



- Board of Directors
Communications and Legislation Committee

8/20/2013 Board Meeting

8-7

Subject

Express opposition, unless amended, to Senate Bill 731 (Steinberg, D-Sacramento) – California Environmental Quality Act Modernization Act of 2013

Executive Summary

Senate Bill (SB) 731 (**Attachment 1**), the California Environmental Quality Act (CEQA) Modernization Act of 2013, was introduced by Senator Darrell Steinberg (D–Sacramento) on February 22, 2013, as a legislative vehicle for comprehensive CEQA reform intended to strengthen protection of California’s environment while modernizing the law to aid economic growth. Metropolitan’s CEQA policy principles, adopted in April 2013, support CEQA modernization to improve efficiency and reduce the potential for litigation without loss of environmental protection. In its present form, however, SB 731 falls short of its intended purposes, and is inconsistent with Metropolitan’s CEQA policy principles. SB 731 adds new notice provisions, both before and after project approval that would encumber agencies with additional operating costs, increase the time required to complete the CEQA process, and increase litigation risks without providing any new environmental protections. Thus, staff recommends Metropolitan oppose SB 731 unless amended.

Details

Background

The impetus for CEQA reform gained momentum at the end of the 2011/2012 legislative session when then-Senator Michael Rubio proposed amendments to SB 317 in response to concerns from the business community that CEQA compliance was unnecessarily costly, time consuming, and frequently subject to strategic use of CEQA in litigation to achieve non-environmental goals. SB 317 proposed major CEQA reform intended to integrate environmental and planning laws into CEQA review to eliminate duplicative environmental review and curb strategic litigation. Environmental and labor interests raised concerns that the proposed amendments would weaken the environmental and community protections currently afforded by CEQA and, as a result, CEQA reform was postponed for further discussions during the 2013/2014 legislative session.

Senator Steinberg introduced SB 731 with the stated intent to strengthen CEQA’s protection of the state’s environment while modernizing the law to help grow California’s economy. Recent amendments to SB 731 fail to streamline and clarify CEQA but instead offer limited streamlining provisions for residential infill and transit-oriented development projects while expanding CEQA’s procedural mandates in ways that increase regulatory costs, project delays, and litigation risks for lead agencies such as Metropolitan.

Impacts on Metropolitan

In its current form, SB 731 contains provisions that would make CEQA compliance significantly more burdensome, costly and unpredictable, without resulting in improved environmental protections. For these reasons, staff recommends the following provisions be deleted entirely unless otherwise modified as indicated below where applicable:

- **New Requirement to Circulate Draft Findings Prior to Project Approval.** Requires public agencies to circulate draft findings for public review at least 15 days prior to approval of the project. This provision introduces a new opportunity for public comment immediately prior to or at the governing board meeting on a proposed project, and leaves inadequate time for staff to review comments and provide responses to the board in advance of project approval and adoption of findings. Significant delay could occur if board direction requires that the findings be revised, thus triggering an additional round of public review and comment on revised findings.
- **New Requirement to Produce and Post Annual Mitigation Reports.** Requires lead agencies to (1) submit mitigation plans to applicable natural resource agencies for review, and (2) prepare and electronically post annual mitigation measure compliance reports for public scrutiny, presumably until the mitigation measures have been fully implemented. Annual mitigation reporting would be resource intensive and could create additional opportunities for legal challenge years after project approval.
- **New Requirement to Prepare an Administrative Record and Electronically Post Documents Concurrent with CEQA Review.** Upon request of a project applicant, public agencies would be required to (1) prepare and electronically post all supporting studies and other technical documents concurrent with preparation of CEQA documents, and (2) make comments received electronically available to the public within a week of receipt. This provision would be extremely costly and resource intensive.
- **New Statewide Thresholds of Significance for Certain Impacts.** Requires the state Office of Planning and Research (OPR) to establish statewide thresholds of significance for noise, aesthetics, transportation, and parking impacts. Currently lead agencies have the discretion to determine applicable thresholds, and parking is not an environmental resource. This provision should be removed because statewide thresholds may not be applicable in all situations, may create confusion, and undermine lead agency significance determinations.
- **Priority Review of Renewable Energy Projects.** Requires California Department of Fish and Wildlife (CDFW) to prioritize review of renewable energy projects. There are already significant delays in processing permits given budget and resource constraints experienced by CDFW, so prioritizing renewable energy projects could delay their review of essential public service projects unless CDFW is provided with additional funding and resources to implement this provision.
- **New Unfunded Mandates.** Imposes significant financial burdens on public agencies like Metropolitan who undertake their own projects because the costs of the new requirements outlined above would be unrecoverable from project applicants.

While all of the above new burdens would be added to CEQA, SB 731 lacks any significant reforms to streamline or modernize CEQA as was originally proposed, such as eliminating duplicative environmental review of projects compliant with other environmental laws enacted since CEQA went into effect in the early 1970s.

Staff recommends working with the author and proponents to add provisions consistent with Metropolitan's CEQA policy principles. For instance, as currently written, SB 731 states that it is the intent of the Legislature to amend CEQA to prohibit and restrict "late hits" and "document dumps" prior to certification of an environmental impact report (EIR), but no substantive amendments are actually proposed that would effectuate that intent. An amendment to restrict the grounds for legal review to issues raised prior to the close of the public comment period on an EIR or Negative Declaration would reduce litigation risks and the potential for unexpected delay of project approval without compromising meaningful public participation in the CEQA process.

Recommended Amendments

As stated in Metropolitan's board-adopted policy principles, Metropolitan's objective with respect to CEQA reform is to uphold the environmental protection and public participation provisions afforded by the Act while improving the clarity and workability of the statute and its implementing guidelines. Accordingly, Metropolitan supports legislative changes that clarify and streamline CEQA's provisions without further burdening public agencies or creating new litigation risks.

Metropolitan staff recommends opposing SB 731 unless it is amended to remove the new proposed requirements. Additionally, staff recommends deleting new provisions that create ambiguity without making substantive changes to the law. Staff also recommends working with the author to add amendments that streamline CEQA consistent with Metropolitan's policy principles, such as developing a provision that prohibits "late hits" and "document dumps."

Changes to SB 731 along these lines support the goals of improving regulatory efficiency and preserving environmental protection without encumbering the operational, financial, regulatory, and customer obligations of Metropolitan and other public agencies.

Policy

Board-adopted California Environmental Quality Act Policy Principles (last adopted in April 2013)

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination that the proposed action is not subject to CEQA and is categorically exempt and authorize the General Manager to express Metropolitan's opposition to SB 731 unless amended as described in this board letter.

Fiscal Impact: None

Business Analysis: None

Option #2

Take no position on SB 731.

Fiscal Impact: None

Business Analysis: None

Staff Recommendation

Option #1



Linda Waade
Deputy General Manager, External Affairs

8/8/2013

Date



Jeffrey Kightlinger
General Manager

8/9/2013

Date

Attachment 1 – Senate Bill 731 (amended May 24, 2013)

Ref# ea12626315

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE APRIL 23, 2013

SENATE BILL

No. 731

Introduced by Senators Steinberg and Hill

February 22, 2013

An act to amend, repeal, and add Section 705 of the Fish and Game Code, to amend Section 65457 of the Government Code, and to amend Sections 21080, 21081.5, 21081.6, 21167, 21167.6, 21167.7, and 21168.9 of, to add Sections 21167.6.2 and 21167.6.3 to, and to add Chapter 2.7 (commencing with Section 21099) to Division 13 of, the Public Resources Code, relating to the ~~environment, and making an appropriation therefor~~ *environment*.

LEGISLATIVE COUNSEL'S DIGEST

SB 731, as amended, Steinberg. Environment: California Environmental Quality Act and sustainable communities strategy.

(1) The California Environmental Quality Act, or CEQA, requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report, or EIR, on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA requires the Office of Planning and Research to

develop and prepare, and the Secretary of the Natural Resources Agency to certify and adopt, guidelines for the implementation of CEQA by public agencies. CEQA establishes a procedure for the preparation and certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA. CEQA establishes time periods within which a person is required to bring a judicial action or proceeding to challenge a public agency's action taken pursuant to CEQA.

This bill would provide that aesthetic impacts of a residential, mixed-use residential, or employment center project, as defined, within a transit priority area, as defined, shall not be considered significant impacts on the environment. The bill would require the office to prepare and propose, and the Secretary of the Natural Resources Agency to certify and adopt, revisions to the guidelines for the implementation of CEQA establishing thresholds of significance for noise, and for the transportation and parking impacts of residential, mixed-use residential, or employment center projects within transit priority areas. The bill would require the lead agency, in making specified findings, to make those findings available to the public at least 15 days prior to the approval of the proposed project and to provide specified notice of the availability of the findings for public review. Because the bill would require the lead agency to make the draft finding available for public review and to provide specified notices to the public, this bill would impose a state-mandated local program. The bill would require the lead agency, at the request of a project applicant for specified projects, to, among other things, prepare a record of proceedings concurrently with the preparation of negative declarations, mitigated negative declarations, EIRs, or other environmental documents for specified projects. Because the bill would require a lead agency to prepare the record of proceedings as provided, this bill would impose a state-mandated local program. The bill would authorize the tolling of the time period in which a person is required to bring a judicial action or proceeding challenging a public agency's action taken pursuant to CEQA through a tolling agreement that does not exceed 4 years. The bill would authorize the extension of the tolling agreement.

(2) For mitigation measures required pursuant to an EIR or a mitigated negative declaration, CEQA requires the lead agency to adopt a reporting and monitoring program to ensure compliance with those required mitigation measures during project implementation.

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This bill would require the lead agency, as a part of the mitigation and monitoring plan, to prepare or cause to be prepared an annual report on project compliance with the required mitigation measures that is publicly available online. Because the lead agency would be required to prepare and make available this report, this bill would impose a state-mandated local program.

(3) Existing law exempts from the requirements of CEQA residential development projects that are undertaken to implement, and are consistent with a specific plan for which an EIR has been certified after January 1, 1980. Existing law provides that this exemption does not apply if, after the certification of the EIR, a specified event occurs, unless a supplemental EIR for the specified plan is prepared and certified.

This bill would specify that the event does not include new information consisting solely of argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are caused by, physical impacts on the environment.

(4) CEQA requires the court, if the court finds that a public agency has violated the requirements of CEQA, to issue an order containing specified mandates.

This bill would require the court to issue a peremptory writ of mandate specifying actions that a public agency needs to take to comply with the requirements of CEQA. The bill would require the writ to specify the time by which the public agency is to file an initial return to a writ containing specified information. Because a public agency would be required to file an initial return to a writ, this bill would impose a state-mandated local program.

(5) CEQA requires every person bringing an action or proceeding alleging a violation of CEQA to furnish to the Attorney General a copy of the pleading within 10 days after filing and a copy of any amended or supplemental pleading.

This bill would require the Attorney General to annually submit to the Legislature a report containing specified information on CEQA litigation in the state.

(6) Existing law requires the regional transportation plan for regions of the state with a metropolitan planning organization to each adopt a sustainable communities strategy, as part of their regional transportation plan, as specified, designed to achieve certain goals for the reduction of greenhouse gas emissions from automobiles and light trucks in a

region. Existing law establishes the Strategic Growth Council to manage and award grants and loans to support the planning and development of sustainable communities strategies.

This bill would ~~authorize, upon appropriation by the Legislature, the use of state~~ *the intent of the Legislature to appropriate \$30,000,000 annually by the council for the purposes of providing competitive grants to local agencies for planning activities for the implementation of the sustainable communities strategy.*

(7) This bill would, until January 1, 2017, establish in the office of the Governor the position of Advisor on Renewable Energy Facilities.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: ~~yes-no~~. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) It is the intent of the Legislature to enact
2 legislation to adopt provisions of Chapter 3 (commencing with
3 Section 15000) of Division 6 of Title 14 of the California Code of
4 Regulations (CEQA Guidelines) that are intended to provide greater
5 certainty for smart infill development, such as Section 15183.3 of
6 the CEQA Guidelines and related appendices that implement
7 Chapter 469 of the Statutes of 2011. It is further the intent of the
8 Legislature to explore amendments to expand the definition of
9 “infill” and to accommodate infill development in the Central
10 Valley.

11 (b) It is the intent of the Legislature to explore amendments to
12 the California Environmental Quality Act (Division 13
13 (commencing with Section 21000) of the Public Resources Code),
14 to further streamline the law for renewable energy projects,
15 advanced manufacturing projects, transit, bike, and pedestrian
16 projects, and renewable energy transmission projects.

1 (c) (1) It is the intent of the Legislature to update CEQA to
2 establish a threshold of significance for noise, aesthetics, parking,
3 and traffic levels of service, and thresholds relating to these land
4 use impacts, so that ~~project~~ *projects* meeting those thresholds are
5 not subject to further environmental review for those environmental
6 impacts. It is further the intent of the Legislature to review other
7 similar land use related impacts to determine if other thresholds
8 of significance can be set.

9 (2) It is not the intent of the Legislature to affect authority,
10 consistent with CEQA, for a local agency to impose its own, more
11 stringent thresholds.

12 (3) It is not the intent of the Legislature to replace full CEQA
13 analysis with state or local standards, with the exception of the
14 land use standards described in paragraph (1).

15 (d) It is the intent of the Legislature to amend Section 65456,
16 which exempts from CEQA projects undertaken pursuant to a
17 specific plan for which an EIR has been prepared, unless conditions
18 specified under Section 21166 of the Public Resources Code have
19 occurred, to define with greater specificity what “new information”
20 means, and to avoid duplicative CEQA review for projects and
21 activities that comply with that plan. It is further the intent of the
22 Legislature to review the possibility of defining other types of
23 plans to determine if similar treatment could be applied to those
24 plans or portions of those plans that are consistent with sustainable
25 communities strategies adopted pursuant to Section 65080 of the
26 Government Code or that have had a certified EIR within the past
27 five years.

28 (e) It is the intent of the Legislature to enact amendments to
29 Section 21168.9 to establish clearer procedures for a trial court to
30 remand to a lead agency for remedying only those portions of an
31 EIR, negative declaration, or mitigated negative declaration found
32 to be in violation of CEQA, while retaining those portions that are
33 not in violation so that the violations can be corrected, recirculated
34 for public comment, and completed more efficiently and
35 expeditiously. It is further the intent of the Legislature to explore
36 options under which a court could allow project approvals to
37 remain in place, and for projects to proceed.

38 (f) It is the intent of the Legislature to amend Section 21091 of
39 the Public Resources Code and related provisions of law to
40 establish clear statutory rules under which “late hits” and

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1 “document dumps” are prohibited or restricted prior to certification
2 of an EIR, if a project proponent or lead agency has not
3 substantively changed the draft EIR or substantively modified the
4 project.

5 (g) It is the intent of the Legislature to provide \$30 million
6 annually to the Strategic Growth Council for the purposes of
7 providing planning incentive grants to local and regional agencies
8 to update and implement general plans, sustainable communities
9 strategies, and smart growth plans pursuant to Chapter 728 of the
10 Statutes of 2008.

11 SEC. 2. This act shall be known, and may be cited, as the
12 CEQA Modernization Act of 2013.

13 SEC. 3. Section 705 of the Fish and Game Code is amended
14 to read:

15 705. (a) For purposes of this section, “eligible renewable
16 energy resources” has the same meaning as in the California
17 Renewables Portfolio Standard Program (Article 16 (commencing
18 with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the
19 Public Utilities Code).

20 (b) The department shall establish an internal division with the
21 primary purpose of performing comprehensive planning and
22 environmental compliance services with priority given to projects
23 involving the building of eligible renewable energy resources.

24 (c) The internal division shall ensure the timely completion of
25 plans pursuant to the Natural Community Conservation Planning
26 Act (Chapter 10 (commencing with Section 2800) of Division 3).

27 (d) The position of Advisor on Renewable Energy Facilities is
28 hereby established in the office of the Governor.

29 (e) This section shall remain in effect only until January 1, 2017,
30 and as of that date is repealed, unless a later enacted statute, that
31 is enacted before January 1, 2017, deletes or extends that date.

32 SEC. 4. Section 705 is added to the Fish and Game Code, to
33 read:

34 705. (a) For purposes of this section, “eligible renewable
35 energy resources” has the same meaning as in the California
36 Renewables Portfolio Standard Program (Article 16 (commencing
37 with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the
38 Public Utilities Code).

39 (b) The department shall establish an internal division with the
40 primary purpose of performing comprehensive planning and

1 environmental compliance services with priority given to projects
2 involving the building of eligible renewable energy resources.

3 (c) The internal division shall ensure the timely completion of
4 plans pursuant to the Natural Community Conservation Planning
5 Act (Chapter 10 (commencing with Section 2800) of Division 3).

6 (d) This section shall become operative on January 1, 2017.

7 SEC. 5. Section 65457 of the Government Code is amended
8 to read:

9 65457. (a) A residential development project, including any
10 subdivision, or any zoning change that is undertaken to implement,
11 and is consistent with, a specific plan for which an environmental
12 impact report has been certified after January 1, 1980, is exempt
13 from the requirements of Division 13 (commencing with Section
14 21000) of the Public Resources Code. However, if after adoption
15 of the specific plan, an event as specified in Section 21166 of the
16 Public Resources Code occurs, the exemption provided by this
17 subdivision does not apply unless and until a supplemental
18 environmental impact report for the specific plan is prepared and
19 certified in accordance with the provisions of Division 13
20 (commencing with Section 21000) of the Public Resources Code.
21 After a supplemental environmental impact report is certified, the
22 exemption specified in this subdivision applies to projects
23 undertaken pursuant to the specific plan.

24 (b) An action or proceeding alleging that a public agency has
25 approved a project pursuant to a specific plan without having
26 previously certified a supplemental environmental impact report
27 for the specific plan, where required by subdivision (a), shall be
28 commenced within 30 days of the public agency's decision to carry
29 out or approve the project.

30 (c) For the purposes of this section, "an event as specified in
31 Section 21166 of the Public Resources Code" does not include
32 any new information consisting solely of argument, speculation,
33 unsubstantiated opinion or narrative, evidence that is clearly
34 inaccurate or erroneous, or evidence of social or economic impacts
35 that do not contribute to, or are caused by, physical impacts on the
36 environment.

37 SEC. 6. Section 21080 of the Public Resources Code is
38 amended to read:

39 21080. (a) Except as otherwise provided in this division, this
40 division shall apply to discretionary projects proposed to be carried

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1 out or approved by public agencies, including, but not limited to,
2 the enactment and amendment of zoning ordinances, the issuance
3 of zoning variances, the issuance of conditional use permits, and
4 the approval of tentative subdivision maps unless the project is
5 exempt from this division.

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

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

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

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

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

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

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

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

1 (8) The establishment, modification, structuring, restructuring,
2 or approval of rates, tolls, fares, or other charges by public agencies
3 which the public agency finds are for the purpose of (A) meeting
4 operating expenses, including employee wage rates and fringe
5 benefits, (B) purchasing or leasing supplies, equipment, or
6 materials, (C) meeting financial reserve needs and requirements,
7 (D) obtaining funds for capital projects necessary to maintain
8 service within existing service areas, or (E) obtaining funds
9 necessary to maintain those intracity transfers as are authorized
10 by city charter. The public agency shall incorporate written findings
11 in the record of any proceeding in which an exemption under this
12 paragraph is claimed setting forth with specificity the basis for the
13 claim of exemption.

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

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

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

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

26 (13) A project for the development of a regional transportation
27 improvement program, the state transportation improvement
28 program, or a congestion management program prepared pursuant
29 to Section 65089 of the Government Code.

30 (14) Any project or portion thereof located in another state
31 which will be subject to environmental impact review pursuant to
32 the National Environmental Policy Act of 1969 (42 U.S.C. Sec.
33 4321 et seq.) or similar state laws of that state. Any emissions or
34 discharges that would have a significant effect on the environment
35 in this state are subject to this division.

36 (15) Projects undertaken by a local agency to implement a rule
37 or regulation imposed by a state agency, board, or commission
38 under a certified regulatory program pursuant to Section 21080.5.
39 Any site-specific effect of the project which was not analyzed as
40 a significant effect on the environment in the plan or other written

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1 documentation required by Section 21080.5 is subject to this
2 division.

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

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

11 (2) An initial study identifies potentially significant effects on
12 the environment, but (A) revisions in the project plans or proposals
13 made by, or agreed to by, the applicant before the proposed
14 negative declaration and initial study are released for public review
15 would avoid the effects or mitigate the effects to a point where
16 clearly no significant effect on the environment would occur, and
17 (B) there is no substantial evidence, in light of the whole record
18 before the lead agency, that the project, as revised, may have a
19 significant effect on the environment.

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

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

27 (2) Substantial evidence is not argument, speculation,
28 unsubstantiated opinion or narrative, evidence that is clearly
29 inaccurate or erroneous, or evidence of social or economic impacts
30 that do not contribute to, or are not caused by, physical impacts
31 on the environment.

32 (f) As a result of the public review process for a mitigated
33 negative declaration, including administrative decisions and public
34 hearings, the lead agency may conclude that certain mitigation
35 measures identified pursuant to paragraph (2) of subdivision (c)
36 are infeasible or otherwise undesirable. In those circumstances,
37 the lead agency, prior to approving the project, may delete those
38 mitigation measures and substitute for them other mitigation
39 measures that the lead agency finds, after holding a public hearing
40 on the matter, are equivalent or more effective in mitigating

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1 significant effects on the environment to a less than significant
2 level and that do not cause any potentially significant effect on the
3 environment. If those new mitigation measures are made conditions
4 of project approval or are otherwise made part of the project
5 approval, the deletion of the former measures and the substitution
6 of the new mitigation measures shall not constitute an action or
7 circumstance requiring recirculation of the mitigated negative
8 declaration.

9 (g) This section does not preclude a project applicant or any
10 other person from challenging, in an administrative or judicial
11 proceeding, the legality of a condition of project approval imposed
12 by the lead agency. If, however, any condition of project approval
13 set aside by either an administrative body or court was necessary
14 to avoid or lessen the likelihood of the occurrence of a significant
15 effect on the environment, the lead agency's approval of the
16 negative declaration and project shall be invalid and a new
17 environmental review process shall be conducted before the project
18 can be reapproved, unless the lead agency substitutes a new
19 condition that the lead agency finds, after holding a public hearing
20 on the matter, is equivalent to, or more effective in, lessening or
21 avoiding significant effects on the environment and that does not
22 cause any potentially significant effect on the environment.

23 (h) A project applicant for a renewable energy project may
24 present to the public agency, orally or in writing, the benefits onsite
25 or offsite of the project, including, but not limited to, measures
26 that will mitigate greenhouse gas emissions resulting from the
27 project or measures that will significantly reduce traffic, improve
28 air quality or replace higher emitting energy sources, and other
29 significant environmental or public health impacts.

30 SEC. 7. Section 21081.5 of the Public Resources Code is
31 amended to read:

32 21081.5. (a) In making the findings required by paragraph (3)
33 of subdivision (a) of, and subdivision (b) of, Section 21081, the
34 public agency shall base its findings on substantial evidence in the
35 record. Those findings shall be made available in draft form for
36 review by the members of the public for at least 15 days prior to
37 approval of the proposed project.

38 (b) To make the draft findings available to the members of the
39 public for the purposes of subdivision (a), the lead agency shall
40 provide a notice of availability of the findings for review either at

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1 the lead agency's office during normal business hours and online
2 through all of the following mechanisms:

3 (1) Publication in a newspaper of general circulation in the area
4 affected by the proposed project. If more than one area will be
5 affected, the notice shall be published in the newspaper with the
6 largest circulation from among the newspapers of general
7 circulation in those areas.

8 (2) By electronic mail, if available, and mail to the last known
9 name and address of all individuals and organizations that have
10 submitted timely comments on the draft environmental impact
11 report.

12 (3) By electronic mail, if available, and mail to responsible and
13 trustee agencies that have submitted timely comments on the draft
14 environmental impact report.

15 (4) By electronic mail, if available, and mail to the project
16 applicant, if different from the lead agency, and the applicant's
17 duly authorized agent.

18 (5) By electronic mail, if available, and mail to a person who
19 has filed a written request for notice with the clerk of the governing
20 body, if there is no governing body, the director of the agency.

21 SEC. 8. Section 21081.6 of the Public Resources Code is
22 amended to read:

23 21081.6. (a) When making the findings required by paragraph
24 (1) of subdivision (a) of Section 21081 or when adopting a
25 mitigated negative declaration pursuant to paragraph (2) of
26 subdivision (c) of Section 21080, the following requirements shall
27 apply:

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

13

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

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

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

33 (d) As a part of the mitigation monitoring plan established
34 pursuant to this section, the lead agency shall prepare or cause to
35 be prepared an annual report on project compliance with mitigation
36 measures required pursuant to this division. The report shall be
37 made publicly available online to enhance public disclosure and
38 accountability. *The lead agency may cease reporting once all*
39 *mitigation measures are completed.*

14

1 SEC. 9. Chapter 2.7 (commencing with Section 21099) is added
2 to Division 13 of the Public Resources Code, to read:

3

4 CHAPTER 2.7. STANDARDIZED THRESHOLDS OF SIGNIFICANCE
5 FOR ENVIRONMENTALLY BENEFICIAL PROJECTS

6

7 21099. (a) For purposes of this section, the following terms
8 mean the following:

9 (1) "Employment center project" means a project located on
10 property zoned for commercial uses with a floor area ratio of no
11 less than 0.75 and that is located within one-half mile of a major
12 transit stop or high-quality transit corridor included in a regional
13 transportation plan.

14 (2) "Floor area ratio" means the ratio of gross building area of
15 the development, excluding structured parking areas, proposed for
16 the project divided by the net lot area.

17 (3) "Gross building area" means the sum of all finished areas
18 of all floors of a building included within the outside faces of its
19 exterior walls.

20 (4) "Lot" means all parcels utilized by the project.

21 (5) "Net lot area" means the area of a lot, excluding publicly
22 dedicated land and private streets that meet local standards, and
23 other public use areas as determined by the local land use authority.

24 (6) "Transit priority area" means an area within one-half mile
25 of a major transit stop that is existing or planned, if the planned
26 stop is scheduled to be completed within the planning horizon
27 established by Section 450.322 of Title 23 of the Code of Federal
28 Regulations.

29 (b) (1) The Office of Planning and Research shall prepare and
30 propose revisions to the guidelines adopted pursuant to Section
31 21083, and submit to the Secretary of the Natural Resources
32 Agency for certification and adoption of, thresholds of significance
33 for noise, and for the transportation and parking impacts for
34 residential, mixed-use residential, or employment center projects
35 within transit priority areas. The thresholds of significance shall
36 be based upon a project's proximity to a multimodal transportation
37 network, its overall transportation accessibility, and its proximity
38 to a diversity of land uses.

15

1 (2) On or before July 1, 2014, the Office of Planning and
2 Research shall circulate a draft revision prepared pursuant to
3 paragraph (1).

4 (c) (1) Aesthetic impacts of a residential, mixed-use residential,
5 or employment center project within a priority transit area shall
6 not be considered significant impacts on the environment.

7 (2) This subdivision does not affect, change, or modify the
8 authority of a lead agency to consider aesthetic impacts pursuant
9 to local design review ordinances or other discretionary powers
10 provided by other laws or policies.

11 (d) This section does not affect the authority of a public agency
12 from establishing or adopting transportation or parking standards
13 applicable to projects or more stringent thresholds of significance.

14 SEC. 10. Section 21167 of the Public Resources Code is
15 amended to read:

16 21167. An action or proceeding to attack, review, set aside,
17 void, or annul the following acts or decisions of a public agency
18 on the grounds of noncompliance with this division shall be
19 commenced as follows:

20 (a) An action or proceeding alleging that a public agency is
21 carrying out or has approved a project that may have a significant
22 effect on the environment without having determined whether the
23 project may have a significant effect on the environment shall be
24 commenced within 180 days from the date of the public agency's
25 decision to carry out or approve the project, or, if a project is
26 undertaken without a formal decision by the public agency, within
27 180 days from the date of commencement of the project.

28 (b) An action or proceeding alleging that a public agency has
29 improperly determined whether a project may have a significant
30 effect on the environment shall be commenced within 30 days
31 from the date of the filing of the notice required by subdivision
32 (a) of Section 21108 or subdivision (a) of Section 21152.

33 (c) An action or proceeding alleging that an environmental
34 impact report does not comply with this division shall be
35 commenced within 30 days from the date of the filing of the notice
36 required by subdivision (a) of Section 21108 or subdivision (a) of
37 Section 21152 by the lead agency.

38 (d) An action or proceeding alleging that a public agency has
39 improperly determined that a project is not subject to this division
40 pursuant to subdivision (b) of Section 21080 or Section 21172

16

1 shall be commenced within 35 days from the date of the filing by
2 the public agency, or person specified in subdivision (b) or (c) of
3 Section 21065, of the notice authorized by subdivision (b) of
4 Section 21108 or subdivision (b) of Section 21152. If the notice
5 has not been filed, the action or proceeding shall be commenced
6 within 180 days from the date of the public agency's decision to
7 carry out or approve the project, or, if a project is undertaken
8 without a formal decision by the public agency, within 180 days
9 from the date of commencement of the project.

10 (e) An action or proceeding alleging that another act or omission
11 of a public agency does not comply with this division shall be
12 commenced within 30 days from the date of the filing of the notice
13 required by subdivision (a) of Section 21108 or subdivision (a) of
14 Section 21152.

15 (f) If a person has made a written request to the public agency
16 for a copy of the notice specified in Section 21108 or 21152 prior
17 to the date on which the agency approves or determines to carry
18 out the project, then not later than five days from the date of the
19 agency's action, the public agency shall deposit a written copy of
20 the notice addressed to that person in the United States mail, first
21 class postage prepaid. The date upon which this notice is mailed
22 shall not affect the time periods specified in subdivisions (b), (c),
23 (d), and (e).

24 (g) The limitation period provided pursuant to this section may
25 be tolled for a period not to exceed four years if the agreement to
26 toll the limitation period is in writing and signed by the party
27 asserting noncompliance with this division, the public agency, and
28 the real party in interest, as specified in subdivision (a) of Section
29 21167.6.5, if any. The tolling agreement shall bar a defense to any
30 action filed pursuant to this division that the action was not
31 commenced within the time period specified in this section. Prior
32 to the expiration of the tolling agreement, the tolling agreement
33 may be renewed for a further period not to exceed four years from
34 the immediately preceding tolling agreement. The extension of
35 the tolling agreement may be made successively.

36 SEC. 11. Section 21167.6 of the Public Resources Code is
37 amended to read:

38 21167.6. Notwithstanding any other provision of law, in all
39 actions or proceedings brought pursuant to Section 21167, except

1 as provided in Section 21167.6.2 or those involving the Public
2 Utilities Commission, all of the following shall apply:

3 (a) At the time that the action or proceeding is filed, the plaintiff
4 or petitioner shall file a request that the respondent public agency
5 prepare the record of proceedings relating to the subject of the
6 action or proceeding. The request, together with the complaint or
7 petition, shall be served personally upon the public agency not
8 later than 10 business days from the date that the action or
9 proceeding was filed.

10 (b) (1) The public agency shall prepare and certify the record
11 of proceedings not later than 60 days from the date that the request
12 specified in subdivision (a) was served upon the public agency.
13 Upon certification, the public agency shall lodge a copy of the
14 record of proceedings with the court and shall serve on the parties
15 notice that the record of proceedings has been certified and lodged
16 with the court. The parties shall pay any reasonable costs or fees
17 imposed for the preparation of the record of proceedings in
18 conformance with any law or rule of court.

19 (2) The plaintiff or petitioner may elect to prepare the record
20 of proceedings or the parties may agree to an alternative method
21 of preparation of the record of proceedings, subject to certification
22 of its accuracy by the public agency, within the time limit specified
23 in this subdivision.

24 (c) The time limit established by subdivision (b) may be
25 extended only upon the stipulation of all parties who have been
26 properly served in the action or proceeding or upon order of the
27 court. Extensions shall be liberally granted by the court when the
28 size of the record of proceedings renders infeasible compliance
29 with that time limit. There is no limit on the number of extensions
30 that may be granted by the court, but no single extension shall
31 exceed 60 days unless the court determines that a longer extension
32 is in the public interest.

33 (d) If the public agency fails to prepare and certify the record
34 within the time limit established in paragraph (1) of subdivision
35 (b), or any continuances of that time limit, the plaintiff or petitioner
36 may move for sanctions, and the court may, upon that motion,
37 grant appropriate sanctions.

38 (e) The record of proceedings shall include, but is not limited
39 to, all of the following items:

40 (1) All project application materials.

18

- 1 (2) All staff reports and related documents prepared by the
2 respondent public agency with respect to its compliance with the
3 substantive and procedural requirements of this division and with
4 respect to the action on the project.
- 5 (3) All staff reports and related documents prepared by the
6 respondent public agency and written testimony or documents
7 submitted by any person relevant to any findings or statement of
8 overriding considerations adopted by the respondent agency
9 pursuant to this division.
- 10 (4) Any transcript or minutes of the proceedings at which the
11 decisionmaking body of the respondent public agency heard
12 testimony on, or considered any environmental document on, the
13 project, and any transcript or minutes of proceedings before any
14 advisory body to the respondent public agency that were presented
15 to the decisionmaking body prior to action on the environmental
16 documents or on the project.
- 17 (5) All notices issued by the respondent public agency to comply
18 with this division or with any other law governing the processing
19 and approval of the project.
- 20 (6) All written comments received in response to, or in
21 connection with, environmental documents prepared for the project,
22 including responses to the notice of preparation.
- 23 (7) All written evidence or correspondence submitted to, or
24 transferred from, the respondent public agency with respect to
25 compliance with this division or with respect to the project.
- 26 (8) Any proposed decisions or findings submitted to the
27 decisionmaking body of the respondent public agency by its staff,
28 or the project proponent, project opponents, or other persons.
- 29 (9) The documentation of the final public agency decision,
30 including the final environmental impact report, mitigated negative
31 declaration, or negative declaration, and all documents, in addition
32 to those referenced in paragraph (3), cited or relied on in the
33 findings or in a statement of overriding considerations adopted
34 pursuant to this division.
- 35 (10) Any other written materials relevant to the respondent
36 public agency's compliance with this division or to its decision on
37 the merits of the project, including the initial study, any drafts of
38 any environmental document, or portions thereof, that have been
39 released for public review, and copies of studies or other documents
40 relied upon in any environmental document prepared for the project

1 and either made available to the public during the public review
2 period or included in the respondent public agency's files on the
3 project, and all internal agency communications, including staff
4 notes and memoranda related to the project or to compliance with
5 this division.

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

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

12 (g) The clerk of the superior court shall prepare and certify the
13 clerk's transcript on appeal not later than 60 days from the date
14 that the notice designating the papers or records to be included in
15 the clerk's transcript was filed with the superior court, if the party
16 or parties pay any costs or fees for the preparation of the clerk's
17 transcript imposed in conformance with any law or rules of court.
18 Nothing in this subdivision precludes an election to proceed by
19 appendix, as provided in Rule 8.124 of the California Rules of
20 Court.

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

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

34 SEC. 12. Section 21167.6.2 is added to the Public Resources
35 Code, to read:

36 21167.6.2. (a) (1) Notwithstanding Section 21167.6, for a
37 project described in Section 21167.6.3, the lead agency, upon the
38 written request of a project applicant received no later than 30 days
39 after the date that the lead agency makes a determination pursuant
40 to subdivision (a) of Section 21080.1, Section 21094.5, or Chapter

20

1 4.2 (commencing with Section 21155), shall prepare and certify
2 the record of proceedings in the following manner:

3 (A) The lead agency for the project shall prepare the record of
4 proceedings pursuant to this division concurrently with the
5 administrative process.

6 (B) All documents and other materials placed in the record of
7 proceedings shall be posted on, and be downloadable from, an
8 Internet Web site maintained by the lead agency commencing with
9 the date of the release of the draft environmental document for a
10 project specified in Section 21167.6.3. If the lead agency cannot
11 maintain an Internet Web site with the information required
12 pursuant to this section, the lead agency shall provide a link on
13 the agency's Internet Web site to that information.

14 (C) The lead agency shall make available to the public in a
15 readily accessible electronic format the draft environmental
16 document for a project specified in Section 21167.6.3, and all other
17 documents submitted to, cited by, or relied on by the lead agency,
18 in the preparation of the draft environmental document for a project
19 specified in Section 21167.6.3.

20 (D) A document prepared by the lead agency or submitted by
21 the applicant after the date of the release of the draft environmental
22 document for a project specified in Section 21167.6.3 that is a part
23 of the record of the proceedings shall be made available to the
24 public in a readily accessible electronic format within five business
25 days after the document is released or received by the lead agency.

26 (E) The lead agency shall encourage written comments on the
27 project to be submitted in a readily accessible electronic format,
28 and shall make any comment available to the public in a readily
29 accessible electronic format within five business days of its receipt.

30 (F) Within seven business days after the receipt of any comment
31 that is not in an electronic format, the lead agency shall convert
32 that comment into a readily accessible electronic format and make
33 it available to the public in that format.

34 (G) The lead agency shall certify the record of proceedings
35 within 30 days after the filing of the notice required pursuant to
36 Section 21108 or 21152.

37 (2) This subdivision does not require the disclosure or posting
38 of any trade secret as defined in Section 6254.7 of the Government
39 Code, information about the location of archaeological sites or

1 sacred lands, or any other information that is subject to the
2 disclosure restrictions of Section 6254 of the Government Code.

3 (b) Any dispute regarding the record of proceedings shall be
4 resolved by the court in an action or proceeding brought pursuant
5 to subdivision (b) or (c) of Section 21167.

6 (c) The content of the record of proceedings shall be as specified
7 in subdivision (e) of Section 21167.6.

8 (d) Subdivisions (g) to (i), inclusive, of Section 21167.6 are
9 applicable to an appeal of a decision in an action or proceeding
10 brought pursuant to subdivision (b) or (c) of Section 21167.

11 (e) The negative declaration, mitigated negative declaration,
12 draft and final environmental impact report, or other environmental
13 document for a project specified in Section 21167.6.3 shall include
14 a notice in no less than 12-point type stating the following:

15
16 “THIS NEGATIVE DECLARATION, MITIGATED
17 NEGATIVE DECLARATION, EIR, OR ENVIRONMENTAL
18 DOCUMENT IS SUBJECT TO SECTIONS 21167.6.2 AND
19 21167.6.3 OF THE PUBLIC RESOURCES CODE, WHICH
20 REQUIRES THE RECORD OF PROCEEDINGS FOR THIS
21 PROJECT TO BE PREPARED CONCURRENTLY WITH THE
22 ADMINISTRATIVE PROCESS, DOCUMENTS PREPARED
23 BY, OR SUBMITTED TO, THE LEAD AGENCY TO BE
24 POSTED ON THE LEAD AGENCY’S INTERNET WEB SITE,
25 AND THE LEAD AGENCY TO ENCOURAGE WRITTEN
26 COMMENTS ON THE PROJECT TO BE SUBMITTED TO THE
27 LEAD AGENCY IN A READILY ACCESSIBLE ELECTRONIC
28 FORMAT.”

29
30 (f) For a lead agency that is a state agency, this section shall
31 apply if the state agency consents to the preparation of the record
32 of proceedings pursuant to this section.

33 SEC. 13. Section 21167.6.3 is added to the Public Resources
34 Code, to read:

35 21167.6.3. (a) Section 21167.6.2 applies to the record of
36 proceedings for the preparation of a negative declaration, mitigated
37 negative declaration, environmental impact report, or other
38 environmental document prepared for any of the following:

1 (1) A project determined to be of statewide, regional, or
2 areawide environmental significance pursuant to subdivision (d)
3 of Section 21083.

4 (2) A project subject to Section 21094.5 of Chapter 4.2
5 (commencing with Section 21155).

6 (3) (A) A project, other than those described in paragraph (1)
7 or (2), for which the project applicant has requested for, and the
8 lead agency consents to, the preparation for the record of
9 proceeding pursuant to this section and Section 21167.6.2.

10 (B) The lead agency shall respond to a request by the project
11 applicant within 10 business days from the date that the request
12 pursuant to subdivision (a) of Section 21167.6.2 is received by the
13 lead agency.

14 (C) A project applicant and the lead agency may mutually agree,
15 in writing, to extend the time period for the lead agency to respond
16 pursuant to subparagraph (B), but they shall not extend that period
17 beyond the commencement of the public review period for the
18 proposed negative declaration, mitigated negative declaration,
19 draft environmental impact report, or other environmental
20 document.

21 (D) The request to prepare a record of proceedings pursuant to
22 this paragraph shall be deemed denied if the lead agency fails to
23 respond within 10 business days of receiving the request or within
24 the time period agreed upon pursuant to subparagraph (C),
25 whichever ends later.

26 (b) The written request of the applicant submitted pursuant to
27 subdivision (a) of Section 21167.6.2 shall include an agreement
28 to pay all of the lead agency's costs of preparing and certifying
29 the record of proceedings pursuant to Section 21167.6.2 and
30 complying with the requirements of this section and Section
31 21167.6.2 in a manner specified by the lead agency.

32 (c) The cost of preparing the record of proceedings pursuant to
33 Section 21167.6.2 and complying with the requirements of this
34 section and Section 21167.6.2 are not recoverable costs pursuant
35 to Section 1033 of the Code of Civil Procedure.

36 SEC. 14. Section 21167.7 of the Public Resources Code is
37 amended to read:

38 21167.7. (a) Every person who brings an action pursuant to
39 Section 21167 shall comply with the requirements of Section 388
40 of the Code of Civil Procedure. Every such person shall also furnish

1 pursuant to Section 388 of the Code of Civil Procedure a copy of
2 any amended or supplemental pleading filed by such person in
3 such action to the Attorney General. No relief, temporary or
4 permanent, shall be granted until a copy of the pleading has been
5 furnished to the Attorney General in accordance with such
6 requirements.

7 (b) Notwithstanding Section 10231.5 of the Government Code,
8 the Attorney General shall annually submit to the Legislature a
9 report, pursuant to Section 9795 of the Government Code, with
10 information on actions or proceedings brought pursuant to this
11 division that includes, but is not limited to, all of the following:

12 (1) The names of the plaintiffs or petitioners, the respondents
13 or defendants, and the real parties in interest.

14 (2) The type of action or proceeding filed and the alleged
15 violation.

16 (3) The disposition, if any, of the action or proceeding.

17 SEC. 15. Section 21168.9 of the Public Resources Code is
18 amended to read:

19 21168.9. (a) If a court finds, as a result of a trial, hearing, or
20 remand from an appellate court, that any determination, finding,
21 or decision of a public agency has been made without compliance
22 with this division, the court shall issue a peremptory writ of
23 mandate specifying what action by the public agency is necessary
24 to comply with this division, including one or more of the
25 following:

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

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

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

1 (b) (1) A writ pursuant to subdivision (a) shall include only
2 those mandates that are necessary to achieve compliance with this
3 division and only those specific project activities in noncompliance
4 with this division.

5 (2) In the case of a negative declaration, mitigated negative
6 declaration, or environmental impact report found not to be in
7 compliance with this division, the writ may direct the agency to
8 revise only those portions of the document found not to be in
9 compliance with this division.

10 (3) The writ shall be limited to that portion of a determination,
11 finding, or decision, or the specific project activity or activities,
12 or document found to be in noncompliance only if a court finds
13 all of the following:

14 (A) The portion or specific project activity or activities or
15 document is severable.

16 (B) Severance will not prejudice complete and full compliance
17 with this division.

18 (C) The court has not found the remainder of the project or
19 document to be in noncompliance with this division.

20 (4) A writ shall include a time by which the agency shall make
21 an initial return of the writ.

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

26 (c) An initial return to a writ shall describe all of the following:

27 (1) The actions the agency will take to come into compliance
28 with the writ and this division.

29 (2) A schedule for these actions.

30 (3) In the case of a negative declaration, mitigated negative
31 declaration, or environmental impact report found not to be in
32 compliance with this division, the public comment period
33 applicable to the agency's revision of the document.

34 (d) This section does not authorize a court to direct a public
35 agency to exercise its discretion in any particular way. Except as
36 expressly provided in this section, this section is not intended to
37 limit the equitable powers of the court.

38 (e) This section does not affect the authority of a court to allow
39 those determinations, findings, or decisions of a public agency that
40 are not found to be in violation of this division to proceed, if

1 allowing the public agency to proceed does not, in any manner,
2 prejudice complete and full compliance with this division.

3 SEC. 16. ~~Notwithstanding any other law, It is the intent of the~~
4 *Legislature to appropriate* the sum of thirty million dollars
5 (\$30,000,000) ~~may be appropriated by the Legislature~~ in the annual
6 Budget Act to the Strategic Growth Council to provide competitive
7 grants to local agencies for planning activities pursuant to Chapter
8 4.2 (commencing with Section 21155) of Division 13 of the Public
9 Resources Code.

10 SEC. 17. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 a local agency or school district has the authority to levy service
13 charges, fees, or assessments sufficient to pay for the program or
14 level of service mandated by this act, within the meaning of Section
15 17556 of the Government Code.

16 However, if the Commission on State Mandates determines that
17 this act contains other costs mandated by the state, reimbursement
18 to local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.