

BILL NUMBER: SB 731 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 23, 2013

INTRODUCED BY Senator Steinberg

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, to amend Section 44273 of the Health and Safety Code, and to amend Sections 21080, 21081.5, 21081.6, 21167, 21167.6, 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.

LEGISLATIVE COUNSEL'S DIGEST

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

~~The~~

(1) The California Environmental Quality ~~Act (CEQA)~~ 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 (EIR)~~ 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 state the intent of the Legislature to enact legislation revising CEQA to, among other things, provide greater certainty for smart infill development, streamline the law for specified projects, and establish a threshold of significance for specified impacts.~~

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.

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.

~~Existing~~

(5) 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. Existing law establishes the Alternative and Renewable Fuel and Vehicle Technology Fund that is administered by the State Energy Resources Conservation and Development Commission. Existing law requires that moneys in the fund, upon appropriation by the Legislature, be expended by the commission to implement the Alternative and Renewable Fuel and Vehicle Technology Program to assist in the transition from the exclusive use of petroleum fuel to a diverse portfolio of viable alternative fuels that meet petroleum reduction and alternative fuel use goals and minimizing adverse environmental impacts.

This bill would ~~state the intent of the Legislature to provide~~ authorize, upon appropriation by the Legislature, the use of \$30,000,000 annually ~~to~~

from the Alternative and Renewable Fuel and Vehicle Technology Fund by the council for the purposes of providing ~~planning incentive~~ competitive grants to local ~~and regional~~ agencies ~~to update and implement general plans, sustainable communities strategies, and smart growth plans.~~ for planning activities for the implementation of the sustainable communities strategy.

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

(7) 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: no. Fiscal committee: ~~no~~
yes . State-mandated local program: ~~no~~
yes .

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

(b) It is the intent of the Legislature to explore amendments to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), to further streamline the law for renewable energy projects, advanced

manufacturing projects, transit, bike, and pedestrian projects, and renewable energy transmission projects.

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

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

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

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

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

(f) It is the intent of the Legislature to amend Section 21091 of the Public Resources Code and related provisions of law to establish clear statutory rules under which "late hits" and "document dumps" are prohibited or restricted prior to certification of an EIR, if a project proponent or lead agency has not substantively changed the draft EIR or substantively modified the project.

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

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

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

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

(b) The department shall establish an internal division with the

primary purpose of performing comprehensive planning and environmental compliance services with priority given to projects involving the building of eligible renewable energy resources.

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

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

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

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

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

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

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

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

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

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

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

(c) *For the purposes of this section, "an event as specified in Section 21166 of the Public Resources Code" does not include any 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.*

SEC. 6. Section 44273 of the Health and Safety Code is amended to read:

44273. (a) The Alternative and Renewable Fuel and Vehicle Technology Fund is hereby created in the State Treasury, to be administered by the commission. The moneys in the fund, upon appropriation by the Legislature, shall be expended by the commission to implement the Alternative and Renewable Fuel and Vehicle Technology Program in accordance with this chapter.

(b) Notwithstanding any other ~~provision of~~ law, the sum of ten million dollars (\$10,000,000) shall be transferred annually from the Public Interest Research, Development, and Demonstration Fund created by Section 384 of the Public Utilities Code to the Alternative and Renewable Fuel and Vehicle Technology Fund. Prior to the award of any funds from this source, the commission shall make a determination that the proposed project will provide benefits to electric or natural gas ratepayers based upon the commission's adopted criteria.

(c) Beginning with the integrated energy policy report adopted in 2011, and in the subsequent reports adopted thereafter, pursuant to Section 25302 of the Public Resources Code, the commission shall include an evaluation of research, development, and deployment efforts funded by this chapter. The evaluation shall include all of the following:

(1) A list of projects funded by the Alternative and Renewable Fuel and Vehicle Technology Fund.

(2) The expected benefits of the projects in terms of air quality, petroleum use reduction, greenhouse gas emissions reduction, technology advancement, and progress towards achieving these benefits.

(3) The overall contribution of the funded projects toward promoting a transition to a diverse portfolio of clean, alternative transportation fuels and reduced petroleum dependency in California.

(4) Key obstacles and challenges to meeting these goals identified through funded projects.

(5) Recommendations for future actions.

(d) *Notwithstanding any other law, the sum of thirty million dollars (\$30,000,000) may be appropriated by the Legislature in the annual Budget Act to the Strategic Growth Council to provide competitive grants to local agencies for planning activities pursuant to Chapter 4.2 (commencing with Section 21155) of Division 13 of the Public Resources Code.*

SEC. 7. Section 21080 of the Public Resources Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) Projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5. Any site-specific effect of the project which was not analyzed as a

significant effect on the environment in the plan or other written documentation required by Section 21080.5 is subject to this division.

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

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

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

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

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

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

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

(g) ~~Nothing in this~~ This section ~~shall~~ does not preclude a project applicant or any other person from challenging, in an administrative or judicial proceeding, the legality of a condition of project approval imposed by the lead agency. If, however, any condition of project approval set aside by either an administrative body or court was necessary to avoid or lessen the likelihood of the occurrence of a significant effect on the environment, the lead agency's approval of the negative declaration and project shall be invalid and a new environmental review process shall be conducted before the project can be reapproved, unless the lead agency substitutes a new condition

that the lead agency finds, after holding a public hearing on the matter, is equivalent to, or more effective in, lessening or avoiding significant effects on the environment and that does not cause any potentially significant effect on the environment.

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

SEC. 8. Section 21081.5 of the Public Resources Code is amended to read:

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

(b) To make the draft findings available to the members of the public for the purposes of subdivision (a), the lead agency shall provide a notice of availability of the findings for review either at the lead agency's office during normal business hours and online through all of the following mechanisms:

(1) Publication 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 with the largest circulation from among the newspapers of general circulation in those areas.

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

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

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

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

SEC. 9. Section 21081.6 of the Public Resources Code is amended to read:

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

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

monitoring program.

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

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

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

(d) *As a part of the mitigation monitoring plan established pursuant to this section, the lead agency shall prepare or cause to be prepared an annual report on project compliance with mitigation measures required pursuant to this division. The report shall be made publicly available online to enhance public disclosure and accountability.*

SEC. 10. Chapter 2.7 (commencing with Section 21099) is added to Division 13 of the Public Resources Code , to read:

CHAPTER 2.7. STANDARDIZED THRESHOLDS OF SIGNIFICANCE FOR ENVIRONMENTALLY BENEFICIAL PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 11. Section 21167 of the Public Resources Code is amended to read:

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

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

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

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

(d) An action or proceeding alleging that a public agency has improperly determined that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or Section 21172 shall be commenced within 35 days from the date of the filing by the public

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

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

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

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

SEC. 12. Section 21167.6 of the Public Resources Code is amended to read:

21167.6. Notwithstanding any other provision of law, in all actions or proceedings brought pursuant to Section 21167, except as provided in Section 21167.6.2 or those involving the Public Utilities Commission, all of the following shall apply:

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

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

(2) The plaintiff or petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified

in this subdivision.

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

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

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

(1) All project application materials.

(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project.

(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.

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

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

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

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

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

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

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

and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division.

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

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

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

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

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

SEC. 13. Section 21167.6.2 is added to the Public Resources Code , to read:

21167.6.2. (a) (1) Notwithstanding Section 21167.6, for a project described in Section 21167.6.3, the lead agency, upon the written request of a project applicant received no later than 30 days after the date that the lead agency makes a determination pursuant to subdivision (a) of Section 21080.1, Section 21094.5, or Chapter 4.2 (commencing with Section 21155), shall prepare and certify the record of proceedings in the following manner:

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

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

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

(D) A document prepared by the lead agency or submitted by the applicant after the date of the release of the draft environmental

document for a project specified in Section 21167.6.3 that is a part of the record of the proceedings shall be made available to the public in a readily accessible electronic format within five business days after the document is released or received by the lead agency.

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

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

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

(2) This subdivision does not require the disclosure or posting of any trade secret as defined in Section 6254.7 of the Government Code, information about the location of archeological sites or sacred lands, or any other information that is subject to the disclosure restrictions of Section 6254 of the Government Code.

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

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

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

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

"THIS NEGATIVE DECLARATION, MITIGATED NEGATIVE DECLARATION, EIR, OR ENVIRONMENTAL DOCUMENT IS SUBJECT TO SECTIONS 21167.6.2 AND 21167.6.3 OF THE PUBLIC RESOURCES CODE, WHICH REQUIRES THE RECORD OF PROCEEDINGS FOR THIS PROJECT TO BE PREPARED CONCURRENTLY WITH THE ADMINISTRATIVE PROCESS, DOCUMENTS PREPARED BY, OR SUBMITTED TO, THE LEAD AGENCY TO BE POSTED ON THE LEAD AGENCY'S INTERNET WEB SITE, AND THE LEAD AGENCY TO ENCOURAGE WRITTEN COMMENTS ON THE PROJECT TO BE SUBMITTED TO THE LEAD AGENCY IN A READILY ACCESSIBLE ELECTRONIC FORMAT."

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

SEC. 14. Section 21167.6.3 is added to the Public Resources Code , to read:

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

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

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

(3) (A) A project, other than those described in paragraph (1) or (2), for which the project applicant has requested for, and the lead

agency consents to, the preparation for the record of proceeding pursuant to this section and Section 21167.6.2.

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

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

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

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

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

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

21168.9. (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~~ issue a peremptory writ of mandate specifying what action by the public agency is necessary to comply with this division, including one or more of the following:

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

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

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

(b) ~~Any order~~ (1) A writ pursuant to subdivision (a) shall include only those mandates ~~which~~ that 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~~

(2) In the case of a negative declaration, mitigated negative

declaration, or environmental impact report found not to be in compliance with this division, the writ may direct the agency to revise only those portions of the document found not to be in compliance with this division.

(3) The writ shall be limited to that portion of a determination, finding, or ~~decision~~ decision, or the specific project activity or ~~activities~~ activities, or document found to be in noncompliance only if a court finds ~~that (1) the~~ all of the following:

(A) The portion or specific project activity or activities ~~are severable, (2) severance or document is severable.~~

(B) Severance will not prejudice complete and full compliance with this ~~division, and (3) the~~ division.

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

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

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

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

(2) A schedule for these actions.

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

~~(c) Nothing in this~~

(d) This section ~~authorizes~~ does not authorize a court to direct ~~any~~ a public agency to exercise its discretion in any particular way. Except as expressly provided in this section, ~~nothing in~~ this section is not intended to limit the equitable powers of the court.

(e) This section does not affect the authority of a court to allow those determinations, findings, or decisions of a public agency that are not found to be in violation of this division to proceed, if allowing the public agency to proceed does not, in any manner, prejudice complete and full compliance with this division.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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