will be received on the draft Negative Declaration, shall include the date, time and place of any public meetings or hearings on the project, a brief description of the project, the significant effects on the environment, if any, which may result and the address where copies of the Negative Declaration and all documents referenced in the Negative Declaration are available for review. The format for the Notice of Negative Declaration is described in Appendix J. The Notice shall specify comments will not be accepted by facsimile transmission (FAX).

Projects for which a Negative Declaration is required, shall have a minimum 20-day public review period. Project Negative Declarations requiring review through the State Clearinghouse shall normally have a 30-day review period unless a shorter period is established by the Clearinghouse. Upon termination of the public review period, comments on the draft document shall be forwarded to the decision making body along with the proposed Negative Declaration for consideration. These comments shall be included with the document together with any responses or changes to the document which may be deemed necessary.

5. Adoption. Negative Declarations for both public and private projects shall be considered together with any comments received during the public review process, approved and adopted by the decision making body, prior to any action to approve the project or entitlement for which the document was prepared. A separate public hearing for approval and adoption of a Negative Declaration is not required and may be combined with the public hearing for action on the merits of the project. In those cases when the Planning Commission or another County agency is required to make a recommendation on a project to the Board of Supervisors or another decision making body, the Commission or other agency shall also make a recommendation as to adoption of the Negative Declaration. Negative Declarations containing important environmental studies and/or information shall be retained in the Environmental Data Base as specified in Article VI, L of these procedures.

6. Withdrawal. If prior to the consideration of the Negative Declaration by the Decision Making Body, there is new information that the proposed project may result in a significant impact, the Environmental Coordinator shall so notify the project sponsor and withdraw the Negative Declaration from further review.

7. Appeal. The requirement for a Negative Declaration, or any determination as to the scope, content, or processing of a Negative Declaration may be appealed to the Planning Commission or other County Decision Making Body pursuant to Article X of these procedures.

VIII. Mitigation Monitoring

A. General. No County Department or Body shall approve or carry out a project for which an EIR or Negative Declaration was prepared, unless a Mitigation Monitoring Program is adopted pursuant to Public Resources Code 21081.6.

B. Content. The Monitoring Program shall address the changes to the project which are adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment. The Monitoring Program shall be designed to ensure compliance during project implementation. In the case of mitigation measures requested by an Agency with jurisdiction by law over natural resources affected by the project, that Agency shall be responsible for that portion of the Monitoring Program.

The Monitoring Program shall contain the mitigation measures adopted as conditions of project approval. The Monitoring Program shall set forth a list of the mitigation and the monitoring required to verify implementation at each stage of project approval and development. The Program shall also include a checklist to document verification of mitigation measure implementation and a general condition which requires the project sponsor to submit any required mitigation compliance plans or reports and checklist at specific stages of the project up to two years after completion of development of all project elements, in accordance with Appendix L of these procedures.

C. Procedure. A draft Mitigation Monitoring Program and checklist shall accompany the draft Negative Declaration or EIR during public review and shall be revised as necessary to accompany the Final EIR response to comments or Negative Declaration submitted for certification and/or adoption by the Decision Making Body. The Monitoring Program shall be approved and adopted in final form upon action to approve the project.

D. Retention and Availability of Monitoring Programs. The approved Monitoring Program and completed Monitoring checklists shall be retained on file in the official Department project file and a copy forwarded to the Environmental Coordinator for retention in the Environmental Data Base files in the Community Development Agency. The documents constituting the record of proceedings for the decision to approve the project and the Monitoring Program and verification checklists shall be, upon request, made available by the Lead County Department and/or the Environmental Coordinator for public review at the Lead County Department and/or Community Development Agency during normal business hours.

IX. Notice of Determination

A. General. A Notice of Determination shall be issued upon approval of a project for which a Negative Declaration or an EIR has been prepared and considered.

B. Procedure. After a County permit or entitlement has been granted for a private project, or a public project has been approved by the decision making body, the Lead County Department shall prepare a Notice of Determination. Such Notice shall be prepared and processed in accordance with State CEQA Guidelines Sections 15075 and 15094 and these procedures. The Notice shall certify that the Final EIR, together with response to comments, is available to the general public and state the location and address where the document is available. After preparation, the Lead County Department shall forward the Notice to the Environmental Coordinator for approval and filing. The Notice shall be filed with the County Clerk. If a State agency is a Responsible Agency, the Notice shall also be filed with the Office of Planning and Research. The Notice shall be filed within 5 days of the date of project approval. The format for the Notice of Determination is described in Appendix D. The Notice should be on file with the record of the project approval and made available to anyone who requests a copy. A copy of the Notice shall also be posted on a bulletin board adjacent to the Community Development Agency office.

X. Appeal Procedures

A. General. Any person aggrieved or affected by any determination made pursuant to this procedure may appeal such determination according to the following procedure.

B. Procedure.

1. Appeal of Environmental Coordinator Action. Such appeals shall be considered by the Planning Commission or other appropriate County Decision Making Body if the Planning Commission is not the hearing body for the determination of environmental effect. The aggrieved or affected party shall file a written letter of appeal and a fee as established by the Board of Supervisors with the Community Development Agency within five (5) working days after the issuance of the decision to be appealed. Appeals will not be accepted unless the entire appeal fee has been submitted within the aforementioned five (5) day period to the Community Development Agency. The letter shall state the reason for the appeal and should include supporting information. The appeal shall be considered in a public hearing and acted upon by the Decision Making Body within sixty (60) days or, in the case of appeal to the Planning Commission, no later than its fourth regular meeting following the date on which the appeal was filed. Upon hearing the appeal, the Decision Making Body shall find that the former decision shall be affirmed, reversed or modified. Appeals regarding a determination of completeness for development projects pursuant to the Permit Streamlining Act shall be determined with a final written determination on the appeal not later than sixty (60) calendar days following the date on which the appeal was filed, in accord with Government Code Section 65943(c).

2. Appeal of Planning Commission or Other Decision Body Action. Such appeals shall be considered by the Board of Supervisors or other relevant Lead County Department "final" decision making body. The aggrieved party shall file a written letter of appeal and a fee as established by the Board of Supervisors with the Lead County Department or Clerk to the Board of Supervisors within five (5) working days after the issuance of the decision to be appealed. Appeals will not be accepted unless the entire appeal fee

has been submitted within the aforementioned five (5) day period to the Lead County Department or Clerk to the Board of Supervisors. The letter shall state the reason for the appeal and should include supporting information. The appeal shall be considered and acted upon by the relevant decision making body within forty-five (45) days or, in the case of appeal to the Board of Supervisors, no later than its sixth regular meeting following the date on which the appeal was filed. The decision of the relevant body shall be final, and shall not be further appealable to the Board of Supervisors if they are not the relevant "final" decision making body. However, if the final decision is not made by an elected body, certification of the EIR can be appealed to the Board of Supervisors.

C. County Decision Making Body or Board of Supervisors Motion. The relevant County decision making body or Board of Supervisors may, on its own motion, review and affirm, modify or reverse a determination of the Environmental Coordinator, the Director, or a Lead County Department. Any action to initiate review of such determinations shall be taken within ten (10) working days of such determination. If no review action is initiated, such determination shall be final.

XI. Review of Environmental Documents Prepared by Agencies Other Than Those of Marin County

Each County Department shall make a good faith attempt to review and comment upon, if necessary, all environmental documents received by it, pursuant to State CEQA Guidelines Section 15200 et seq. and these procedures. A copy of any comments made shall be provided to the Environmental Coordinator. If the County is required to act as a Responsible Agency pursuant to CEQA, the appropriate County agencies shall respond to consultation as set forth in State CEQA Guidelines Section 15204. Such responses shall be coordinated with the Environmental Coordinator and, at a minimum, shall identify the significant environmental issues and possible alternatives and mitigation which County Responsible Agencies will need to have explored in the draft document.

XII. Time for Completion of Environmental Documents

A. Environmental Impact Reports. EIRs shall be completed and certified within one (1) year of the acceptance of the project application as complete unless the conditions specified in State CEQA Guidelines Section 15109 or 15110 or 15111 exist.

B. Negative Declarations. Negative declarations shall be completed within one hundred and five (105) days of acceptance of the project application as complete unless the conditions specified in State CEQA Guidelines Section 15109 or 15110 or 15111 exist.

C. Time Extensions. The above mentioned time period may be extended for a reasonable period of time in the event that compelling circumstances justify additional time and the applicant consents thereto. Such request for extension shall be approved by the Lead County Department. The one-year time limit to complete and certify a Final EIR may be extended once for a period of not more than 90 days, as specified in State CEQA Guidelines 15108.

XIII. Time Requirements for Development Projects Pursuant to the Permit Streamlining Act (PSA) as specified in Government Code 65950 et seq.

A. County as Lead Agency. Where the County is the lead agency for a development project as specified in the PSA, for which an EIR is prepared, the project shall be approved or disapproved within six (6) months of certification of the EIR. Where the County is the lead agency for a development project for which a Negative Declaration is prepared, or is exempted from CEQA, the project shall be approved or disapproved within three (3) months of adoption of the Negative Declaration.

B. County as Responsible Agency. Where the County is a responsible agency for a development project that has been approved by another lead agency, the project shall be approved or disapproved within one hundred and eighty (180) days of either of the following events, as specified in Government Code Section 65952, whichever is longer:

1. Approval or disapproval by the agency; or

2. Acceptance of the project application as complete.

C. More Than One Approval Required. In the event that a development project requires the approval of more than one application, the time for acting on all applications, in the aggregate, shall not exceed the time limits specified in Article XIII, A and B of these procedures.

A Lead County Department or Responsible County Department shall not require proof of CEQA compliance or the informational equivalent of an EIR in order to find an application complete. At the request of the project sponsor, a Responsible Department shall start processing a permit application prior to the Lead Department or Agency action on the project, to the extent necessary information is available.

D. Extensions. The time limits established in Article XIII, A and B of these procedures may be extended upon mutual agreement of the County and the project sponsor for a period not to exceed ninety (90) days.

E. Action Following an Extension. If an extension has been granted pursuant to Article XII, C of these procedures, a development project for which an EIR has been prepared shall be approved or disapproved within the time specified in Article XIII A, B, and C as applicable.

F. Exceptions. The provisions of Article XIII of these procedures regarding PSA time periods do not apply to projects involving legislative actions such as amendments to the General Plan, Community Plan, or County Zoning or other Ordinances.

G. Amendments to Applications.

1. Applications cannot be amended without permission of the approving authority.

2. If the applicant requests amendments to an application, the Lead County Department may, upon determination that the submitted application has been substantially amended, require that the applicant withdraw the original application and reapply.

H. Request for Shortened Review. Requests for shortened review periods for EIR and Negative Declaration shall be made in writing to the State Clearinghouse by the Environmental

Coordinator. The Environmental Coordinator shall notify the Decision Making Body of any such request. Approved shortened review periods shall be indicated in the Notice of public review for the document. The shortened review shall not be less than 30 days for a Draft EIR and 20 days for a Negative Declaration.

XIV. Fees

A. Preparation of Environmental Documents. In cases where the preparation of an environmental document is required, including EIRs, Negative Declarations, Mitigated Negative Declarations, and Environmental Assessments, fees shall be charged and collected from persons proposing private projects in an amount sufficient as determined by the County to recover cost to Marin County in preparing such documents. A fee schedule shall be as established by the Board of Supervisors pursuant to adopted Ordinance. Fees shall be due prior to contracting the preparation of environmental documents. Any remaining environmental consultant fees collected for preparation of an EIR which are not expended upon completion and certification of the EIR shall be refunded to the project sponsor within a reasonable period of time.

B. Notices of Exemption and Initial Studies. A fee shall be charged by County agencies for the determination and preparation of Notices of Exemption or an Initial Environmental Study on a private project referred to the Environmental Coordinator.

C. Negative Declarations. A fee shall be charged by County agencies for the preparation and processing of a Negative Declaration.

D. Processing of Environmental Impact Reports. Applicants shall be charged fees to be collected by the Environmental Coordinator in amounts sufficient as determined by the County to recover the cost to the County of processing and reviewing EIRs. An initial non-refundable deposit of $1,500 shall be submitted at the time a determination to require an EIR is made by the Environmental Coordinator. The applicant is required to deposit the remainder of all EIR preparation and processing fees into a Community Development Agency environmental revenue account, prior to execution of contracts for completing the EIR on the project. Details for payment and completion of the EIR shall be included in the contracts for document preparation. County EIR processing administration and overhead fees paid by the project sponsor are not refundable.

E. Reproduction of Documents. Members of the general public may be charged for the cost of reproducing EIRs and other environmental documents and public records for their personal use.

F. Sales of EIRs. A reasonable document reproduction cost may be established and charged for the sale of EIRs to the general public.

ENHANCED CEQA ACTION TEAM

A Collaboration of the American Planning Association California and the Association of Environmental Professionals

LEGISLATIVE PROPOSALS TO ENHANCE FIVE KEY AREAS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

September 2011

Preface

The American Planning Association California Chapter (APACA) and the California Association of Environmental Professionals (AEP) joined ranks in late 2010 to identify opportunities for enhancing key areas of the California Environmental Quality Act (CEQA) so as to improve the effectiveness and efficiency of the environmental review process in a manner that helps lead agencies protect the environment, promote public involvement, and make well-informed decisions. The APACA-AEP collaboration is guided by an all-volunteer task force of CEQA practitioners known as the Enhanced CEQA Action Team (ECAT).

The mission of the ECAT is to recommend legislative and regulatory changes to enhance CEQA's efficiency and effectiveness in achieving its original purposes, based on thoughtful consideration by CEQA practitioners who work with the law on a daily basis. ECAT consists of highly experienced environmental consultants, local-government planners, and environmental attorneys who represent this practitioner's viewpoint. The mission is founded on the premise that CEQA is an important and constructive element of California public agency decision-making that should continue to help ensure disclosure of environmental information, public involvement in the environmental review and decision-making process, and protection of the State's important environmental qualities. This essential state environmental law needs to be preserved through the incorporation of constructive enhancements.

California's environmental, social, and economic priorities have evolved in the 40+ years since CEQA's enactment. Over this time-frame it has become clear that the actions public agencies take in the interest of good environmental planning, such as infill urban development, efficient use of land and resources, greater reliance on renewable energy, and protection of environmental quality, are inextricably linked to economic prosperity and social equity. Making the CEQA process work better is especially important to the larger discussion among California policy makers and opinion leaders concerning the future of California as it emerges from the current recession. Public Resources Code (PRC) Section 21003(f) presents an element of CEQA's policy purpose that is particularly pertinent as State leaders seek solutions to State and local government priorities and finances:

> *"All persons and public agencies involved in the environmental review process [are] responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment."*

In other words, it is important to enhance CEQA in ways that apply precious social, governmental, and economic resources to actions that protect the environment, rather than to an unnecessarily complicated environmental process. To this end, ECAT has identified five key areas where enhancements can and should be addressed. Problem statements about the issues and legislative proposals are presented below. All proposed amendments are to the CEQA statute (Public Resources Code, commencing with Section 21000).

1. CEQA Litigation is Costly and Does Not Always Further CEQA's Basic Purposes

Problem Statement

Litigation is a powerful tool used by citizens to ensure that CEQA's provisions are followed by government agencies. Indeed, many key holdings in major court decisions have subsequently been incorporated into the State CEQA Guidelines (Chapter 3 of Title 14, California Code of Regulations, commencing with Section 15000). In some situations CEQA litigation—and the threat of litigation—can also result in a more costly and time consuming process that does little to further the basic purposes of CEQA expressed in PRC Section 21003(f). Two issues are of particular concern regarding CEQA litigation provisions:

- Late input to the environmental review process that is disruptive and counterproductive; and
- The practical inability of a court to sever offending parts of a large project, which unnecessarily delays implementation of beneficial parts of a project not relevant to a decision finding noncompliance with CEQA.

Late Input to the Environmental Review Process That Is Disruptive and Counterproductive. The statute allows potential CEQA litigation issues to be raised very late in the decision-making process, well after the close of the public comment period, and even after the certification or adoption of CEQA environmental documents. Despite prescribing very clear and publicly noticed review periods during which anyone can submit comments on the adequacy of CEQA documents, the statute also allows new information (and future causes of action in litigation) to be inserted into the process at any time prior to the close of the last public hearing before final project approval by the lead agency (PRC Section 21177[a]).

In principle and practice, the public must have the ability to submit relevant evidence and testimony to decision-makers prior to a decision being rendered. Public involvement is at the heart of CEQA's goals and policies. However, project opponents regularly take advantage of PRC Section 21177(a) to introduce voluminous information about environmental issues at the last minute, with the intent and effect of disrupting the project review process and delaying the decision while the lead agency scrambles to ensure that every issue is adequately addressed. At its most troublesome, this information consists of material that could have been known and submitted earlier or that duplicates earlier submittals. This practice diminishes the importance of the orderly public review opportunities included in the CEQA process and often introduces substantial uncertainty into the lead agency's decision-making process at the eleventh hour.

Citizen advocates raise an analogous issue when lead agencies insert new evidence into the process after certification or adoption of the CEQA document. For example, as part of findings of fact adopted at the time of project approval, a lead agency may add information about the economic feasibility of alternatives or mitigation measures after the

environmental process has concluded. If this occurs, the public can be deprived of the opportunity to review and comment on important evidence that supports a lead agency's decision on a project.

Severability of Project Elements That Allow Beneficial Elements to Continue. When a court is considering the adequacy of a project's compliance with CEQA, current law allows the court to sever a portion of a project and let that portion proceed while considering the CEQA issue on the rest of the project (PRC Section 21168.9). In practice, this seldom happens. A court may sever project components "only if a court finds that (1) the portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division" (PRC Section 21168.9). In judicial practice, courts rarely make these findings. Since the enactment of PRC Section 21168.9 in the early 1990s, only one or two published cases have included the severance of a portion of the project from the ongoing CEQA litigation. This is a problem when the entirety of a large, multi-faceted project is delayed by CEQA litigation where the noncompliance issue affects only a portion of the project. Severable parts of projects that may have important community benefits and no significant environmental impacts are delayed, along with the elements of the project at issue in the litigation.

Legislative Proposal to Address Disruptive Late Input

Rationale for the Proposal. The proposed revision links limits on the submittal of disruptive late input with improved opportunities for public input and expanded review of responses to comments on environmental documents. It limits the timing for introducing potential litigation issues by requiring issues to be raised during public comment periods for NDs, MNDs and EIRs. At the same time, the proposed revision includes an additional public review period for responses to comments on draft CEQA documents to enhance the public's opportunity for input on final environmental documents. A safety-net exception is included for issues that were not known and could not have been known during those public comment periods.

The revisions proposed below seek to expand the opportunity for public input earlier in the environmental review process to alleviate potential concerns that limiting late comments may have an unintended consequence of hindering public review or placing undue burden on concerned citizens. Also, proposed changes are intended to create more strict requirements regarding timeliness of comment submittals to promote effective public input. Enhanced public input opportunities involve expanded notice of and opportunities for public review and comment on certain types of CEQA documents, such as commenting on the response to public comments on a Draft EIR. Expanding the opportunities for public input within the framework of an orderly environmental review can help ensure that the affected public is aware of project impacts earlier than final project hearings. The intended result of this proposal is to enhance opportunities for public involvement in the environmental review process.

Proposed Statutory Amendment.

1. Amend Section 21082.1 to read:

(a) Any CEQA Document ~~draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration~~ prepared pursuant to the requirements of this division shall be prepared directly by, or under contract to, a public agency.

[NOTE TO READER: Please refer to Key Issue Area No. 3 for the proposed definition of "CEQA Document". This proposed amendment under Key Issue Area No. 1 can be applied either to the proposed "CEQA Document" definition or to current statutory definitions of environmental impact report, negative declaration, and mitigated negative declaration.]

(b) This section is not intended to prohibit, and shall not be construed as prohibiting, any person from submitting information or other comments to the public agency responsible for preparing an environmental impact report, draft environmental impact report, negative declaration, or mitigated negative declaration~~.~~, except that any such information or comments must be submitted prior to the close of the public comment periods prescribed in this Division. The information or other comments may be submitted in any format, shall be considered by the public agency, if timely, and may be included, in whole or in part, in any report or declaration.

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

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

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

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

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

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

(i) The lead agency.

(ii) A responsible agency.

(iii) A trustee agency.

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

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

2. Amend Section 21083.9 to read:

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

(1) A proposed project that may affect highways or other facilities under the jurisdiction of the Department of Transportation if the meeting is requested by the department. The lead agency shall call the scoping meeting as soon as possible, but not later than 30 days after receiving the request from the Department of Transportation.

(2) A project of statewide, regional, or areawide significance.

(b) The lead agency shall provide notice of at least one public scoping meeting held pursuant to paragraph (2) of subdivision (a) to all of the following:

(1) A county or city that borders on a county or city within which the project is located, unless otherwise designated annually by agreement between the lead agency and the county or city.

(2) A responsible agency.

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

(4) A transportation planning agency or public agency required to be consulted pursuant to Section 21092.4.

(5) An organization or individual who has filed a written request for the notice.

(c) For an 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~~.~~ or by following notice requirements set forth in Section 21092.

(d) A scoping meeting that is held in the city or county within which the project is located pursuant to the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.) and the regulations adopted pursuant to that act shall be deemed to satisfy the requirement that a scoping meeting be held for a project subject

to paragraph (2) of subdivision (a) if the lead agency meets the notice requirements of subdivision (b) or subdivision (c).

3. Amend Section 21091 to read:

21091. CEQA Documents~~Draft environmental impact reports, proposed negative declarations, and proposed mitigated negative declarations~~; review periods

(a) Public review periods for environmental impact reports shall not be less than:

(1) 30 days for a draft environmental impact report that is not required to be submitted to the State Clearinghouse.

(2) ~~(a) The public review period~~45 days for a draft environmental impact report ~~may not be less than 30 days. If the draft environmental impact report is submitted to the State Clearinghouse for review, the review period shall be at least 45 days~~that is required to be submitted to the State Clearinghouse, and the lead agency shall provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

(3) 10 days for a final environmental impact report. The 10-day period shall run from the date a notice of completion of the final environmental impact report is posted by the Office of Planning and Research on the on-line list established by Section 21108(d).

(b) ~~The public~~Public review ~~period~~periods for a proposed negative declaration ~~or proposed~~, enhanced negative declaration, proposed mitigated negative declaration, or enhanced mitigated negative declaration ~~may~~shall not be less than :

(1)20 days~~. If the proposed negative declaration or proposed mitigated negative declaration is~~ if the document is not required to be submitted to the State Clearinghouse for review, ~~the review period shall be at least 30 days~~

(2)30 days, if the document is required to be submitted to the State Clearinghouse for review, and the lead agency shall provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies

(3) 10 days for a final enhanced negative declaration or final enhanced mitigated negative declaration, consisting of responses to comments on, and any revisions to, the document initially circulated for review. The 10-day period shall run from the date a notice of completion of the final enhanced

negative declaration or final enhanced mitigated negative declaration is posted by the Office of Planning and Research on the on-line list established by Section 21108(d).

(c) (1) Notwithstanding subdivisions (a) and (b), if a ~~draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration~~CEQA document is submitted to the State Clearinghouse for review and the period of review by the State Clearinghouse is longer than the public review period established pursuant to subdivision (a) or (b), whichever is applicable, the public review period shall be at least as long as the period of review and comment by state agencies as established by the State Clearinghouse.

(2) The public review period for subdivisions (a) (1), (a) (2), (b)(1) and (b)(2) of this Section and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state agency review period shall be the date that the State Clearinghouse distributes the draft or proposed CEQA document to state agencies.

(3) If the submittal of a CEQA document is determined by the State Clearinghouse to be complete, the State Clearinghouse shall distribute the document within three working days from the date of receipt. The State Clearinghouse shall specify the information that will be required in order to determine the completeness of ~~thesubmittal~~the submittal of a CEQA document.

(d) (1) The lead agency shall consider comments it receives on a ~~draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration~~CEQA document in a timely manner. C~~c~~omments are timely, if they are received within the ~~public review period~~applicable public review period set forth in subsections (a) and (b) of this Section. The lead agency may, but is under no obligation to consider untimely comments, and if it opts not to consider untimely comments, information contained within the untimely comments shall not be considered when determining whether substantial evidence supports the lead agency's CEQA conclusions and findings.

(2) (A) With respect to the consideration of comments received on a draft environmental impact report, an enhanced negative declaration, or enhanced mitigated negative declaration the lead agency shall evaluate comments on environmental issues that are received within the duly noticed public comment period ~~from persons who have reviewed the draft~~ and shall prepare a written response pursuant to subparagraph (B). The lead agency may ~~also~~, but is not required to consider or respond to comments that are received after the close of the ~~public review period~~duly noticed public review period, however, if the lead agency opts to consider any comment or comments submitted outside of a duly noticed public review period, it shall consider all untimely comments on the document. Nothing herein shall limit an

agency's authority to extend a comment period and establish an alternate deadline for submission of comments that creates a longer comment period.

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

~~(3) (A) With respect to the consideration of comments received on a draft~~ (3) A final environmental impact report, a final enhanced negative declaration, or final enhanced mitigated negative declaration consisting of the draft document, timely comments, and responses thereto, and any changes made to the draft document in response to timely comments, shall be considered by the lead agency. A lead agency may choose, but is not required, to respond to comments received on the final environmental impact report, ~~proposed~~final enhanced negative declaration~~, proposed~~ or final enhanced mitigated negative declaration~~, or notice pursuant to Section 21080.4, the lead agency shall accept comments via e-mail and shall treat e-mail comments as equivalent to written comments~~.

(~~B~~4) Any law or regulation relating to written comments received on a ~~draft environmental impact report, proposed negative declaration, proposed mitigated negative declaration,~~CEQA document or notice received pursuant to Section 21080.4, shall also apply to e-mail comments received for those reasons.

(5) The Lead Agency shall only be required to consider comments on a final environmental impact report, final enhanced negative declaration, or final enhanced mitigated negative declaration that address one or more of following topics:

(A) The adequacy of responses to comments contained in the final environmental impact report, final enhanced negative declaration or final enhanced mitigated declaration.

(B) Significant new information, including a disclosure showing that:

(i) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(ii) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(iii) A feasible project alternative for an environmental impact report, or a feasible mitigation measure for an environmental impact report or enhanced mitigated negative declaration, that is considerably different from others previously analyzed and that would clearly lessen the significant environmental impacts of the project to a level of insignificance, but the project's proponents decline to adopt it.

(iv) The draft environmental impact report, proposed enhanced negative declaration, or proposed enhanced mitigated negative declaration was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

(v) Information meeting the following criteria shall not be significant new information:

(a) Mitigation measures that are replaced with equally or more effective measures.
(b) Project revisions added in response to written or verbal comments on the project's effects identified in the enhanced negative declaration or enhanced mitigated negative declaration that do not result in new avoidable significant effects.
(c) Measures or conditions of project approval added after circulation of the enhanced negative declaration or enhanced mitigated negative declaration that are not required by CEQA, that do not create significant environmental effects, and that are not necessary to mitigate an avoidable significant effect.
(d) New information added to the enhanced negative declaration or enhanced mitigated negative declaration that merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

(C) Information contained in comments that are outside the limits of the topics provided in this subdivision (5) shall not constitute substantial evidence.

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

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

declaration, mitigated negative declaration, enhanced negative declaration or enhanced mitigated negative declaration.

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

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

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

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

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

4. Amend Section 21092 to read:

(a) Any lead agency that is preparing an ~~environmental impact report or a negative declaration~~ CEQA Document or making a determination pursuant to subdivision (c) of Section 21157.1 shall provide public notice of that fact within a reasonable period of time prior to adoption or certification of the ~~environmental impact report, adoption of the negative declaration,~~ CEQA Document or making the determination pursuant to subdivision (c) of Section 21157.1.

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

report, a negative declaration, mitigated negative declaration, enhanced negative declaration, or enhanced mitigated negative declaration.

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

~~(3) The notice required by this section shall be given to the last known name and address of all organizations and individuals who have previously requested notice and shall also be given by at least one of the following procedures:~~ (3) Notice of the availability of a draft or final environmental impact report, or a proposed negative declaration or mitigated negative declaration, or a proposed enhanced negative declaration or enhanced mitigated negative declaration, the notice required by this section shall be provided by all of the following:

(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.~~ By mail or electronic mail to the last known name and address of all organizations and individuals who have previously requested notice.

(C) By mail or electronic mail to responsible and trustee agencies.

(D) By mail or electronic mail to a project applicant, if different from the lead agency, and the applicant's duly authorized agent.

(4) In addition to the foregoing requirements, when a project involves construction, development, or redevelopment of facilities, buildings, or infrastructure, notice of the availability of the CEQA Document required by this section also shall be provided as follows:

~~(C) Direct mailing~~(A) ~~By~~ mail to the owner or owners of the subject property, the owner or owners' duly authorized agent or agents, and to all owners and occupants of ~~contiguous~~real property within 300 feet of the project site as shown on the latest equalized assessment roll. Instead of using the assessment roll, the lead agency may use records of the county assessor or tax collector if those records contain more recent information than the information contained on the assessment roll.

(B) If the number of property owners to whom notice would be mailed or delivered pursuant to subparagraph (1) above, is greater than 1,000, a lead agency may, in lieu of mailed or delivered notice, provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the local city or county or cities or counties where the project is located.

(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) and (D) 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.

5. Amend Section 21108 to read:

(a) Whenever a state agency approves or determines to carry out a project that is subject to this division, the state agency shall file notice of that approval or that determination with the Office of Planning and Research. The notice shall indicate the determination of the state agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division.

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

(c) All notices filed pursuant to this section shall be available for public inspection, and a list of these notices shall be posted on a weekly basis in the Office of Planning and Research. Each list shall remain posted for a period of 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.

(d) (1) In addition to other posting requirements all notices filed in accordance with subdivisions (a) and (b) of Section 21108, subdivision (a) and (b) of Section 21152, and Section 21172, shall be posted on an on-line list to be established and maintained by the Office of Planning and Research. The on-line listing shall include the capability to view the notices filed with the Office.

(2) Notices filed with the Office of Planning and Research shall be posted on the list within one business day after filing; however delays in posting shall not extend or otherwise impact the deadlines set forth in Section 21167. Notices shall remain on the list for no less than 45 days.

(3) The Office of Planning and Research may charge a fee that is reasonably related to the costs of processing the notices and maintaining the list required in this subsection (d).

6. Amend the title of 21152 to read:

21152. ~~LOCAL AGENCY; APPROVAL OR DETERMINATION TO CARRY OUT PROJECT; NOTICE; CONTENTS; PUBLIC INSPECTION; POSTING~~ FILE NOTICES WITH COUNTY CLERK AND OFFICE OF PLANNING AND RESEARCH; AND AMEND

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

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

(c) All notices filed pursuant to this section shall be available for public inspection, and shall be posted within 24 hours of receipt in the office of the county clerk. A notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than 12 months.

(d) In addition to other posting requirements, all notices filed in accordance with this section shall be filed with the Office of Planning and Research for posting on the on-line list established by Section 21108(d).

7. Amend Section 21177. PRESENTATION OF GROUNDS FOR NON-COMPLIANCE; OBJECTIONS TO APPROVAL OF PROJECT to read:

(a) ~~An~~ No action or proceeding ~~shall not~~ may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were

presented to the public agency orally or in writing by any person during the public comment periods provided ~~by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination~~ for a CEQA Document in Section 21091 with the following exception. With respect to alleged grounds for noncompliance relating to matters that were not known and could not have been known with reasonable diligence during the public comment period, an action or proceeding may be brought pursuant to Section 21167 if the alleged grounds for noncompliance with this division were presented to the public agency by any person as soon as reasonably feasible and prior to the close of the final public hearing on the project, or if there is no public hearing held, before final action on the project by the lead agency.

(b) ~~A~~ No person shall ~~not~~ maintain an action or proceeding unless that person objected to the approval of the project orally or in writing during the public comment periods provided by this division or prior to the close of the public hearing on the ~~project before the issuance of the notice of determination~~. project's compliance with this division. If no separate public hearing is held on the project's compliance with this division or no other final opportunity to be heard by the decision maker is provided when no public hearing is required, a person may maintain an action or proceeding if that person objected to the approval of the project orally or in writing during the public comment periods provided for the CEQA Document in Section 21091, or prior to the close of the public hearing on the project or during any other final opportunity to be heard by the decision making body before final action is taken on the project.

(c) This section does not preclude any organization formed after the approval of a project from maintaining an action pursuant to Section 21167 if a member of that organization has complied with subdivisions (a) and (b). The grounds for noncompliance may have been presented directly by a member or by a member agreeing with or supporting the comments of another person.

(d) This section does not apply to the Attorney General.

(e) This section does not apply to any alleged grounds for noncompliance with this division for which there was no public hearing or other opportunity for members of the public to raise those objections orally or in writing prior to the approval of the project, or if the public agency failed to give the notice required by law.

(f) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

Legislative Proposal to Facilitate Judicial Severability.

Rationale for the Proposal. This proposal would remove the findings requirement in Section 21168.9 and instead allow a court to fashion an order that permits all or part of a project to proceed pending compliance with CEQA and providing that (1) the order

promotes policies expressly stated in the CEQA statute, and (2) the order specifies the reasons for allowing all or part of a project to proceed. The proposal would give the court more practical discretion to allow beneficial projects or parts of projects to proceed while the lead agency cures the CEQA noncompliance called out in a decision.

Because this revision would allow a court to consider all CEQA policies (including protection of the environment), limiting the mandate in subdivision (a)(2) to only those activities that "could result in an adverse change or alteration to the physical environment" would not be necessary. Deleting that phrase would allow meritorious projects (ARB's AB32 Scoping Plan, for example) to proceed pending CEQA compliance despite arguable changes in the environment. These changes should be read in light of the existing provisions of this section stating that orders shall only include those mandates necessary to achieve compliance and recognizing courts' traditional equitable powers.

Finally, this proposal would add a new subdivision to clarify that any portion of a determination not found to violate CEQA would be conclusively presumed to comply with CEQA for purposes of later project approvals and further environmental review as may be required by the court's determination.

Proposed Statutory Amendment.

8. Section 21168.9. FINDING THAT PUBLIC AGENCY FAILED TO COMPLY WITH DIVISION is amended to read:

(a) If a court finds, as a result of a trial, hearing, or remand from an appellate court, that any determination, finding, or decision of a public agency has been made without compliance with this division, the court shall enter an order that includes one or more of the following:

(1) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.

(2) ~~If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a~~ A mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision~~, that could result in an adverse change or alteration to the physical environment,~~ until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision into compliance with this division.

(3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division.

(b) Any order pursuant to subdivision (a) shall include only those mandates which are necessary to achieve compliance with this division and only those

specific project activities in noncompliance with this division. The order shall be made by the issuance of a peremptory writ of mandate specifying what action by the public agency is necessary to comply with this division. ~~However, the order shall be limited to that portion of a determination, finding, or decision or the specific project activity or activities found to be in noncompliance only if a court finds that (1) the portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division.~~ An order pursuant to subdivision (a)(2) may allow all or certain project activities to proceed pending compliance with this division provided that doing so would promote the legislative policies expressed in sections 21000, 21001, 21002, 21003 and elsewhere in this division. The factors supporting a determination that all or certain project activities may proceed shall be explained in the order.

(c) The trial court shall retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with this division.

~~(c)~~ (d) Nothing in this section authorizes a court to direct any public agency to exercise its discretion in any particular way. Except as expressly provided in this section, nothing in this section is intended to limit the equitable powers of the court.

(e) Consistent with subdivision (c) of Section 21005, any portion of any determination, finding, or decision of a public agency that was not voided pursuant to subdivision (a) shall be conclusively presumed to comply with the provisions of this division for purposes of its use in connection with later project activities, unless the provisions of Section 21166 apply.

2. Despite Previous Efforts to Streamline CEQA for Infill Projects, Current Provisions Are Still Not Sufficiently Effective

Problem Statement

Local governments, affordable housing advocates, urban planners, community-based organizations, environmental organizations, and developers have long sought to create effective streamlining provisions in CEQA for appropriate urban infill projects, particularly affordable housing. With increasing attention toward sustainable development concepts, even greater emphasis has been placed on the benefits of infill development when it offers opportunities for reduced automobile travel and use of established infrastructure and public services. Although multiple attempts have been made to create legislative and regulatory solutions, they have resulted primarily in exemptions with so many constraints that their utility and effectiveness are seriously limited.

One problem is the inequitable applicability of the infill categorical exemption to projects only within incorporated city limits. The Guidelines establish this categorical exemption for small (up to 5 acre) infill development projects (14 CCR Section 15332), but the restriction of the exemption to projects within city limits precludes its use in urbanized county territory that has similar urban density, public services, utilities, and transit characteristics.

The Legislature added Article 6 to CEQA (commencing with Section 21159.20), to provide conditional statutory exemptions for heavily qualified, low-income and infill housing projects. The conditions that must be met to qualify for an exemption under Article 6 are very complex and in some cases require avoidance of common, practically unavoidable urban impacts (e.g., traffic, noise) or subject projects to a fair-argument test that effectively disqualifies otherwise appropriate projects. These qualifying conditions make the exemptions unworkable for otherwise appropriate infill residential projects, even though the projects can help meet community housing needs, provide opportunity to reduce regional vehicle miles traveled, and are consistent with local plans and zoning.

SB 375 (Statutes of 2009) added “Sustainable Communities Strategies” to the CEQA lexicon (commencing with Section 21155) to streamline qualified housing and transit priority projects that meet strict criteria related to proximity to high quality transit corridors and other conditions. Because approval of Sustainable Communities Strategies will not occur for some years to come, it is premature to assess the practical benefits of the CEQA streamlining provisions made possible by SB 375. While more efficient environmental review of qualifying projects is a hope, SB 375 will not fully resolve the need for effective infill project streamlining.

The Governor’s Office of Planning and Research has conducted surveys of local governments regarding use of the infill exemptions as part of its annual California Planner’s Book of Lists. The survey results indicated that while many cities used the guidelines Section 15332 infill categorical exemption (as noted above, this provision is not available for urbanized areas of counties), few cities and counties were able to use

the statutory exemptions for infill housing. Overall, CEQA still lacks sufficiently effective streamlining strategies for appropriate infill development. Beneficial infill projects already face substantial hurdles, such as inadequate park and green space, poorly performing schools, financing limitations, and local opposition. Lack of effective CEQA streamlining should not add another hurdle.

As a result, instead of the Article 6 exemption providing the intended incentive, many infill projects have more difficulty getting through the environmental review process than "greenfield" developments that contribute to urban sprawl. The lack of a reliable statutory exemption is a lost opportunity to facilitate beneficial infill development.

Legislative Proposals to Improve Infill Streamlining Provisions.

Rationale for the Proposals. Although the current housing exemptions are intended to ensure that housing projects with unacceptable environmental impacts do not qualify for exemption, most agency planners, environmental consultants, and other CEQA practitioners have found, in practice, that the existing exemptions are laden with too many qualifications, which greatly limit their use. For that reason, the exemptions are rarely used. The proposed statutory amendments set forth below seek to either eliminate or modify some of the most difficult qualifications to expand the universe of qualifying projects, while still ensuring that projects with unacceptable impacts remain subject to CEQA.

One key proposed change is to eliminate the existing requirement that the project site has been subject to "community level environmental review" completed within the preceding few years, because very recent plan updates have not been prepared for many communities with beneficial infill opportunities. This requirement is particularly counterproductive in largely built-out cities and urbanized unincorporated areas (where infill projects are arguably very likely to otherwise occur) that, by their nature, have not recently completed a general plan or specific plan update. Because infill projects must be consistent with general plan and zoning regardless of the age of the last update or community plan, the existence of relatively "fresh" community plan and its environmental review provides relatively little value. Ironically, the communities most suitable for substantial infill development are typically so close to being fully built out that their general plans are older, whereas communities facing greenfield development proposals tend to find less resistance to environmental clearances for such projects compared to urban infill projects.

Another key proposed change is deletion of the "reasonable possibility" language from Sections 21159.22 and 21159.23. The existing language subjects the statutory exemptions to the "fair-argument" standard, which effectively negates the procedural advantage and certainty that would otherwise be provided by the statutory exemption. This language was purposefully left out of the infill provisions of SB 375 for that reason. If infill is important enough to be statutorily exempt – and we believe it should be – then it should have clear procedural advantages over greenfield development. This proposed revision is intended to establish that advantage.

Finally, the proposed amendments address an overlap between the existing “low-income infill housing exemption” (Section 21159.23) and the “infill housing exemption” (Section 21159.24). Both sections include low income conditions in order to qualify for a CEQA exemption. This proposal would delete the low income conditions of Section 21159.24 because Section 21159.23 adequately accounts for low income housing development. The low income qualification included in Section 21159.24 is not necessary and inhibits use of the exemption for otherwise appropriate infill housing projects.

Proposed Statutory Amendments.

9. Amend Section 21159.20. DEFINITIONS to read:

For the purposes of this article, the following terms have the following meanings:

(a) "Census-defined place" means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

~~(b) "Community-level environmental review" means either of the following:~~

~~(1) An environmental impact report certified on any of the following:~~

~~(A) A general plan.~~

~~(B) A revision or update to the general plan that includes at least the land use and circulation elements.~~

~~(C) An applicable community plan.~~

~~(D) An applicable specific plan.~~

~~(E) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.~~

~~(2) Pursuant to this division and the implementing guidelines adopted pursuant to this division that govern subsequent review following a program environmental impact report, or pursuant to Section 21157.1, 21157.5, or 21166, a negative declaration or mitigated negative declaration was adopted as a subsequent environmental review document, following and based upon an environmental impact report on any of the projects listed in subparagraphs (A), (C), or (D) of paragraph (1).~~

(b~~c~~) "Low-income households" means households of persons and families of very low and low income, as defined in Sections 50093 and 50105 of the Health and Safety Code.

(cd) "Low- and moderate-income households" means households of persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

10. Amend Section 21159.21 CRITERIA TO QUALIFY FOR HOUSING PROJECT EXEMPTIONS to read:

A housing project qualifies for an exemption from this division pursuant to Section 21159.22, 21159.23, or 21159.24 if it meets the criteria in the applicable section and all of the following criteria:

(a) The project is consistent with any applicable general plan, specific plan, and local coastal program, including any mitigation measures required by a plan or program, as that plan or program existed on the date that the application was deemed complete and with any applicable zoning ordinance, as that zoning ordinance existed on the date that the application was deemed complete, except that:

(1) a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.

(2) a project shall not be deemed to be inconsistent with a general plan, specific plan, or local coastal program, or the zoning ordinance, solely as a result of a density bonus, modification, waiver, concession or incentive authorized by Government Code section 65915.

(b) Community-level environmental review has been adopted or certified. (c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(cd) The site of the project does not have a significant effect on biological resources, unless any significant effect on biological resources can be mitigated to a level of insignificance. For purposes of this subdivision, "biological resources" means contain wetlands, as wildlife habitat for, and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete. For the purposes of this subdivision, "wetlands" has the same meaning as in Section 328.3 of Title 33 of the Code of Federal Regulations and "wildlife habitat" means the ecological

communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

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

(e) The site of the project is subject to an environmental ~~preliminary endangerment~~ assessment prepared by a registered environmental assessor that is adequate to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. A preliminary endangerment assessment, as that term is defined in Section 25401.1 of the Health and Safety Code, shall be adequate for this purpose.

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(~~d~~f) The project does not have a significant effect on historical resources pursuant to Section 21084.1 or any significant effect on historical resources can be mitigated to a level of insignificance.

(~~h~~g) The project site is not subject to any of the following:

(1) A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(2) An unusually high risk of fire or explosion from materials stored or used on nearby properties.

(3) Risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(4) Within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.

(5) Landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(~~i~~h) (1) The project site is not located on developed open space.

(2) For the purposes of this ~~subdivision~~,subsection, "developed open space" means land that meets all of the following criteria:

(A) Is publicly owned, or financed in whole or in part by public funds.

(B) Is generally open to, and available for use by, the public.

(C) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.

(3) For the purposes of this subdivision, "developed open space" includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(i) The project site is not located within the boundaries of a state conservancy.

(j) The lead agency's determination that a project meets the criteria in this section shall be reviewed under the substantial evidence standard.

(k) Nothing in this section shall be understood to eliminate or modify the ability of an agency to impose conditions of approval, exactions, dedications, fees, or other local requirements addressing matters such as the need for infrastructure, public services and utilities, open space, housing construction, and other matters relating to public health and safety or the general welfare of the community.

11. Amend Section 21159.22 AGRICULTURAL EMPLOYEE HOUSING EXEMPTION to read:

(a) This division does not apply to any development project that meets the requirements of subdivision (b), and meets either of the following criteria:

(1) Consists of the construction, conversion, or use of residential housing for agricultural employees, and meets all of the following criteria:

(A) Is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Lacks public financial assistance.

(C) The developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years.

(2) Consists of the construction, conversion, or use of residential housing for agricultural employees and meets all of the following criteria:

(A) Is housing for very low, low-, or moderate-income Households as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(B) Public financial assistance exists for the development project.

(C) The developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least 15 years.

(b)(1) If the development project is proposed within incorporated city limits or within a census defined place with a minimum population density of at least 5,000 persons per square mile, it is located on a project site that is adjacent, on at least two sides, to land that has been developed, and consists of not more than 45 units, or is housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(2) If the development project is located on a project site zoned for general agricultural use, and consists of not more than 20 units, or is housing for a total of 20 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(3) The project satisfies the criteria in Section 21159.21.

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

(c) Notwithstanding subdivision (a), if a project satisfies the criteria described in subdivisions (a) and (b), but does not satisfy the criteria described in paragraph (1) of subdivision (b), this division does not apply to the project if the project meets all of the following criteria:

(1) Is located within either an incorporated city or a census-defined place.

(2) The population density of the incorporated city or census-defined place has a population density of at least 1,000 persons per square mile.

(3) The project site is adjacent on at least two sides to land that has been developed and the project consists of not more than 45 units, or the project consist of dormitories, barracks, or other group housing facilities for a total of 45 or fewer agricultural employees.

~~(d) Notwithstanding subdivision (c), this division shall apply to a project that meets the criteria described in subdivision (c) if a public agency that is carrying out or approving the project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impact of successive projects of the same type in the same area, over time, would be significant.~~

For the purposes of this section, "agricultural employee" has the same meaning as defined by subdivision (b) of Section 1140.4 of the Labor Code.

12. Amend Section 21159.23 Low-income housing exemption to read:

(a) This division does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of 200~~100~~ or fewer that is affordable to low-income households if both of the following criteria are met:

(1) The developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households, as defined in Section 50079.5 of the Health and Safety Code, for a period of at least 30 years, at monthly housing costs, as determined pursuant to Section 50053 of the Health and Safety Code.

(2) The development project meets all of the following requirements:

(A) The project satisfies the criteria described in Section 21159.21.

(B) The project site meets one of the following conditions:

(i) Has been previously developed for qualified urban uses.

(ii) The parcels immediately adjacent to the site are Developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses and the remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses, and the site has not been developed for urban uses ~~and no parcel within the site has been created within 10 years prior to the proposed development of the site~~.

(C) The project site is not more than ~~five~~ eight acres in area.

(D) The project site is located within an urbanized area or within a census-defined place with a population density of at least ~~5,000~~ 1,000 persons per square mile or, if the project consists of ~~50~~ 10 or fewer units, within an incorporated city with a population density of at least ~~2,500~~ 500 persons per square mile and a total population of at least 25,000 persons.

(b) Notwithstanding subdivision (a), if a project satisfies all of the criteria described in subdivision (a) except subparagraph (D) of paragraph (2) of that subdivision, this division does not apply to the project if the project is located within either an incorporated city or a census defined place with a population density of at least1,000 persons per square mile.

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

~~(d)~~ For the purposes of this section, "residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

13. Section 21159.24, INFILL HOUSING EXEMPTION to read:

(a) ~~Except as provided in subdivision (b), t~~This division does not apply to a project if all of the following criteria are met:

(1) The project is a residential or predominantly residential project on an infill site.

(2) The project is located within an urbanized area.

(3) The project satisfies the criteria of Section 21159.21.

(4) ~~Within five years of the date that the application for the project is deemed complete pursuant to Section 65943 of the Government Code, community-level environmental review was certified or adopted.~~

~~(5)~~ The site of the project is not more than ~~four~~ 10 acres in total area.

(6) The project does not contain more than ~~100~~ 400 residential units.

(7) ~~Either of the following criteria are met:~~

~~(A) (i) At least 10 percent of the housing is sold to families of moderate income, or not less than 10 percent of the housing is rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.~~

~~(ii) The project developer provides sufficient legal Commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.~~

~~(B) The project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).~~

~~(8)~~ The project is within one-half mile of a bus or rail ~~major~~ transit stop.

(8~~9~~) The project does not include any single level building that exceeds ~~100,000~~ 40,000 square feet.

(910) The project promotes higher density infill housing. A project with a density of at least 20 units per acre shall be conclusively presumed to promote higher density infill housing. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density housing unless the preponderance of the evidence demonstrates otherwise.

~~(b) Notwithstanding subdivision (a), this division shall apply to a development project that meets the criteria described in subdivision (a), if any of the following occur:~~

~~(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.~~

~~(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.~~

~~(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project, that was not known, and could not have been known, at the time that community-level environmental review was certified or adopted.~~

~~(c) If a project satisfies the criteria described in subdivision (a), but is not exempt from this division as result of satisfying the criteria described in subdivision (b), the analysis of the environmental effects of the project in the environmental impact report or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to paragraph (2) or (3) of subdivision (b).~~

(~~d~~b) For the purposes of this section, (1) "residential" means a use consisting of ~~either of the following: (1) R~~ residential units only and (2) "predominantly residential" means a use consisting of~~. (2) R~~ residential units and ~~primarily~~ neighborhood serving goods, services, or retail uses that do not exceed ~~15~~ 25 percent of the total floor area of the project.

3. Well-Prepared and Thorough MNDs and NDs Are Difficult to Defend in Light of the Fair Argument Standard

Problem Statement

The fair argument standard creates a very low threshold for a lead agency's decision to prepare an EIR instead of an ND or MND. This reflects one of CEQA's fundamental policies: "The EIR requirement is the heart of CEQA" (14 CCR Section 15003[a]). In many cases the standard has appropriately encouraged lead agencies to be accountable for sound environmental planning. However, the fair argument standard has not evolved, while the level of detail and sophistication of environmental analysis in ND/MNDs have improved dramatically in the nearly four decades since the standard was codified in *County of Inyo v. Yorty*. Consequently, unnecessary and costly EIRs have been required in some circumstances where well-prepared ND/MNDs can and should suffice. In CEQA's early years, an EIR was truly the only way to ensure a comprehensive and in-depth analysis of a project's environmental impacts. NDs were often perfunctory documents consisting mainly of a bare checklist and little or no supporting analysis or documentation.

As CEQA practice has matured, NDs and, particularly, MNDs, have evolved such that many now contain a thorough, well-supported discussion of environmental impacts and mitigation measures, with technical studies and other substantial evidence included to support the conclusion that "clearly no significant effect on the environment would occur" after mitigation (14 CCR Section 15064[f][2]). In this way, many MNDs now fulfill the essential disclosure and mitigation purposes of CEQA: informing decision-makers and the public about a project's environmental effects and avoiding or reducing impacts to a less-than-significant level. An MND cannot defer mitigation and mitigation measures adopted as part of an MND are held to a higher standard than those adopted with an EIR. Further, an MND cannot be used if the project would result in significant and unavoidable impacts. So, arguably, an MND results in mitigation that is at least as complete as in an EIR (both must mitigate to the extent feasible). While the ND or MND does not and should not replace the EIR in CEQA's hierarchy of environmental documents, they are clearly a reasonable and effective option for many projects.

It is also important to acknowledge that the evolution of NDs and MNDs has, in part, been driven by economic necessity. Since CEQA's adoption, the cost and time needed to prepare an EIR have increased exponentially, prompting lead agencies to look for ways to meet their obligations under CEQA in a more streamlined and less costly way.

The CEQA Guidelines require preparation of an EIR, rather than an ND or MND, whenever there is substantial evidence supporting a "fair argument" that the project may have a significant effect on the environment (14 CCR Section 15064[f][1]). Thus, despite this evolution in the effectiveness of ND/MNDs, the only question that really matters is whether any substantial evidence exists to suggest that the project may have a significant impact. Under the fair argument standard, an EIR is required even when other substantial evidence clearly and convincingly shows that the project will not have a significant effect. In fact, when deciding whether to prepare an ND or MND instead of an

EIR, the lead agency is effectively unable to rely on such compelling evidence, regardless of the magnitude by which it outweighs even a small amount of evidence supporting a fair argument. Thus, the CEQA Guidelines and numerous court decisions set a very low threshold for preparation of an EIR, even when ND/MND documentation is thorough, valid, informative, and compelling in its conclusions.

For a project opponent, "a fair argument that the project may have a significant impact on the environment" is usually an easy threshold to meet, despite the lead agency having made a diligent and good faith effort to analyze the project with the MND. Ironically, this creates an unfair outcome where projects that can be convincingly and objectively shown to have minimal environmental impacts—and clearly no significant impacts in an MND—are required to undergo a more expensive and time-consuming EIR process that does not contribute much additional value in the environmental information provided for the lead agency's decision or changes in impact conclusions or mitigation. While the fair-argument standard is important and EIRs are clearly justified in many instances, unnecessary EIRs that do not contribute value to public agency decisions or environmental protections are burdensome and consume substantial staff and economic resources of all involved parties.

Legislative Proposal to Improve Defensibility of Well-Prepared and Thorough MNDs or NDs

Rationale for the Proposal. This proposal would create a new, optional type of negative declaration with enhanced, more stringent standards for responses to public comments and greater opportunities for public review than current versions. In return for the elevated procedural standards, the new documents, called an "enhanced ND" or an "enhanced MND," would be subject to a more deferential test when considering its compliance with CEQA. The enhanced standards include an obligation of the lead agency to prepare responses to comments, and an additional opportunity for the public and interested parties to review those responses for 10 days prior to the lead agency's decision. (The 10-day review is included in the proposed amendments to Section 21091, described in proposed amendment No. 3, above.)

With the additional process and documentation consistent with state-of-the-art CEQA practice, challenges to the sufficiency of an "enhanced" ND or MND should be subject to a standard of review that takes into account the quality of the environmental information and public process of the enhanced ND or MND, rather than using the fair-argument standard for whether the agency has proceeded in a manner required by law. The proposed standard would require the lead agency to prepare clear and convincing evidence in the enhanced ND or MND that a significant effect on the environment will not occur and conduct the more extensive public process of an enhanced ND or MND, as described below.

Proposed Legislative Amendments.

14. Add a new Section 21060.2 to read:

Section 21060.2 “CEQA DOCUMENT”

“CEQA Document” is an inclusive term that means a draft environmental impact report, final environmental impact report, negative declaration, mitigated negative declaration, enhanced negative declaration, or enhanced mitigated negative declaration.

15. Add a new Section 21064.1 to read:

21064.1 "ENHANCED NEGATIVE DECLARATION" OR "ENHANCED MITIGATED NEGATIVE DECLARATION".

"Enhanced Negative Declaration" or " Enhanced Mitigated Negative Declaration" means a negative declaration or mitigated negative declaration for which written responses to comments have been prepared and made available for public comment pursuant to Section 21092 of this division, and which includes the proposed negative declaration or mitigated negative declaration, comments on the proposed negative declaration or mitigated negative declaration, responses to significant environmental points raised in the comments, and revisions to the proposed negative declaration or mitigated negative declaration as may be warranted based on the responses to comments.

16. Amend Section 21080 to read:

(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~~ any 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.

(3) The lead agency weighs all substantial evidence in the record related to whether the project may result in a significant adverse environmental impact, and finds that there is clear and convincing evidence showing that the project will not have a significant adverse impact on the environment, and an enhanced negative declaration or enhanced mitigated negative declaration has been prepared, and made available for public review in accordance with the provisions of Section 21092.

(d) Except as provided in Section 21080(c)(3), 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.

Amend Section 21082.2(d) to read the same as Section 21080(d).

17. Amend Section 21151 (a) to read:

(a) All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project that they intend to carry out or approve which may have a significant effect on the environment, unless an enhanced negative declaration or enhanced mitigated negative declaration is prepared in accordance with the requirements of Section 21080 (c)(3). When a report is required by Section 65402 of the Government Code, the environmental impact report may be submitted as part of the report.

4. Legally Vulnerable and Ineffective Tiering Provisions Continue to Necessitate Redundant Environmental Documentation

Problem Statement

CEQA's tiering provisions are intended to "help a public agency to focus upon issues ripe for decision at each level of environmental review … in order to exclude duplicative analysis of environmental effects examined in previous environmental impact reports" (PRC Section 21093). However, this intent cannot be fulfilled when the first-tier EIR identifies a significant, unavoidable impact. In these circumstances the lead agency must prepare a second-tier EIR, rather than an ND or MND, despite the fact that the unavoidable impacts have been previously evaluated, mitigated to the extent feasible, and overridden by the lead agency as a result of the prior EIR. The second EIR does not provide additional environmental protection nor does it add useful information to the decision making process. But it does lead to costly, duplicative documentation and an extended environmental review process.

The fair argument standard applies to new environmental issues encountered in analysis of the later project. Therefore, if that project were to result in a new significant impact or would substantially worsen the significant impacts disclosed in the first-tier EIR, a second-tier EIR would be appropriate. There is, however, no practical benefit (i.e., better environmental protection or more complete environmental information for decision-making) to require a second-tier EIR when: (1) a significant unavoidable impact has previously been disclosed and overridden, (2) the later project would not substantially worsen that impact or create a new significant impact, and (3) an ND or MND would otherwise be allowed. If the statute were amended to allow an ND or MND in this circumstance, a second statement of overriding considerations could still be adopted by the lead agency to acknowledge the unavoidable significant effect and the fact that mitigation to a less-than-significant level is still infeasible.

Legislative Proposal to Make Tiering More Effective

***Rationale for the Proposals*.** This proposal has three parts that, taken as a whole, will facilitate streamlining of environmental review for qualifying projects while ensuring that significant unavoidable effects are properly considered in second tier environmental review. The proposal consists of amendments to Sections 21083.3, 21093, and 21094.

Section 21083.3 currently exempts certain categories of impacts for projects consistent with general plans, community plans, or zoning actions for which EIRs have previously been prepared and certified. The proposed amendments would do three things:

- Expand the universe of projects eligible for this exemption by adding projects consistent with a *specific plan* for which an EIR has previously been prepared. Specific plans, by definition, include land use designations and implementing actions comparable to general plans and zoning programs. This change would eliminate an existing disparity in CEQA, whereby specific plans do not enjoy the

same level of streamlining as projects consistent with other types of prior legislative planning actions (although *purely residential* projects consistent with approved specific plans enjoy a partial exemption from CEQA pursuant to Government Code section 65457 and CEQA Guidelines section 15182).

- Expand the universe of previously approved "uniformly applied development policies or standards" that can be the basis for finding an impact to not be "peculiar". The current statutory language limits such policies and standards to those adopted by cities or counties, and allows such policies or standards to be relied on for exemption only where, at the time they were adopted, the city or county had the foresight to make a finding that they would "substantially mitigate" the impacts to which they are addressed. The proposed amendments would expand qualifying policies or standards to include "other environmental regulations or standards" adopted by an air pollution control district, air quality management district, or other agency."

- Eliminate the undefined and confusing term "substantially mitigate" and substitute a term with a clear and known meaning, "mitigate to a less-than-significant level." Just as CEQA Guidelines section 15183 has done since the late 1990s, the amendments would also allow an agency that did not make a mitigation finding at the time of adoption of such policies or standards to make the finding at the time of consideration of action on a proposed project, provided that the agency holds a hearing on the question of whether, indeed, the policies or standards would mitigate the impacts at issue to a less-than-significant level, based on substantial evidence.

- Lay out a roadmap for how agencies should determine which impacts of proposed projects are exempt from CEQA.

The proposed amendments would clarify the use of negative declarations (and mitigated negative declarations) as "lower tier" documents in Section 21094. Currently, both Sections 21093 and 21094 read as though EIRs are the only legitimate second- or third-tier environmental documents.

With respect to Section 21094, the proposed amendments would among other things:

- Allow agencies to prepare negative declarations for lower tier projects with "cumulatively considerable" incremental contributions to previously identified significant cumulative effects, but only where the agency finds that additional mitigation for such effects remains infeasible despite "consideration of new information, regulatory opportunities, and/or technological advancements not addressed" previously.

- Borrow a concept from CEQA Guidelines Section 15168, authorizing the use of program EIRs. Section 15168 allows an agency to conclude that a "later activity" is "within the scope of the project covered by the program EIR," so that "no new environmental document would be required." Section 21094, as amended, would include language authorizing a similar finding.

Proposed Legislative Amendments

18. Amend Section 21083.3. APPLICATION OF DIVISION TO APPROVAL OF SUBDIVISION MAP OR OTHER PROJECT; LIMITATION; MITIGATION MEASURES UNDER PRIOR ENVIRONMENTAL IMPACT REPORT; PUBLIC HEARING; FINDING to read:

(a) If a parcel has been zoned to accommodate a particular density of development or has been designated in a community plan or specific 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, or specific 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 or other environmental regulations or standards have been previously adopted by a~~the~~ city, ~~or~~ county, air pollution control district, air quality management district, or other public agency, with a finding based upon substantial evidence, which need not include an environmental impact report, that the ~~development~~ policies, ~~or~~ standards, or regulations will ~~substantially~~ mitigate to a less-than-significant level that environmental effect when applied to future projects, unless substantial new information shows that the policies, ~~or~~ standards, or regulations will not ~~substantially~~ mitigate the environmental effect to such a degree. Where an

agency is considering relying on previously adopted, uniformly applied development policies or standards or other environmental regulations or standards pursuant to this subdivision but the agency that adopted or enacted such standards did not, in adopting or enacting them, previously make a finding that they would mitigate the effects of future projects to less-than-significant levels, the decision-making body of an agency, prior to approving a project pursuant to this section, shall hold a noticed public hearing for the purpose of considering whether, as applied to the project, such standards, policies, or regulations would mitigate the effects of the project to less-than-significant levels. Such a public hearing need only be held, however, if the agency is considering reliance on policies, standards, or regulations as permitted in this subdivision.

(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.

(h) In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, based on substantial evidence:

(1) Are peculiar to the project or the parcel on which the project would be located.

(2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan, community plan, or specific plan with which the project is consistent.

(3) Are potentially significant off-site impacts and cumulative impacts that were not discussed in the prior EIR prepared for the general plan, community plan, specific plan, or zoning action, or

(4) Are previously identified significant effects that, as a result of substantial new information not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

19. Amend Section 21093. LEGISLATIVE FINDINGS AND DECLARATION; PUBLIC AGENCIES MAY TIER ENVIRONMENTAL IMPACT REPORTS to read:

(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 CEQA Documents ~~environmental impact reports~~, and (3) ensuring that CEQA Documents ~~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.

20. Amend Section 21094. LATER PROJECTS; TIERED ENVIRONMENTAL IMPACT REPORTS; INITIAL STUDY; USE OF PRIOR REPORTS to read:

(a) (1) If a prior ~~environmental impact report~~ CEQA Document 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~~, CEQA Document except that the report on the later project is not required to examine those effects that the lead agency determines were either of the following:

(A) Mitigated to the extent feasible as identified in the prior CEQA Document, though not necessarily to a less-than-significant level, ~~or avoided~~ pursuant to paragraph (1) of ~~paragraph (1) of~~ subdivision (a) of Section 21081 as a result of the prior ~~environmental impact report~~ CEQA Document.

(B) Examined at a sufficient level of detail in the prior ~~environmental impact report~~ CEQA Document to enable those effects to be mitigated to a less-than-significant level ~~or avoided~~ by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(2) If a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, and the lead agency makes a finding of overriding consideration pursuant to subdivision (b) of Section 21081, the lead agency for a later project that uses a tiered environmental impact report from that program, plan, policy, or ordinance may incorporate by reference that finding of overriding consideration if all of the following conditions are met:

(A) The lead agency determines that the project's significant impacts on the environment are not greater than or different from those identified in the prior environmental impact report.

(B) The lead agency incorporates into the later project all the applicable mitigation measures identified by the prior environmental impact report.

(C) The prior finding of overriding considerations was not based on a determination that mitigation measures should be identified and approved in a subsequent environmental review.

(D) The prior environmental impact report was certified not more than three years before the date findings are made pursuant to Section 21081 for the later project.

(E) The lead agency has determined that the mitigation measures or alternatives found to be infeasible in the prior environmental impact report pursuant to paragraph (3) of subdivision (a) of Section 21081 remain infeasible based on the criteria set forth in that section.

(3) On and after January 1, 2016, a lead agency shall not take action pursuant to paragraph (2) with regard to incorporating by reference a prior finding of overriding consideration, and paragraph (2) shall become inoperative on January 1, 2016.

(b) This section applies only to a later project that the lead agency determines is all of the following:

(1) Consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified.

(2) 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 (except where a rezone is necessary to achieve or maintain conformity with an updated general plan).

(3) Not subject to Section 21166.

(c) (1) For purposes of compliance with this section, an initial study or comparably detailed analysis shall be prepared to assist the lead agency in making the determinations required by this section. The initial study or comparably detailed analysis shall analyze whether (A) the proposed later project is within the scope of the project covered by the earlier CEQA Document, so that no new environmental document will be required or (B) the later project, if not within the scope of such earlier project, may cause significant effects on the environment that either were not examined in the prior environmental impact report, or were mitigated to the extent feasible, though not necessarily to a less-than-significant level, by mitigation previously adopted pursuant to subdivision (a) of Section 21081. With respect to any effects examined in the prior environmental impact report and mitigated pursuant to Section 21081, subdivision (a), but not to a less-than-significant level, the initial study or comparably detailed analysis shall assess whether, in light of information, regulatory opportunities, or technological advancements not addressed in the prior environmental impact report or findings, additional feasible mitigation may be available to mitigate it to a less-than-significant level. Where such additional feasible mitigation is available, no environmental impact report need be prepared with respect to the effect to which the additional mitigation is addressed if the project proponent agrees to incorporate the mitigation into the project prior to public release of any mitigated negative declaration for the project. Nor shall an environmental impact report be required solely because of a project's cumulatively considerable incremental contribution to a significant cumulative effect, if such an incremental effect has been adequately addressed pursuant to subdivision (e)(4)(C) of this Section.

(2) Whether a later project is within the scope of a previous CEQA Document is a question of fact to be determined by a lead agency based on substantial evidence. Where a lead agency approves a later project without any new CEQA Document because the later project is within the scope of the project covered by the earlier CEQA Document, the lead agency shall file a notice of its determination pursuant to Section 21108, subdivision (a), or Section 21152, subdivision (a).

(3) If a later project is within the scope of a previous environmental impact report and the prior environmental impact report included a significant effect on the environmental that could not be feasibly reduced to a less-than-significant level, the later CEQA Document must include a statement disclosing the prior

unavoidable significant impact and the lead agency's determination about its disposition.

(4) If the public agency approves a project that would result in an unavoidable significant effect on the environment using a tiered CEQA document, it shall adopt overriding considerations at the time of the approval action using information in the whole of the record before the public agency.

(d) All public agencies that 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) (1) If a lead agency determines pursuant to this subdivision that a cumulative effect has been adequately addressed in a prior environmental impact report, that cumulative effect is not required to be examined in a later environmental impact report, mitigated negative declaration, or negative declaration for purposes of subparagraph (B) of paragraph (1) of subdivision (a).

(2) When assessing whether there is new significant cumulative effect, the lead agency shall consider whether the incremental effects of the project are cumulatively considerable.

(3) (A) For purposes of paragraph (2), if the lead agency determines the incremental effects of the project are significant when viewed in connection with the effects of past, present, and probable future projects, the incremental effects of a project are cumulatively considerable.

(B) If the lead agency determines incremental effects of a project are cumulatively considerable, the later environmental impact report, mitigated negative declaration, or negative declaration shall examine those effects.

(4) If the lead agency makes one of the following determinations, the otherwise cumulatively considerable incremental contribution of a project to significant cumulative effects ~~of a project~~ are adequately addressed for purposes of paragraph (1):

(A) The incremental contribution to the significant cumulative effect has been mitigated to a less than considerable level ~~or avoided~~ as a result of the prior environmental impact report and findings adopted pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of the prior environmental impact report.

(B) The incremental contribution to the significant cumulative effect has been examined at a sufficient level of detail in the prior environmental impact report to enable the effect to be mitigated to a less-than-significant level ~~or avoided~~ by site-specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(C) The incremental contribution to the significant cumulative effect cannot be mitigated to a less-than-considerable level despite the project proponent's willingness to accept all feasible mitigation measures, notwithstanding consideration of new information, regulatory opportunities, and/or technological advancements not addressed in the prior environmental impact report or findings, and the only purpose of including analysis of the cumulatively considerable effect in another environmental impact report would be to put the agency in a position to adopt a statement of overriding considerations with respect to the effect.

(f) If tiering is used pursuant to this section, a~~n environmental impact report~~ CEQA Document 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.

(g) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

5. CEQA Lacks Effective Tools or Guidance for Analyzing Cumulative Impacts in Already Poor Environmental Conditions

Problem Statement

CEQA does not provide practical guidance for the analysis of cumulative impacts in the context of already poor environmental conditions. When there is a cumulative impact (i.e., poor air quality), CEQA requires an examination of whether a project may make a "cumulatively considerable" contribution to that impact.

A cumulative impact consists of "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (CEQA Guidelines Section 15355). "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." (PRC Section 21083(b)(2)). For purposes of cumulative impact analysis, a cumulatively considerable contribution is equivalent to a significant impact. A project's incremental contribution to a cumulative impact can be considerable (i.e., significant) even when the project's individual impact is less than significant and the magnitude of the contribution is extremely small in practical terms.

A CEQA review must consider three aspects of cumulative impact: (1) whether there is a cumulative impact to which the project may contribute; (2) whether the project is contributing to or taking part in a program designed to avoid the cumulative impact; and (3) whether the project's incremental contribution is "considerable." In the first case, the review need not include cumulative impacts to which the project does not contribute. In the second case, when determining whether the project's contribution is considerable, the review must take into account project compliance with existing programs and project-specific mitigation measures that would avoid the contribution.

There are three common problems with cumulative impact analysis. First, rather than examining the significance of the project's incremental contribution, the CEQA document instead focuses on disclosing the significant cumulative impacts in the area (sometimes, even when they are not pertinent to the project). This results in a failure to consider the importance of the project's incremental contribution. Second, the CEQA document equates the significance of the project's individual impact to the significance of its incremental contribution. This can lead to an incorrect conclusion regarding the significance of the project's contribution. Third, projects making extremely small incremental contributions may be characterized as having a cumulatively significant effect, even when the contribution is miniscule and, in reality, inconsequential.

Neither the CEQA statute and guidelines nor case law are helpful in explaining how cumulative impact analysis is to be done from a practical standpoint. Case law has established that an incremental contribution of one molecule or less is not cumulatively considerable. At the same time, case law advises that "the greater the existing environmental problems are, the lower the threshold should be for treating a project's

contribution to cumulative impacts as significant" (*Communities for a Better Environment v. California Resources Agency* [2002] 103 Cal.App.4th 98 [invalidating prior CEQA Guidelines "de minimis" standard]). For the same reason, case law also rejects the use of a ratio when determining whether a project's contribution is considerable. (*Communities for a Better Environment v. California Resources Agency, supra*) Taken together, this implies that while there is no "one-molecule rule" for determining whether a contribution is considerable, anything above a single molecule contribution might still be considerable when the cumulative impact is particularly severe. While it is important to not overlook the role of small contributions in worsening a cumulatively significant environmental effect, it is not helpful to sound environmental decision-making nor effective for reducing cumulative effects to require environmental impact reports for contributions that are so miniscule to be demonstrated to have no consequence related to that impact, i.e., an inconsequential contribution.

The CEQA Guidelines allow a lead agency to determine (subject to fair argument) that a proposed project's compliance with an existing plan or mitigation program for reducing a significant cumulative impact will reduce that project's contribution so that it is not cumulatively considerable (14 CCR Section 15064[h][3]). Although this provision is helpful when determining significance, plans and mitigation programs do not exist for many local cumulative impacts. Therefore, this provision has limited practical application.

As a result, in areas where there is an existing significant cumulative impact (i.e., an air quality non-attainment area, an over-drafted groundwater basin, etc.) any later project that would make *any* contribution to that impact, no matter how inconsequential, should arguably be the subject of an EIR. Requiring EIRs in such situations does not result in a demonstrable lessening of the significant cumulative effect. At best, a project's mitigation measures may avoid an additional contribution to the cumulative effect, but Constitutional law on unlawful "takings" prohibits the imposition of mitigation measures that would require the project to mitigate more than its incremental contribution (*Nollan v. California Coastal Commission* [1987] 483 U.S. 825 [requiring an essential nexus between the impact and the measure to mitigate that impact] and *Dolan v. City of Tigard* [1994] 114 S.Ct. 2309 [requiring proportionality between extent of impact and extent of required mitigation]). As a result of this Constitutional limitation, mitigation under CEQA cannot solve cumulative impacts because it cannot rectify existing conditions. Beyond that, projects that are not subject to CEQA (e.g., building permits) are generally exempt from contributing to the mitigation of any significant cumulative impact. Therefore, project-by-project CEQA mitigation is ineffective in solving the underlying significant cumulative impact.

Legislative Proposal to Improve Cumulative Impact Analysis.

Rationale for the Proposal. These changes are intended to make it easier for lead agencies to avoid unnecessary EIRs based solely on significant cumulative impacts if the project's incremental contribution to the cumulative impact is environmentally inconsequential or can be rendered less than cumulatively considerable. The proposed statutory amendments would:

- Respond to the court's elimination of the "de minimis" provisions in the CEQA Guidelines and allow lead agencies to determine that a project's incremental contribution to a cumulative effect is so miniscule or has other characteristics that can be shown, based on substantial evidence, to have no real consequence for that cumulative impact, i.e., to be environmentally inconsequential, and therefore, not a cumulatively considerable contribution.

- Allow a lead agency to determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable when the incremental contribution will be avoided by the imposition of project-specific on-site or off-site mitigation measures.

- Expand the ability of a lead agency to rely on previously adopted or approved plans or mitigation programs to render a project's contribution to a cumulative impact less than cumulatively considerable. Specifically, three changes to the 15064(h) approach are recommended that would allow agencies to (a) find that an incremental contribution has been rendered less than cumulatively considerable if it *is consistent with* a plan or mitigation program (rather than just compliance with the plan); (b) rely on mitigation programs in previously certified EIRs prepared by non-regulatory agencies (e.g., RTP EIRs); or (c) use the substantial evidence standard to review decisions that compliance with plans or programs has rendered cumulative contributions less than cumulatively considerable. This latter provision can help incentivize the preparation of plans and programs for reducing cumulatively significant impacts to less-than-significant levels, which can have substantial environmental benefits over time as more cumulative impacts are addressed by such plans and programs.

Proposed Statutory Amendment

21. Amend Section 21082.2 to read:

(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.

(f)(1) When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the contributions of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, may be cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of reasonably foreseeable, probable future projects.

(2) A lead agency may determine, based on substantial evidence in light of the whole of the record, that a project's incremental contribution to a cumulative effect is so small or has other characteristics that render it environmentally inconsequential and, therefore, not cumulatively considerable.

(3) A lead agency may determine in a CEQA Document that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. When a project might contribute to a significant cumulative impact, but the contribution will be rendered less than cumulatively considerable through mitigation measures set forth in a mitigated negative declaration or enhanced mitigated negative declaration, the initial study shall briefly indicate and explain how the contribution has been rendered less than cumulatively considerable.

(4) A lead agency may determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable if the incremental impact will be avoided by the imposition of project-specific on-site or off-site mitigation measures, so that there is no net contribution to the cumulative effect.

(5) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable using previously approved or adopted plans or mitigation programs under the following circumstances.

> (A) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with or is consistent with the requirements in a previously approved plan or program (including, but not limited to, water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community

conservation plan, plans or regulations for the reduction of greenhouse gas emissions) that provides specific enforceable requirements that will mitigate the significant cumulative impact to a less-than-significant level within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources following at least one public hearing.

(B) A lead agency may also determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with or is consistent with an adopted mitigation program in a certified EIR that provides specific requirements that will mitigate the significant cumulative impact to a less-than-significant level within the geographic area in which the project is located.

(C) When relying on a plan, regulation or program, the lead agency shall explain, based on substantial evidence, how implementing the requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable.

(D) Notwithstanding Sections 21082.2 (a) and (d), an EIR need not be prepared for a project when there is substantial evidence in the record that the incremental effects of a project have been rendered less than cumulatively considerable pursuant to this section. A lead agency's decision not to prepare an EIR under these circumstances shall be reviewed under the substantial evidence standard.

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

CEQA WORKING GROUP

Protect the environment. Improve the economy.

Policy Principles for CEQA Modernization

Problem: Thoughtful Reforms to CEQA Long Overdue

- When the California Environmental Quality Act (CEQA) was enacted 40 years ago, the wide array of local, state and federal environmental and land use regulations that are now on the books didn't exist. CEQA was essentially it.
- In the 40 years since, Congress and the Legislature have adopted more than 120 laws to protect environmental quality in many of the same topical areas required to be independently mitigated under CEQA, including laws like the Clean Air Act, Clean Water Act, Endangered Species Act, GHG emissions reduction standards, SB 375 and more.
- Despite these stringent environmental laws and local planning requirements, public and private projects throughout the state are commonly challenged under CEQA even when a project meets all other environmental standards of existing laws.
- Many lawsuits are brought or threatened for non-environmental reasons and often times these lawsuits seek to halt environmentally desirable projects like clean power, infill and transit.
- It is time to modernize CEQA to conform with California's comprehensive environmental laws and regulations. Thoughtful CEQA reforms can preserve the law's original intent – environmental protection – while preventing special interest CEQA abuses that jeopardize community renewal, job-creation and the environment.

SOLUTION: Modernize CEQA to Protect Environment While Limiting Abuses

The Working Group Supports the Following Four Principles to Modernize CEQA:

1. Integrate Environmental and Planning Laws

- ✓ CEQA should continue to serve as *the* state environmental law for environmental impacts not regulated by standards set forth in other environmental and planning laws adopted since 1970.
- ✓ However, where a federal, state or local environmental or land use law has been enacted to achieve environmental protection objectives (e.g., air and water quality, greenhouse gas emission reductions, endangered species, wetlands protections, etc.), CEQA review documents like EIRs should focus on fostering informed debate (including public notice and comment) by the public and decision makers about how applicable environmental standards reduce project impacts.
- ✓ State agencies, local governments and other lead agencies would continue to retain full authority to reject projects, or to condition project approvals and impose additional mitigation measures consistent with their full authority under law other than CEQA.

(more)

2. Eliminate CEQA Duplication

- ✓ As originally enacted, CEQA did not require further analysis of projects that already complied with CEQA-certified plans such as General Plans. But a 1987 court decision dramatically changed CEQA's application.
- ✓ Reforms should return the law to its original intent and not require duplicative CEQA review for projects that already comply with approved plans for which an environmental impact report (EIR) has already been completed – particularly since existing laws also require both plans and projects to comply with our stringent environmental standards.
- ✓ Local governments and other lead agencies would continue to retain full authority to reject projects or to condition project approvals and impose additional mitigation measures, consistent with their full authority under law other than CEQA.

3. Focus CEQA Litigation on Compliance with Environmental and Planning Laws

- ✓ CEQA lawsuits would still be allowed to be filed for failure to comply with CEQA's procedural and substantive requirements, including, for example adequate notice, adequate disclosure, adequate mitigation of environmental effects not regulated by other environmental or planning law, adequate consideration of alternatives to avoid unmitigated significant adverse impacts.
- ✓ However, CEQA lawsuits could not be used to challenge adopted environmental standards, or to endlessly re-challenge approved plans by challenging projects that comply with plans.
- ✓ Environmental and other public advocacy efforts to enact environmental protection laws should not be affected by any CEQA reform, and refocusing CEQA on how compliance with standards and plans will reduce impacts can also inform advocacy efforts to revisit standards or plans.
- ✓ Finally, "real" environmental lawsuits - seeking to enforce true environmental objectives - could still be pursued against agencies that fail to make regulatory or permitting decisions in compliance with standards and plans. However, the current system of broad brush CEQA lawsuits that can be filed by any party for any purpose to challenge any or all environmental attributes of projects that comply with standards and plans are an outdated artifact of the "anything goes" environment of 1970, which now hinders both environmental improvement and economic recovery.

4. Enhance Public Disclosure and Accountability

- ✓ CEQA would continue to mandate comprehensive environmental disclosure and informed public debate for all environmental impacts, including those covered by standards set in other environmental and planning laws.
- ✓ CEQA's public disclosure principles are enhanced by requiring an annual report of project compliance with required mitigation measures made electronically available to the public as part of the existing Mitigation Monitoring and Reporting Plan process.