

West's
ANNOTATED
CALIFORNIA CODES



PUBLIC RESOURCES CODE

Sections 9501 to 29999

*Official
California Public Resources Code
Classification*

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FOREWORD

This volume contains legislation relating to resource and energy conservation, development and alternatives, environmental quality, geologic hazard abatement and Suisun Marsh preservation, as amended and supplemented through chapter 20 of the 1986 portion of the 1985-1986 Regular Session.

The enactments, pertinent judicial constructions and other annotative materials that have accumulated in recent years have been integrated with existing provisions to simplify and facilitate the use of this volume.

All standard practice features of West's Annotated California Codes are continued and expanded in this volume for maximum utility. These valuable research features include:

Case Notes—State and federal court constructions setting forth the facts and the law.

Cross References—State laws of related subject matter, qualification or limitation are noted and listed.

Historical Notes—Showing the source and tracing the development of the law.

Law Reviews—References to pertinent articles and commentaries.

Library References to:

Key Number Digests.

Corpus Juris Secundum.

Miscellaneous Digests, Books and Reports.

United States Code Annotated—References to federal laws of related or qualifying matter.

Law Revision Commission Comments.

Official Administrative Code References.

Opinions of the Attorney General.

An index, comprehensive and detailed, covering the complete text of the Public Resources Code appears in the last volume of the Code.

The Publisher expresses its sincere appreciation to the State Officials, to the members of the Judiciary, to the Law Schools, and to the practicing Attorneys whose timely suggestions, supplementing the varied experience of the Publisher, have contributed materially to the

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Public trust doctrine in the water rights context: Wrong environmental remedy. Roderick E. Walston (1982) 22 Santa Clara L.Rev. 63.

Solar energy in California. (1980) 17 San Diego L.Rev. 355.

Substantive enforcement of the California Environmental Quality Act. (1981) 69 C.L.R. 112.

Substantive right to a better environment. Ronald B. Robie (1973) 49 Los Angeles Bar Bull. 17.

Symposium: Environmental Law. (1979) 19 Santa Clara L.Rev. 513.

Water rights of the City of Los Angeles: Power-politics and the courts. (1978) 6 San Fernando Valley L.Rev. 151.

When does a private construction project require an environmental impact report. Kevin P. Kane (1976) 52 Los Angeles Bar J. 142.

Library References

Health and Environment ⇐25.5 to 25.8.
 States ⇐72.
 Statutes ⇐184.
 C.J.S. Health and Environment § 61 et seq.

C.J.S. States § 123.
 C.J.S. Statutes § 323.
 Pretrial Practice, Marshall, § 121.

§ 21000. Legislative intent

The Legislature finds and declares as follows:

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

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

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

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

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

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

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

(Added by Stats.1970, c. 1433, p. 2780, § 1. Amended by Stats.1979, c. 947, p. 3270, § 4.)

Historical Note

The 1979 amendment inserted "while providing a decent home and satisfying living environment for every Californian" at the end of subd. (g).

Exemption of certain drought relief projects from this Division, see Historical Note under Water Code § 359.

Cross References

Environment, see § 21060.5.
 Preparation and adoption of redevelopment plans, see Health and Safety Code § 33333.3.
 Public agency, see § 21063.
 Residential development projects, exemption from this division, see Government Code § 65457.

Administrative Code References

Forestry department, policy guides for administration of statutes protecting natural resources, see 14 Cal.Adm. Code 1655.
 State EIR guidelines, see 14 Cal.Adm.Code 15000 et seq.

Law Review Commentaries

California Environmental Quality Act and eminent domain: Failure to comply with Act as defense to condemnation. (1975) 8 Loyola L.Rev. (Calif.) 734.
 Cumulative impact assessment in the California Environmental Quality Act. (1985) 12 West.St.U.L.Rev. 801.
 Friends of the Mammoth. (1973) 9 C.W.L. Rev. 536.
 Pollution control at the maritime frontier: Limits of state extraterritorial power. (1979) 19 Santa Clara L.Rev. 747.
 Population density crisis. (1973) 10 C.W.L. Rev. 147.
 State preemption of cable television regulation—Whatever happened to the sanctity of contractor? (1983) 10 Pepperdine L.Rev. 691.

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Whenever a challenge is presented against a project planned and approved prior to California Environmental Quality Act's effective date, agency involved is vulnerable to charges of institutional bias, particularly so if its ultimate decision is in favor of proceeding with a project previously conceived or planned, but court of appeal cannot apply act retroactively and condemn effort to comply with act's commands, and possibility that an agency which has published its prior approval of project will continue to favor it despite act cannot be a bar to compliance. Residents Ad Hoc Stadium Committee v. Board of Trustees of California State University and Colleges (1979) 152 Cal. Rptr. 585, 89 C.A.3d 274.

1. In general

Legislature intended Environmental Quality Act to be interpreted in such manner as to afford fullest possible protection to environment within reasonable scope of statutory language. People ex rel. Younger v. Local Agency Formation Commission of San Diego County (1978) 146 Cal.Rptr. 400, 81 C.A.3d 464; Natural Resources Defense Council, Inc. v. Arcata Nat. Corp. (1976) 131 Cal.Rptr. 172, 59 C.A.3d 959; San Francisco Ecology Center v. City and County of San Francisco (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584; Bozung v. Local Agency Formation Commission of Ventura County (1975) 118 Cal.Rptr. 249, 529 P.2d 1017, 13 C.3d 263; Friends of Mammoth v. Board of Sup'rs of Mono County (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

Public agency need not and should not await compulsion of judicial decrees before fulfilling demands of California Environmental Quality Act. Inyo County v. City of Los Angeles (1977) 139 Cal.Rptr. 396, 71 C.A.3d 185, motion denied 144 Cal.Rptr. 71, 78 C.A.3d 82.

Environmental Quality Act applies to the fish and game commission. Wildlife Alive v. Chickering (1976) 132 Cal.Rptr. 377, 553 P.2d 537, 18 C.3d 190.

On further development of 400-acre tract in future, those charged with applying requirements of Environmental Quality Act will be required to take into account the existing changes already wrought by shopping center, parking lot and street-widening activities theretofore undertaken with respect to 72-acre portion of 400-acre tract. Plan for Arcadia, Inc. v. Arcadia City Council and Anita Associates (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

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The Environmental Quality Act does not establish environmental protection as exclusive goal but requires that environmental costs and benefits assume their proper place along with other considerations, and leaves room for responsible exercise of discretion. *Hixon v. County of Los Angeles* (1974) 113 Cal.Rptr. 433, 38 C.A.3d 370.

2. Construction with other laws

Tahoe regional planning agency was subject to California Environmental Quality Act with respect to effect of drainage from property located primarily in Nevada but partly in California, to change in surface use of land located within California and to effect of construction work itself on California environment. *California Tahoe Regional Planning Agency v. Harrah's Corp.* (D.C.Nev.1981) 509 F.Supp. 753.

Because state Environmental Quality Act (this section et seq.) was modeled on National Environmental Policy Act (42 U.S.C.A. § 4321 et seq.), judicial interpretation of the latter is persuasive authority in interpreting the former. *Village Laguna of Laguna Beach, Inc. v. Board of Sup'rs of Orange County* (1982) 185 Cal.Rptr. 41, 134 C.A.3d 1022.

In interpreting provisions of California Environmental Quality Act, court relies upon federal precedents as helpful authority in construing parallel provisions contained in National Environmental Policy Act [42 U.S.C.A. § 4321 et seq.]. *Mount Sutro Defense Committee v. Regents of University of California* (1978) 143 Cal.Rptr. 365; 77 C.A.3d 20.

Timber-harvesting operations, carried on pursuant to the Forest Practice Act of 1973, § 4511 et seq., and the forest practice rules, are subject to the requirements of the California Environmental Quality Act of 1970 and the administrative guidelines established pursuant thereto. *Gallegos v. California State Board of Forestry* (1978) 142 Cal.Rptr. 86, 76 C.A.3d 945.

Federal judicial interpretations of the National Environmental Policy Act (42 U.S.C.A. § 4321 et seq.) are relevant in interpreting California Environmental Quality Act only to the extent that the provisions of the National Act may be fairly said to parallel the California Act. *Wildlife Alive v. Chickering* (1976) 132 Cal.Rptr. 377, 553 P.2d 537, 18 C.3d 190.

Forest Practice Act (§ 4511 et seq.) and California Environmental Quality Act are not in conflict, but rather supplement each other and, therefore, must be harmonized; provisions of CEQA are therefore deemed to be part of Forest Practice Act as well. *Natural Resources Defense Council, Inc. v. Arcata Nat. Corp.* (1976) 131 Cal.Rptr. 172, 59 C.A.3d 959.

While economic and environmental values may be given equal weight under the comparable National Environmental Policy Act, 42 U.S.C.A. § 4321 et seq., the federal precedents are

of diminished value in view of substantial differences between the federal act and the state Environmental Quality Act which suggests that environmental protection is of paramount concern, and a sense of urgency is conveyed in several provisions of the state act. *San Francisco Ecology Center v. City and County of San Francisco* (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584.

Since California Environmental Quality Act was modeled on federal statute, judicial and administrative interpretation of federal enactment is persuasive authority in interpreting California act. *No Oil, Inc. v. City of Los Angeles* (1974) 118 Cal.Rptr. 34, 529 P.2d 66, 13 C.3d 68.

The California Environmental Quality Act and the National Environmental Policy Act, 42 U.S.C.A. § 4321 et seq., are so parallel in content and so nearly identical in words that judicial interpretation of federal law is strongly persuasive in deciding meaning of § 21000 et seq. *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 104 Cal.Rptr. 197, 27 C.A.3d 695, supplemented 104 Cal.Rptr. 714, 28 C.A.3d 512.

3. Due process

Notice provided by Environmental Quality Act regulations of county, which limited obligation of county to posting of environmental documents at central public buildings and mailing of notice to persons who specifically requested it, was inadequate to apprise concerned landowners of governmental actions affecting their property interests in connection with approval of subdivision by county and thus violated due process rights of purchaser of lot adjacent to proposed subdivision. *Horn v. Ventura County* (1979) 156 Cal.Rptr. 718, 596 P.2d 1134, 24 C.3d 605.

4. Jurisdiction

Court of appeal's interim decision which declared that city's environmental impact report did not comply with Environmental Quality Act and which provided for the retention of jurisdiction to enforce writ of mandate did not terminate lawsuit and did not exhaust court's authority to award costs and attorney fees. *Inyo County v. City of Los Angeles* (1978) 144 Cal.Rptr. 71, 78 C.A.3d 82.

5. Property value

Environmental protection acts are not designed to protect against decline in commercial value of property adjacent to a public project, but are intended to ensure consideration of qualitative environmental factors as well as quantitative economics in proposed actions affecting the environment. *Hecton v. People* (1976) 130 Cal.Rptr. 230, 58 C.A.3d 653.

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6. Environmental impact statements, generally

Although no environmental impact report under California Environmental Quality Act was required with respect to water pumping plant because the facility was completed prior to the effective date of the Act, state officials would be required to comply with the Act before expanding the facility by installing additional pumps; increased pumping by presently existing facilities did not require compliance with the Act. *Sierra Club v. Morton* (D.C.1975) 400 F.Supp. 610.

In omitting from its calculations and analyses of cumulative impacts other closely related projects that were currently under environmental review, local planning commission which issued environmental impact reports for construction of high-rise office buildings applied unreasonably narrow interpretation of guidelines implementing the California Environmental Quality Act (this section et seq.) and, in so doing, abused its discretion. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (App. 1 Dist.1984) 198 Cal.Rptr. 634, 151 C.A.3d 61.

Evidence did not create a controversy, relative to proposal of 900-cow dairy, serious enough to make an environmental impact report desirable under California Environmental Quality Act (this section et seq.) guideline. *Newberry Springs Water Ass'n v. San Bernardino County* (App. 4 Dist.1984) 198 Cal.Rptr. 100, 150 C.A.3d 740.

Failure of agency to exercise its power, even assuming its power can have significant effect on environment, is not type of conduct that requires environmental impact statement. *City of National City v. State* (1983) 189 Cal.Rptr. 682, 140 C.A.3d 598.

Environmental Quality Act generally and standards for preparation of environmental impact reports in particular compel agencies to assess environmental impacts of proposed general plan amendments by comparing the proposal with the actual physical conditions in the affected area. *Environmental Planning and Information Council of Western El Dorado County, Inc. v. El Dorado County* (1982) 182 Cal.Rptr. 317, 131 C.A.3d 350.

City's process for issuing demolition permit of historical site did not violate state Environmental Quality Act (§ 21000 et seq.) on ground that it did not expressly require environmental impact report or empower city council to deny demolition permit where city adopted environmental quality ordinance pursuant to Environmental Quality Act which required all city agencies to give major consideration to prevent environmental damage and called for preparation of environmental impact reports and where city's power under municipal code dealing with demolition permits to grant permit

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implied a power not to grant permit. *San Diego Trust & Sav. Bank v. Friends of Gill* (1981) 174 Cal.Rptr. 784, 121 C.A.3d 203.

Timber companies were not freed from requirement of submitting environmental impact reports on timber harvesting operations carried on pursuant to Forest Practice Act (§ 4511 et seq.) on theory that that Act was "functional equivalent" of California Environmental Quality Act. *Natural Resources Defense Council, Inc. v. Arcata Nat. Corp.* (1976) 131 Cal.Rptr. 172, 59 C.A.3d 959.

Even if the county was acting illegally in removing trees from public street, i.e., because of failure to file an environmental impact report, required by the California Environmental Quality Act, § 21000 et seq., such failure did not justify defendants' obstruction of operation of machine employed to remove trees, and, thus, did not insulate defendants from a conviction of obstructing a public way. *People v. Man* (1974) 114 Cal.Rptr. 237, 39 C.A.3d Supp. 1.

Environmental impact statement was not required in connection with proposed construction of a highrise hotel, where permit for construction was issued prior to effective date of 1972 amendments to Environmental Quality Act (Stats.1972, c. 1154, §§ 1, 16, adding §§ 21065, 21169, 21170, 21171). *San Francisco Planning and Urban Renewal Ass'n v. Central Permit Bureau* (1973) 106 Cal.Rptr. 670, 30 C.A.3d 920.

The California highway patrol is required to prepare an "environmental assessment" under the California Environmental Quality Act (this section et seq.) before adopting radioactive material transportation routes pursuant to Veh.C. § 33000. 66 Ops.Atty.Gen. 461, 12-15-83.

No environmental impact report is required in connection with the development of the coastal zone conservation plan. 58 Ops.Atty.Gen. 814.

7. Exemptions

Where there was no evidence to show that any impact on the environment from replacement of cement manufacturing facilities would not be mitigated, and no evidence to show that the effects remaining after such mitigation would have a substantial adverse impact on the environment, conclusion of county board of supervisors that granting replacement facilities an exemption from the Environmental Quality Act (§ 21000 et seq.) would have no substantial adverse impact on the environment was unassailable. *Dehne v. Santa Clara County* (1981) 171 Cal.Rptr. 753, 115 C.A.3d 827.

Const. Art. 4, § 20 to the effect that legislature may delegate to the fish and game commission such powers relating to protection and propagation of fish and game as legislature sees fit does not make the commission an arm

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of the legislature and thus exempt from the Environmental Quality Act. *Wildlife Alive v. Chickering* (1976) 132 Cal.Rptr. 377, 553 P.2d 537, 18 C.3d 190.

The creation of a high-speed intercity passenger rail project would not be exempt in its entirety from the provisions of the California Environmental Quality Act (this section et seq.). 66 Ops.Atty.Gen. 340, 10-4-83.

8. Public utilities

Where public utilities commission stated that it intended to adopt regulations pursuant to Environmental Quality Act (§ 21082), requiring all public agencies to adopt procedures for the evaluation of projects and the preparation of environmental impact reports, and indicated that it would withhold action on application for certificate of public convenience and necessity for proposed power plant until such regulations were promulgated, an order by the supreme court compelling the commission to adopt a particular procedure would have contravened priorities established by the legislature and would have done violence to principle of separation of powers enunciated in state constitution. *Desert Environment Conservation Ass'n v. Public Utilities Commission* (1973) 106 Cal.Rptr. 31, 505 P.2d 223, 8 C.3d 739.

Even though the environmental impact report provisions of the California Environmental Quality Act of 1970, § 21000 et seq., do not apply to proceeding on plan for reregulating intrastate transportation of petroleum and other goods in tank truck equipment, and though no environmental impact report or negative declaration is required, public utilities commission must recognize and implement the policy stated in this section and § 21001. *MTR's 6-B and 13* (1979) 1 Cal.P.U.C.2d 405.

The natural gas transfer from Pacific Gas & Electric Co. to the Los Angeles Department of Water Power through the Southern California Gas Company for the summer of 1977 electric shortage was an emergency and was exempt from the California Environmental Quality Act. *PG & E Co.* (1977) 82 Cal.P.U.C. 119.

The policy provisions of the California Environmental Quality Act apply to rate proceedings, but the environmental impact report provisions (§ 21100 et seq.) do not. *In re Environmental Impact Reports* (1973) 75 Cal.P.U.C. 133.

9. Highways

California Environmental Quality Act of 1970 applies to projects that have received some funding prior to effective date of Act; in the case of a highway, compliance with Act does not become unnecessary until a proposed highway has reached the stage of completion where the costs of abandoning or altering the proposed route would clearly outweigh the benefits therefrom. *Keith v. Volpe* (D.C.1972)

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352 F.Supp. 1324, affirmed 506 F.2d 696, certiorari denied 95 S.Ct. 826, 420 U.S. 908, 42 L.Ed.2d 837.

10. Historic structures

Fundamental objectives of California Environmental Quality Act were satisfied by redevelopment authority when it approved demolition of registered historic monument, where draft environmental impact report dramatically alerted public to recommended irretrievable loss of landmark, report identified loss as most significant impact of redevelopment project, public had notice of potential demolition and opportunity to persuade decision makers of unacceptable environmental price of sacrificing historic building, agency was provided with four alternatives to demolitions, each involving renovation of landmark together with varying levels of development, and report described steps necessary to vacate adverse effect of displacing landmark's transient residents. *Dusek v. Anaheim Redevelopment Agency* (App. 4 Dist.1985) 219 Cal.Rptr. 346, 173 C.A.3d 1029.

11. Practice and procedure, in general

Legislative intent in enacting the Environmental Quality Act is that environmental considerations play a significant role in the decision-making and such intent is not to be effectuated by vague or illusory assurances by state and local entities that the effect of a project on the environment has been taken into consideration; "findings" need not be made with formality attached to that term in judicial proceedings. *Burger v. Mendocino County* (1975) 119 Cal.Rptr. 568, 45 C.A.3d 322.

12. Mandamus

Unincorporated association and individuals who challenged plans to construct hotel on university campus and to improve existing stadium and baseball field claimed no violation of the California Environmental Quality Act (this section et seq.) at administrative level and, therefore, could not do so for first time in petition for writ of mandate. *Coalition for Student Action v. City of Fullerton* (RJS Development Co., Inc.) (App. 4 Dist.1984) 200 Cal. Rptr. 855, 153 C.A.3d 1194.

13. Laches

Financial detriment to state of losing a favorable bid for freeway construction could not outweigh substantial benefit of requiring compliance with requirements of Environmental Quality Act, and delay of condemnees and other residents residing in vicinity of the project in asserting noncompliance with environmental impact report requirement would not support defense of laches. *People By and Through Dept. of Public Works v. Bosio* (1975) 121 Cal.Rptr. 375, 47 C.A.3d 495.

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Where department of housing and community development received written legal advice from attorney general to the effect that permits issued under Mobilehome Parks Act (Health & S.C. § 18200 et seq.) were subject to requirements of the Environmental Quality Act, but then issued permit without environmental inquiry, and where applicant, who had waited four months to ascertain whether state would require city authorities to make environmental inquiries, then incurred \$40,000 of expenses in constructing the park on property zoned light industrial, the state was estopped by the doctrine of laches from rescinding the permit and preventing further construction of the mobile home park. *People v. Department of Housing and Community Development* (1975) 119 Cal. Rptr. 266, 45 C.A.3d 185.

Genuine issues of material fact were generated whether zone change, which was issued after grant of conditional use permit and variance, affected the same property and whether sole motivation for zone change was one of administrative convenience or to grant substantial rights not previously bestowed under use permit and variance, precluding summary judgment for property owners on issue whether neighboring landowners, whose attack on conditional use permit and variance was barred by laches and limitations, were entitled to challenge validity of zone change for failure to comply with Environmental Quality Act. *Concerned Citizens of Palm Desert, Inc. v. Riverside County Bd. of Sup'rs* (1974) 113 Cal. Rptr. 328, 38 C.A.3d 257.

Laches was not a bar to county's action against city under the Environmental Quality Act to halt city's extraction of subsurface waters from within distant county, where, inter alia, there was no showing of prejudice to the city by delay of some four years, both parties were public entities in litigation as to which the legislature had declared a clear and all-encompassing public interest, and there was a vast disparity in the population, staff, budget and research and planning resources available to the two entities. *Inyo County v. Yorty* (1973) 108 Cal.Rptr. 377, 32 C.A.3d 795.

14. Attorney fees

Evidence that plaintiff expended \$22,000 to obtain writ of mandate ordering city to conduct environmental assessment of proposed cogeneration plant to be constructed on property immediately adjacent to plaintiff's \$700,000 residence, and that plaintiff's motivation for such action was to prevent the threat of damage or depreciation to his property, established that necessity for pursuing such action did not

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place burden on plaintiff out of proportion to his individual stake in the matter, so that plaintiff was not entitled to award of attorney fees under the private attorney general theory. *Schwartz v. City of Rosemead* (App. 2 Dist. 1984) 202 Cal.Rptr. 400, 155 C.A.3d 547.

Motion for attorney fees for services performed in connection with successful action challenging fish and game commission's failure to comply with requirements of Environmental Quality Act in regard to establishment of hunting and fishing seasons had to be addressed to trial court whose ruling thereon could thereafter be reviewed on appeal. *Wild-life Alive v. Chickering* (1976) 132 Cal.Rptr. 377, 553 P.2d 537, 18 C.3d 190.

Motion of nonprofit corporations, which had brought a successful mandamus action challenging the validity of creation by ordinance of three informational oil drilling districts without first preparing and considering an environmental impact report, for an award of reasonable attorneys' fees incurred by them in connection with appeal would be denied by supreme court, but trial court would be authorized to determine if movants were entitled to reasonable attorneys' fees for services on appeal and, if so, to fix the amount thereof. *No Oil, Inc. v. City of Los Angeles* (1975) 119 Cal.Rptr. 216, 531 P.2d 784, 13 C.3d 486.

Motion of plaintiffs, who successfully appealed the dismissal of their suit to compel submission of environmental impact statement before annexation plan was approved, for an award of attorneys' fees incurred in connection with the appeal would be denied without prejudice to their right to make a similar motion in the trial court, since, inter alia, the motion raised questions of law which have not been decided in California and which the supreme court could not properly decide without full briefing and opportunity for oral argument. *Bozung v. Local Agency Formation Commission of Ventura County* (1975) 119 Cal.Rptr. 215, 531 P.2d 783, 13 C.3d 483.

15. Review

Trial court, in evaluating petitioner's claim that city, in approving developer's project, did not comply with Public Resources Code, followed correct standard, namely, that judicial inquiry is limited to question of abuse of discretion, which is established if agency has not proceeded as required by law or its decision is not supported by substantial evidence. *City of Poway v. City of San Diego* (App. 4 Dist. 1984) 202 Cal.Rptr. 366, 155 C.A.3d 1037.

§ 21001. Additional legislative intent

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

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

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

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

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

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

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

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

(Added by Stats.1970, c. 1433, p. 2781, § 1. Amended by Stats. 1979, c. 947, p. 3271, § 5.)

Historical Note

The 1979 amendment inserted "consistent with the provision of a decent home and suitable living environment for every Californian" in subd. (d).

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Private property rights. Michael M. Berger (1975) 8 Loyola (Calif.) L.Rev. 253.

Statutory requirements of California Environmental Quality Act. (1975) 8 Loyola L.Rev. (Calif.) 736.

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Health and Environment ⇐25.5 to 25.8.
States ⇐72.
Statutes ⇐184.

C.J.S. Health and Environment § 61 et seq.
C.J.S. States § 123.
C.J.S. Statutes § 323.

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trative officials having final approval authority over projects involving substantial effect upon environment review and consider an environmental impact report before taking action to approve or disapprove project. *Kleist v. City of Glendale* (1976) 128 Cal.Rptr. 781, 56 C.A.3d 770.

Guidelines established by state resources agency, which took effect on February 10, 1973, were not applied retroactively to decisions of court or city council rendered before guidelines went into effect, but court made use of guidelines as a suggested interpretation of Environmental Quality Act and as an illustra-

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California Environmental Quality Act requires that decision-making body or adminis-

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tion of procedures which resource agency finds necessary to enforcement of statute. *No Oil, Inc. v. City of Los Angeles* (1974) 118 Cal.Rptr. 34, 529 P.2d 66, 13 C.3d 68.

Legislature intended Environmental Quality Act to be interpreted in such manner as to afford fullest possible protection to environment within the reasonable scope of the statutory language. *Friends of Mammoth v. Board of Sup'rs of Mono County* (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 Cal.3d 247.

While CEQA applies to the whole of a project including those parts of a project occurring beyond the boundaries of the state, each responsible agency must consider the whole of a project, including those parts occurring beyond the boundaries of the state, when each such agency is determining to carry out the project. 58 Ops.Atty.Gen. 614, 9-26-75.

2. Delegation of review and consideration function

Neither California Environmental Quality Act nor state guidelines promulgated thereunder authorize a city council to delegate to another body its review and consideration function with regard to environmental impact reports required to be submitted in connection with intended projects which may have significant effect on the environment; delegation is inconsistent with purposes of environmental impact report itself since it cannot serve its informational function unless it is reviewed and considered by governmental body which takes action having effect upon environment. *Kleist v. City of Glendale* (1976) 128 Cal.Rptr. 781, 56 C.A.3d 770.

3. Environmental impact reports in general

City's process for issuing demolition permit of historical site did not violate state Environmental Quality Act (§ 21000 et seq.) on ground that it did not expressly require environmental impact report or empower city council to deny demolition permit where city adopted environmental quality ordinance pursuant to Environmental Quality Act which required all city agencies to give major consideration to prevent environmental damage and called for preparation of environmental impact reports and where city's power under municipal code dealing with demolition permits to grant permit implied a power not to grant permit. *San Diego Trust & Sav. Bank v. Friends of Gill* (1981) 174 Cal.Rptr. 784, 121 C.A.3d 203.

County zoning administrator's decision to issue use permit for proposed motel development was defective under Environmental Quality Act, (§ 21000 et seq.) in view of administrator's failure to give environmental impact report a significant role in considering use permit application, and in absence of evidence of, or a discussion concerning, economic or social values in proposed project overriding the ad-

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verse effects disclosed by environmental impact report. *City of Carmel-By-The-Sea v. Monterey County Bd. of Sup'rs* (1977) 139 Cal. Rptr. 214, 71 C.A.3d 84.

Neither requirements of Environmental Quality Act, § 21000 et seq., for either a full EIR or the abbreviated EIR permitted to be filed by environmentally oriented agencies are met by procedures used by coastal zone conservation commission in its permit-granting function where, among other things, there is no requirement that the commission propose projects containing alternatives and mitigation measures and there is no requirement that a project be disapproved if there are feasible alternatives which would substantially lessen any significant adverse impact on the environment. *City of Coronado v. California Coastal Zone Conservation Commission* (1977) 138 Cal. Rptr. 241, 69 C.A.3d 570.

4. Public utilities

Even though the environmental impact report provisions of the California Environmental Quality Act of 1970, § 21000 et seq., do not apply to proceeding on plan for reregulating intrastate transportation of petroleum and other goods in tank truck equipment, and though no environmental impact report or negative declaration is required, public utilities commission must recognize and implement the policy stated in this section and § 21000. *MTR's 6-B and 13* (1979) 1 Cal.P.U.C.2d 405.

The policy provisions of the California Environmental Quality Act apply to rate proceedings, but the environmental impact report provisions (§ 21100 et seq.) do not. *In re Environmental Impact Reports* (1973) 75 Cal.P.U.C. 133.

5. Water

In reviewing an environmental impact report regarding application for water service connection or pipeline extension permit, the Marin municipal water district must consider effects of such projects upon all aspects of the environment. 58 Ops.Atty.Gen. 438, 6-20-75.

State water resources control board has the authority to adopt the regulation, in compliance with Fish & G.C. § 5937, requiring a water appropriator to allow passage of water through a dam for preservation of fish below such dam. 57 Ops.Atty.Gen. 577, 11-21-74.

In prescribing waste discharge requirements, state water resources control board and regional water quality control boards must consider the effects of the discharge upon all aspects of the environment. 57 Ops.Atty.Gen. 19.

6. Private property

Archaeological society, as private party, had no right of action against private landowner which was allegedly destroying archaeological

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artifacts on the land as part of the owner's development of a project where no mitigating conditions had been laid down by any agency under the California Environmental Quality Act. San Diego County Archaeological Soc., Inc. v. Compadres (1978) 146 Cal.Rptr. 786, 81 C.A.3d 923.

7. High-speed intercity passenger rail project

The creation of a high-speed intercity passenger rail project would not be exempt in its

entirety from the provisions of the California Environmental Quality Act (§ 21000 et seq.). 66 Ops.Atty.Gen. 340, 10-4-83.

8. Radioactive materials

The California highway patrol is required to prepare an "environmental assessment" under the California Environmental Quality Act (§ 21000 et seq.) before adopting radioactive material transportation routes pursuant to Veh.C. § 33000. 66 Ops.Atty.Gen. 461, 12-15-83.

§ 21001.1. Review of public agency projects

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

(Added by Stats.1984, c. 1514, § 1.)

Library References

Health and Environment ⇐25.10(2).
C.J.S. Health and Environment §§ 70 et seq.,
119 et seq.

Notes of Decisions

1. In general

Amendment [St.1985, c. 931, § 4] to statute [St.1983, c. 958, § 9, as amended] authorizing location of prison near Avenal, California, to exempt facility from requirements of California Environmental Quality Act [West's Ann. Cal.Pub.Res.Code § 21000 et seq.] was not nullified by subsequent adoption of statute [St.

1985, c. 933, § 1 et seq.] concerning expansion of other prisons under statute [West's Ann.Gov. Cal.Code § 9605], providing that statute enacted later in time will prevail over one enacted earlier in same legislative session, where there was no irreconcilable conflict between the two statutes. Sagaser v. McCarthy (App. 5 Dist, 1986) 221 Cal.Rptr. 746.

§ 21002. Approval of projects; feasible alternative or mitigation measures

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

(Added by Stats.1976, c. 1312, § 1. Amended by Stats.1980, c. 676, p. 1996, § 277.)

Historical Note

Section 21 of Stats.1976, c. 1312, provided: "The Legislature declares that it makes no finding whether Sections 21002, 21002.1, and

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21082.1, as added to the Public Resources Code by this act, are, or are not, declaratory of existing law." The 1980 amendment amended the section without change.

Cross References

Feasible, see § 21061.1.
Necessary findings where report identifies effects, see § 21081.
Project, see § 21065.
Public agency, see § 21063.
Significant effect on environment, see § 21068.

Administrative Code References

Activities not requiring an initial study, see 20 Cal.Adm. Code 2304.
Evaluation of environmental impact reports, see 14 Cal.Adm. Code 15200 et seq.
Initial study, see 20 Cal.Adm. Code 2305.

Library References

Health and Environment ⇨25.10(2), (8).
C.J.S. Health and Environment §§ 70 et seq.,
78, 119 et seq., 122.

Notes of Decisions

In general 1
Alternatives 3
Amendment of plans 4
Mitigation 2

See, also, Notes of Decisions under § 21002.1.

1. In general

City complied with California Environmental Quality Act (§ 21000 et seq.) in approving proposed condominium project, where city found that adverse environmental impacts were insignificant, and even if significant were sufficiently mitigated, that further mitigation or alternatives were unfeasible, that project conformed to community plan, that project was physically suitable to site, and that overriding considerations with respect to unmitigated adverse impacts concerning traffic circulation and air quality were beneficial impacts of new housing and temporary construction jobs that project would provide. *Markley v. City Council of City of Los Angeles* (1982) 182 Cal.Rptr. 659, 131 C.A.3d 656.

Where draft environmental impact report identified a "no project" alternative to development project but did not give analysis of it, but feasible mitigation measures were proposed and adopted, requirements of Environmental Quality Control Act were met as requirements of Act governing approval of project including feasible alternative or mitigation measures and use of environmental impact reports are alternative rather than conjunctive requirements. *Stevens v. City of Glendale* (1981) 178 Cal.Rptr. 367, 125 C.A.3d 986.

Provisions of this section and § 21002.1 which govern public agency's approval of proposed project where there are available feasi-

ble mitigation measures or feasible alternatives that would substantially lessen significant environmental effect of project and which became effective in 1977 were applicable to administrative proceedings completed in 1977. *Laurel Hills Homeowners Ass'n v. City Council of City of Los Angeles* (1978) 147 Cal.Rptr. 842, 83 C.A.3d 515.

Board of county supervisors would be required, in findings made in support of its action in approving private development plan, to show how potential economic and social benefits of plan outweighed environmental costs. *Mountain Defense League v. Board of Sup'rs, San Diego County* (1977) 135 Cal.Rptr. 588, 65 C.A.3d 723.

The provisions of the California Environmental Quality Act (§ 21000 et seq.) require an environmental impact report or a negative declaration prior to the amendment of "spheres of influence" by a local agency formation commission, if such action could possibly have a significant effect on the environment. 63 Ops. Atty.Gen. 758, 10-1-80.

2. Mitigation

As regarding environmental impact report issued for proposed annexation and development of 58 acres of prime agricultural land, city's response to "infill" comments of the office of planning research was not adequate, and its finding of "partial mitigation" of certain identified significant impacts on the environment did not comport with purpose of the Environmental Quality Act (§ 21000 et seq.). *Rural Land Owners Ass'n v. Lodi City Council* (1983) 192 Cal.Rptr. 325, 143 C.A.3d 1013.

Under the California Environmental Quality Act, if feasible mitigation measures substantially lessen or avoid generally significant adverse environmental effects of a project, project may

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§ 21002.1

be approved without resort to evaluation of feasibility of various project alternatives contained in environmental impact report; Act does not mandate choice of environmentally best feasible project if through imposition of feasible mitigation measures alone public agency has reduced environmental damage to acceptable level. *Laurel Hills Homeowners Ass'n v. City Council of City of Los Angeles* (1978) 147 Cal.Rptr. 842, 83 C.A.3d 515.

3. Alternatives

Defendant city did not abuse its discretion under the California Environmental Quality Control Act in rejecting as infeasible various alternatives to community planning area project proposed by plaintiff city, since defendant city considered and reasonably rejected the project alternatives as infeasible in view of social and economic realities in the region. *City of Del Mar v. City of San Diego* (1982) 183 Cal.Rptr. 898, 133 C.A.3d 401.

In selecting an alternative to a development project, Environmental Quality Control Act guidelines require that agency outline specific social, physical, or economic reasons why alternative projects which minimize significant adverse effects on environment cannot be implemented. *Stevens v. City of Glendale* (1981) 178 Cal.Rptr. 367, 125 C.A.3d 986.

An environmental impact report must describe all reasonable alternatives to proposed project, including those capable of reducing or eliminating environmental effects and specific alternative of "no project" must also be evaluated; however, discussion of alternatives need not be exhausted and requirement as to discussion of alternatives is subject to a construction of reasonableness. *Foundation for San Fran-*

cisco's Architectural Heritage v. City and County of San Francisco (1980) 165 Cal.Rptr. 401, 106 C.A.3d 893.

Where court of appeal had previously defined project for which environmental impact report was required as city's program for increasing average rate of ground water extraction, for both export and in-valley use, by approximately 130 cubic feet per second, but environmental impact report included only alternatives to a project increasing such extraction, for in-valley use only, by 51 cubic feet per second, because of environmental impact report's failure to list alternatives to consistently viewed project and its further failure to include a genuine "no project" alternative, such environmental impact report did not comply with Environmental Quality Act's demand for reasonable alternatives. *Inyo County v. City of Los Angeles* (1977) 139 Cal.Rptr. 396, 71 C.A.3d 185, motion denied 144 Cal.Rptr. 71, 78 C.A.3d 82.

4. Amendment of plans

Only when the decision-making body of a public agency certifies as adequate and complete an environmental impact report prepared by staff does it adopt the findings of the preparers and where a decision-making body rescinds a prior certification of a staff-prepared EIR it is at liberty to change the environmental conclusion, especially where none of the criteria under Environmental Quality Act (§ 21000 et seq.) guidelines mandating a finding of significant effect on the environment are present. *Environmental Council of Sacramento v. Board of Sup'rs of Sacramento County* (1982) 185 Cal.Rptr. 363, 135 C.A.3d 428.

§ 21002.1. Use of environmental impact reports; policy

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

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

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

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

(d) In applying the policies of subdivisions (b) and (c) to individual projects, the responsibility of a public agency which is functioning as a lead

agency shall differ from that of a public agency which is functioning as a responsible agency. A public agency functioning as a lead agency shall have responsibility for considering the effects, both individual and collective, of all activities involved in a project. A public agency functioning as a responsible agency shall have responsibility for considering only the effects of those activities involved in a project, which it is required by law to carry out or approve. This subdivision applies only to decisions by a public agency to carry out or approve a project and does not otherwise affect the scope of the comments the agency may wish to make pursuant to Section 21104 or 21153.

(Added by Stats.1976, c. 1312, § 1.5. Amended by Stats.1977, c. 1200, p. 3996, § 1.5; Stats.1984, c. 1514, § 2.)

Historical Note

No legislative finding that 1976 addition declaratory of existing law, see Historical Note under § 21002.

The 1977 amendment substituted "public agency" for "local agency" throughout subd. (d), and added the last sentence in subd. (d).

The 1984 amendment substituted "This subdivision applies" for "The provisions of this subdivision shall apply" and "does not otherwise affect" for "shall not limit" in the last sentence of subd. (d).

Cross References

- Environment, see § 21060.5.
- Environmental impact report, see § 21061.
- Feasible, see § 21061.1.
- Lead agency, see §§ 21067, 21165.
- Necessary findings where report identifies effects, see § 21081.
- Public agency, see § 21063.
- Responsible agency, see § 21069.

Administrative Code References

- Implementation of the California Environmental Quality Act of 1970, see 14 Cal. Adm. Code 1681 et seq.
- State policies regarding use of environmental impact reports, see 23 Cal. Adm. Code 2700.7.

Law Review Commentaries

- Environmental impact reports: new legal framework. Richard G. Hildreth (1977) 17 Santa Clara L. 805.

Library References

- Health and Environment ⇨25.10.
- C.J.S. Health and Environment §§ 64 to 90, 115 to 124.

Notes of Decisions

- In general 1**
- Consideration of report 3**
- Hearing 2**

See, also, Notes of Decisions under § 21002.

1. In general

Where draft environmental impact report identified a "no project" alternative to development project but did not give analysis of it, but feasible mitigation measures were proposed and adopted, requirements of Environmental Quality Control Act were met as requirements

of Act governing approval of project including feasible alternative or mitigation measures and use of environmental impact reports are alternative rather than conjunctive requirements. *Stevens v. City of Glendale* (1981) 178 Cal. Rptr. 367, 125 C.A.3d 986.

City's process for issuing demolition permit of historical site did not violate state Environmental Quality Act (§ 21000 et seq.) on ground that it did not expressly require environmental impact report or empower city council to deny demolition permit where city adopted environmental quality ordinance pursuant to Environmental Quality Act which required all city

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agencies to give major consideration to prevent environmental damage and called for preparation of environmental impact reports and where city's power under municipal code dealing with demolition permits to grant permit implied a power not to grant permit. *San Diego Trust & Sav. Bank v. Friends of Gill* (1981) 174 Cal.Rptr. 784, 121 C.A.3d 203.

An environmental impact report should be prepared as early in the planning process as possible to enable environmental considerations to influence the decision. *City of Colorado v. California Coastal Zone Conservation Commission* (1977) 138 Cal.Rptr. 241, 69 C.A.3d 570.

2. Hearing

Although department of transportation, in considering application for amended permit, was required to ascertain any possible adverse environmental effects of proposed changes it was not required to investigate means used to implement the proposal; thus, city air terminal's methods of purchasing parcels covered by amended airport permits were not properly before hearing officer. *Bakman v. State, Dept.*

of Transp. (1979) 160 Cal.Rptr. 583, 99 C.A.3d 665.

3. Consideration of report

Procedure for certification of environmental impact report involves a balancing of adverse environmental impacts against social and economic benefits of the proposed project; court must determine whether substantial evidence supports the government agency's decision to approve the project. *City of Del Mar v. City of San Diego* (1982) 183 Cal.Rptr. 898, 133 C.A.3d 401.

San Francisco's board of permit appeals, in approving permits for demolition of building designated as state historical landmark and construction of new building for use as retail outlet, did not fail to consider other feasible alternatives and feasible mitigation measures and its approval of the project did not violate substantive requirements of California Environmental Quality Act (§ 21000 et seq.). *Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco* (1980) 165 Cal.Rptr. 401, 106 C.A.3d 893.

§ 21003. Planning and environmental review policies; documents; reports; data base; geographical areas

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

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

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

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

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

(e) Information developed in environmental impact reports covering larger geographical areas be used to contribute to information required in specific environmental impact reports.

(Added by Stats.1976, c. 1312, § 2.)

Cross References

Feasible, see § 21061.1.

Library References

Health and Environment ⇄25.5(6).
C.J.S. Health and Environment §§ 106 et seq., 131.

Notes of Decisions

1. Environmental impact reports

Whenever broad scope environmental impact report has been prepared for program, plan or policy and environmental document is prepared later for action included within the program, plan or policy, e.g., site specific action, subsequent environmental document need only summarize issues discussed in broad

scope or program environmental impact report, incorporate discussions from broader report by reference and concentrate on specific action proposed, under West's Ann.Cal.Pub. Res.Code § 21003(e). Las Virgenes Homeowners Federation, Inc. v. Los Angeles County By and Through Bd. of Sup'rs (Currey-Riach Co.) (App. 2 Dist.1986) 223 Cal.Rptr. 18, 177 C.A.3d 300.

§ 21003.1. Environmental effects of projects; comments from public and public agencies to lead agencies; availability of information

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

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

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

(c) Nothing in subdivisions (a) or (b) reduces or otherwise limits public review or comment periods currently prescribed either by statute or in guidelines prepared and adopted pursuant to Section 21083 for environmental documents, including, but not limited to, draft environmental impact reports and negative declarations.

(Added by Stats.1985, c. 85, § 1.)

Library References

Health and Environment ⇐25.10(1), (7).
C.J.S. Health and Environment §§ 67 et seq.,
79, 119 et seq., 122.

§ 21004. Mitigating or avoiding a significant effect; powers of public agency

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

(Added by Stats.1982, c. 1438, p. 5484, § 3.)

Historical Note

Section 4 of Stats.1982, c. 1438, p. 5484, provides:

"The Legislature finds and declares as follows:

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

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

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

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

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

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

Library References

Health and Environment ⇨25.5(1), (9).
C.J.S. Health and Environment §§ 61 et seq.,
91 et seq.

§ 21005. Information disclosure provisions; noncompliance; presumption

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

The Legislature further finds and declares that in undertaking judicial review pursuant to Sections 21168 and 21168.5, courts shall continue to

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follow the established principle that there is no presumption that error is prejudicial.

(Added by Stats.1984, c. 1514, § 3.)

Historical Note

Former § 21005, added by Stats.1984, c. 1438, § 1, relating to similar subject matter, was repealed by Stats.1985, c. 106, § 113, which read:

"Section 21005 of the Public Resources Code, as added by Chapter 1438 of the Statutes of

1984, is repealed. The repeal made by this section shall not affect the existence or validity of Section 21005 of the Public Resources Code, as added by Chapter 1514 of the Statutes of 1984."

Library References

Health and Environment ⇨25.10(1), (7), 25.15(1), (11).

C.J.S. Health and Environment §§ 67 et seq., 79, 82 et seq., 85, 101, 102, 112, 119 et seq., 122 to 124, 146 et seq., 148.

Notes of Decisions

1. In general

Certification of environmental impact report which is legally deficient because it fails to adequately address issue constitutes prejudicial abuse of discretion regardless of whether com-

pliance would have resulted in different outcome. *Citizens To Preserve The Ojai v. Ventura County By and Through Bd. of Sup'rs (USA Petrochem Co.)* (App. 2 Dist.1985) 222 Cal. Rptr. 247, 176 C.A.3d 421.

Chapter 2

SHORT TITLE

Chapter 2 was added by Stats.1970, c. 1433, p. 2781, § 1.

§ 21050. Citation

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

(Added by Stats.1970, c. 1433, p. 2781, § 1. Amended by Stats.1976, c. 1312, § 3.)

Historical Note

The 1976 amendment changed the name of the act to "California Environmental Quality

Act" from "Environmental Quality Act of 1970."

Law Review Commentaries

California supreme court survey: A review of decisions: December 1982-March 1983. (1983) 11 Pepperdine L.Rev. 187.

Friends of Mammoth: Vox populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 137.

Library References

Statutes ⇨211.
C.J.S. Statutes § 350.

Notes of Decisions

1. In general

Policy of the Environmental Quality Act is that highest priority shall be given to environ-

mental considerations. *County of Inyo v. Yorty* (1973) 108 Cal.Rptr. 377, 32 C.A.3d 795.

Chapter 2.5
DEFINITIONS

Section

- 21060. Application of definitions.
- 21060.3. Emergency.
- 21060.5. Environment.
- 21061. Environmental impact report.
- 21061.1. Feasible.
- 21062. Local agency.
- 21063. Public agency.
- 21064. Negative declaration.
- 21065. Project.
- 21065.5. Geothermal exploratory project.
- 21066. Person.
- 21067. Lead agency.
- 21068. Significant effect on the environment.
- 21068.5. Tiering or tier.
- 21069. Responsible agency.

Chapter 2.5 was added by Stats.1972, c. 1154, p. 2271, § 1, eff. Dec. 5, 1972.

Law Review Commentaries

Compatibility of economic and environmental objectives in governmental decision making. (1974) 5 Pacific L.J. 92. Land development and the environment: Subdivision Map Act. (1974) 5 Pacific L.J. 55.

Library References

Words and Phrases (Perm.Ed.)

§ 21060. Application of definitions

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

(Added by Stats.1972, c. 1154, p. 2271, § 1, eff. Dec. 5, 1972.)

Historical Note

Section 17 of Stats.1972, c. 1154, provided: "The Legislature finds and declares that Section 1 of this act is intended to clarify existing provisions of the Environmental Quality Act of 1970 and thereby to facilitate and to promote uniform administration of the Environmental Quality Act of 1970 throughout the state. It is therefore the intent of the Legislature in enacting Section 1 of this act only to declare and to clarify existing law."

Cross References

Construction,

General rules, see Code of Civil Procedure §§ 1858, 1859, 1866; Government Code § 9603 et seq.

Interpretation, see Civil Code §§ 3541, 3542.

Liberal, see Civil Code § 4; Code of Civil Procedure § 4; Penal Code § 4.

Questions of law, see Evidence Code § 310.

Uniform operation, see Const. Art. 4, § 16.

Words and phrases, see Civil Code §§ 13, 14.

Law Review Commentaries

Legislative review. (1973) 4 Pacific L.J. 484.

Library References

Statutes ⇨179.
C.J.S. Statutes § 315.

§ 21060.3. Emergency

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

(Added by Stats.1976, c. 1312, § 4.)

§ 21060.5. Environment

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

(Added by Stats.1972, c. 1154, p. 2271, § 1, eff. Dec. 5, 1972.)

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Indian archaeological sites and the Environmental Quality Act. (1975) 6 Golden Gate L.Rev. 1.

Library References

Health and Environment ⇨25.5.
C.J.S. Health and Environment §§ 61 to 66,
69, 71 to 73, 78 to 80, 82 to 86, 88 to 90, 94,

104, 110, 115 to 126, 128, 129, 132, 133,
135, 137 to 140, 142, 144 to 153.

Notes of Decisions

1. In general

Archaeological sites are encompassed within phrase “objects of historical or aesthetic significance,” within the definition of the term “envi-

ronment” as used in the Environmental Quality Act. Society for California Archaeology v. Butte County (1977) 135 Cal.Rptr. 679, 65 C.A.3d 832.

§ 21061. Environmental impact report

“Environmental impact report” means a detailed statement setting forth the matters specified in Sections 21100 and 21100.1; provided that information or data which is relevant to such a statement and is a matter of public record or is generally available to the public need not be repeated in its entirety in such statement, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the environmental impact report shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building. An environmental impact report also includes any comments which are obtained pursuant to Section 21104 or 21153, or which are required to be obtained pursuant to this division.

An environmental impact report is an informational document which, when its preparation is required by this division, shall be considered by every public agency prior to its approval or disapproval of a project. The purpose

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of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.

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

(Added by Stats.1972, c. 1154, p. 2271, § 1, eff. Dec. 5, 1972. Amended by Stats.1976, c. 1312, § 5.)

Historical Note

The 1976 amendment substantially rewrote the section which had read:

"'Environmental impact report' means a detailed statement setting forth the matters specified in Section 21100. It includes any comments on an environmental impact report which are obtained pursuant to Section 21104 or 21153, or which are required to be obtained pursuant to this division.

"An environmental impact report is an informational document which, when its prepara-

tion is required by this division, shall be considered by every public agency prior to its approval or disapproval of a project. The purpose of an environmental impact report is to provide public agencies with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which any adverse effects of such a project might be minimized; and to suggest alternatives to such a project."

Cross References

Environmental impact reports, information in prior reports, use, see § 21003.

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Environmental impact statements, zoning and low-cost housing. (1973) 46 So.Cal.L.Rev. 754.

Judicial development of the California Environmental Quality Act. Daniel P. Selmi (1984) 18 U.C.D.Law Rev. 197.

Library References

Health and Environment ⇔25.10.
C.J.S. Health and Environment §§ 64 to 90,
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1. In general

If after an initial study a public agency determines that a proposed project which could possibly have significant effect on environment will, in fact, not have a significant effect, agency may so declare in negative declaration and no environmental impact report is required. Pacific Water Conditioning Ass'n, Inc. v. City Council of City of Riverside (1977) 140 Cal. Rptr. 812, 73 C.A.3d 546.

The environmental impact report is the heart of environment control process. Inyo County v. City of Los Angeles (1977) 139 Cal.Rptr. 396, 71 C.A.3d 185, motion denied 144 Cal.Rptr. 71, 78 C.A.3d 82.

In balancing \$5,000 loss incurred by developer in reliance on zoning ordinance in connec-

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tion with planned construction of recreational complex against potential risk of harm to Malibu ecosystem, reliance was not established to be quantitatively substantial, and project which was under legal attack prior to December, 1972, would not be validated without compliance with the Environmental Quality Act, § 21000 et seq., through filing of an environmental impact report. *Cooper v. Los Angeles County* (1977) 138 Cal.Rptr. 229, 69 C.A.3d 529.

California Environmental Quality Act in general, and its provisions relating to environmental impact report in particular, are to be interpreted broadly in order to afford fullest protection to environment within reasonable scope of statutory language. *Natural Resources Defense Council, Inc. v. Arcata Nat. Corp.* (1976) 131 Cal.Rptr. 172, 59 C.A.3d 959.

For purpose of determining whether exhaustive staff report of coastal zone conservation commission satisfied requirement that commission consider environmental impact report before granting development permits, substance rather than form of document determines its nature and validity. *Natural Resources Defense Council, Inc. v. California Coastal Zone Conservation Commission* (1976) 129 Cal.Rptr. 57, 57 C.A.3d 76.

Action of county board and local agency formation commission in detaching area of land from recreation and park district did not constitute a "project" for which an environmental impact report would be required under the Environmental Quality Act. *Simi Val. Recreation and Park Dist. v. Local Agency Formation Commission of Ventura County* (1975) 124 Cal.Rptr. 635, 51 C.A.3d 648.

Supreme court decision [*No Oil, Inc. v. City of Los Angeles* (1974) 118 Cal.Rptr. 34, 529 P.2d 66, 13 Cal.3d 68] requiring that agency determine whether project may have significant environmental impact and thus whether environmental impact report is required before it approves project and impliedly holding that the adoption of ordinance is a project within meaning of Environmental Quality Act is retroactive in its application. *Rosenthal v. Board of Sup'rs of Los Angeles County* (1975) 119 Cal.Rptr. 282, 44 C.A.3d 815.

Under Environmental Quality Act, an environmental impact report is required before agency approves project. *No Oil, Inc. v. City of Los Angeles* (1974) 118 Cal.Rptr. 34, 529 P.2d 66, 13 C.3d 68.

Where county retained jurisdiction to grant or deny application to amend zoning ordinance to permit construction of mountain subdivision and zone change was not approved until after effective date of provision of § 21169 validating projects which were undertaken or approved before provision's effective

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date and which did not comply with Act, environmental impact report was required for proposed project. *People v. Kern County* (1974) 115 Cal.Rptr. 67, 39 C.A.3d 830.

Even if the county was acting illegally in removing trees from public street, i.e., because of failure to file an environmental impact report, such failure did not justify defendants' obstruction of operation of machine employed to remove trees, and, thus, did not insulate defendants from a conviction of obstructing a public way. *People v. Man* (1974) 114 Cal. Rptr. 237, 39 C.A.3d Supp. 1.

Where city's groundwater extraction project involved a continued modification in its constantly increased intensity and scope of actual and projected groundwater withdrawals and it appeared that continuance of subsurface extractions might have a new significant effect on the environment, and only 50 percent of the estimated cost of construction of additional wells had been spent, city's expanded tapping and extraction of the underground water, though commenced prior to the effective date of the Environmental Quality Act, was an "on-going project," requiring the filing of an environmental impact report. *Inyo County v. Yorty* (1973) 108 Cal.Rptr. 377, 32 C.A.3d 795.

An environmental impact report is not required in connection with the development of the coastal zone conservation plan. 58 Ops. Atty.Gen. 814, 11-28-75.

2. Purpose

Environmental impact report is an informational document, the purpose of which is to provide the public and public agencies with detailed information about the effect which a proposed project is likely to have on the environment, to list ways in which significant effects might be minimized, and to indicate alternatives for such a project. *Twain Harte Homeowners Ass'n, Inc. v. Tuolumne County* (1982) 188 Cal.Rptr. 233, 138 C.A.3d 664.

Amendment to this section stating that environmental impact report's purpose is to provide public agencies and public in general with detailed information concerning proposed project's likely environmental effects did no more than articulate a preexisting, implied demand. *Inyo County v. City of Los Angeles* (1977) 139 Cal.Rptr. 396, 71 C.A.3d 185, motion denied 144 Cal.Rptr. 71, 78 C.A.3d 82.

The environmental impact report should provide decision makers with information which enables them to make a decision which intelligently takes account of the environmental consequences, but an evaluation of the environmental effects of a proposed project need not be exhausted. *San Francisco Ecology Center v. City and County of San Francisco* (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584.

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3. Project description

An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient environmental impact report. *Inyo County v. City of Los Angeles* (1977) 139 Cal.Rptr. 396, 71 C.A.3d 185, motion denied 144 Cal.Rptr. 71, 78 C.A.3d 82.

Where environmental impact report submitted by city and its department of water and power initially defined project which report was intended to cover as a proposed increase in long-term subsurface extraction rate of water for use in specified valley, and defined project so as to exclude subsurface extraction for export to city via water department's twin aqueduct system, but recommended project ultimately endorsed by final environmental impact report and approved by city's board of water and power commissioners went beyond such initial project description and dealt with large-scale phases of city aqueduct management program, such fluctuations in descriptions of proposed project frustrated Environmental Quality Act's public information aims, and formulation of environmental impact report was not in manner required by law. *Id.*

4. Alternatives

A major function of environmental impact report is to ensure that all reasonable alternatives are thoroughly assessed by the responsible official or board. *Inyo County v. City of Los Angeles* (1977) 139 Cal.Rptr. 396, 71 C.A.3d 185, motion denied 144 Cal.Rptr. 71, 78 C.A.3d 82; *City of Coronado v. California Coastal Zone Conservation Commission* (1977) 138 Cal. Rptr. 241, 69 C.A.3d 570.

"No project alternative" of environmental impact report must describe maintenance of existing environment as basis for comparison of suggested alternatives to status quo. *Dusek v. Anaheim Redevelopment Agency* (App. 4 Dist.1985) 219 Cal.Rptr. 346, 173 C.A.3d 1029.

City, in approving developer's project, adequately complied with this section requiring an environmental impact report to indicate alternatives to a project; discussion on alternatives was comprehensive, informative, factual and included findings where community plan as presented was preferable. *City of Poway v. City of San Diego* (App. 4 Dist.1984) 202 Cal. Rptr. 366, 155 C.A.3d 1037.

Second environmental impact report filed by city of Los Angeles on extraction of subsurface water in Owens Valley did not comply with requirements of California Environmental Quality Act where it did not include genuine no-project alternatives, its project description impermissibly removed essential element from matters required to be considered, and alternatives were not tied to consistently viewed project. *Inyo County v. City of Los Angeles* (1981) 177 Cal.Rptr. 479, 124 C.3d 1.

An environmental impact report must describe all reasonable alternatives to proposed project, including those capable of reducing or eliminating environmental effects and specific alternative of "no project" must also be evaluated; however, discussion of alternatives need not be exhausted and requirement as to discussion of alternatives is subject to a construction of reasonableness. *Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco* (1980) 165 Cal.Rptr. 401, 106 C.A.3d 893.

Where real party proposed only alternative developments, whether for 123 or 73 building sites, of the same subdivision project, city would be required to consider such alternatives in single integrated environmental impact report. *Woodland Hills Residents Ass'n, Inc. v. City Council of City of Los Angeles* (1980) 164 Cal.Rptr. 255, 609 P.2d 1029, 26 C.3d 938.

Discussion of alternatives in environmental impact report need not be exhaustive, and requirement of provision of this section as to discussion of alternatives is subject to a construction of reasonableness; provision does not demand what is not realistically possible given limitation of time, energy, and funds; however, it is not appropriate to disregard an alternative simply because alternative may be beyond scope of expertise of agency or because alternative may require implementing legislation, since California Environmental Quality Act was intended to provide a basis for consideration and choice by all branches of government. *Residents Ad Hoc Stadium Committee v. Board of Trustees of California State University and Colleges* (1979) 152 Cal.Rptr. 585, 89 C.A.3d 274.

5. Experts' disagreements

Even if experts disagree regarding whether certain plant species qualify as rare or endangered within the Environmental Quality Act (§ 21000 et seq.) an environmental impact report should disclose and summarize the disagreement. *Mira Monte Homeowners Ass'n v. San Buenaventura County By and Through Its Bd. of Sup'rs* (Webb) (App. 2 Dist.1985) 212 Cal.Rptr. 127, 165 C.A.3d 357.

The agency charged with preparation of an environmental impact report is not barred from making reasonable forecasts, and disagreements among experts does not require the invalidation of an EIR. *San Francisco Ecology Center v. City and County of San Francisco* (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584.

6. Time of report

An environmental impact report should be prepared as early in the planning process as possible to enable environmental considerations to influence the decision. *City of Coronado v. California Coastal Zone Conservation*

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Commission (1977) 138 Cal.Rptr. 241, 69 C.A.3d 570.

7. Scope of report

Environmental impact report on proposed expansion and modification of oil refinery was required to set forth and explain basis for any conclusion that analysis of cumulative impact of offshore emissions was wholly infeasible and speculative, though responsible county was not required to engage in sheer speculation as to future environmental consequences. *Citizens To Preserve The Ojai v. Ventura County By and Through Bd. of Sup'rs (USA Petrochem Co.)* (App. 2 Dist.1985) 222 Cal.Rptr. 247, 176 C.A.3d 421.

Although city council had adopted a redevelopment plan which included eight more blocks within central business area, environmental impact statement, which the department of housing and urban development filed in connection with proposed contract for funding a fourth action year of urban renewal, and which only discussed the ramifications of redevelopment of a three-block area, was not too narrow in scope, where there was no guarantee that federal funds would be used toward redevelopment of the eight-block area, and where, with the addition of the three-block area, the central business district of city would be self-sufficient with exception of inadequate parking facilities. *Citizens Against Destruction of Napa v. Lynn* (D.C.1973) 391 F.Supp. 1188.

By law, an environmental impact report must identify and examine significant environmental effects of a proposed project, feasible mitigation measures, unavoidable significant effects, significant irreversible environmental changes, and alternatives to the proposed action. *Mira Monte Homeowners Ass'n v. San Buenaventura County By and Through Its Bd. of Sup'rs (Webb)* (App. 2 Dist.1985) 212 Cal.Rptr. 127, 165 C.A.3d 357.

8. Sufficiency of report

Environmental impact statement prepared in connection with federal funding of construction of Los Angeles dam and reservoir was sufficient. *Homeowners Emergency Life Protection Committee v. Lynn* (D.C.1977) 432 F.Supp. 1334.

Municipality located on boundary of municipal airport in neighboring municipality did not show that environmental impact report for development of airport was deficient due to alleged failure to contain sufficient discussion of topics required by California Environmental Quality Act (this section et seq.), since municipality failed to show how alternatives to master plan which were not considered by neighboring municipality were "reasonable," how mitigation measures relative to master plan were not properly identified nor adequately analyzed by neighboring municipality, how

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specified limitation of aircraft parking spaces in master plan would not limit number of airport operations, and how responses of neighboring municipality to environmental issues raised during public review process were deficient. *City of Lomita v. City of Torrance* (App. 2 Dist.1983) 196 Cal.Rptr. 538, 148 C.A.3d 1062.

Environmental impact report prepared in connection with adoption of Tuolumne County general plan was sufficiently specific to inform public and governmental decision makers that land-use determinations were initially predicated upon determination of water and sewer availability. *Twain Harte Homeowners Ass'n, Inc. v. Tuolumne County* (1982) 188 Cal.Rptr. 233, 138 C.A.3d 664.

Environmental impact report prepared in connection with application for permit to demolish building designated as state historical landmark and construct new building for use as retail outlet was not rendered inadequate by virtue of fact that it was based on data supplied by developer; nor did the report fail to properly discuss the alternatives. *Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco* (1980) 165 Cal.Rptr. 401, 106 C.A.3d 893.

Reduction of agricultural use in preference to residential and commercial use and location of proposed changes in preference to other locations was presented to city council through environmental impact reports with sufficient analysis and appropriate responses to meet requirements of guidelines or regulations adopted to implement Quality Environment Act. *Karlson v. City of Camarillo* (1980) 161 Cal.Rptr. 260, 100 C.A.3d 789.

Whatever is required to be considered in an environmental impact report must be in that formal report and what an official might have known from other writings or oral presentations cannot supply what is lacking in report. *Residents Ad Hoc Stadium Committee v. Board of Trustees of California State University and Colleges* (1979) 152 Cal.Rptr. 585, 89 C.A.3d 274.

Environmental impact report, which was prepared in connection with application for conditional use permit to drill single exploratory oil and gas well, which failed to make adequate reference to existing or planned drilling in area, and which was also deficient in its analysis of few cumulative impacts that were discussed, was fatally deficient in failing to adequately discuss cumulative impacts on environment associated with proposed project. *Whitman v. Board of Sup'rs of Ventura County* (1979) 151 Cal.Rptr. 866, 88 C.A.3d 397.

The sufficiency of an environmental impact report is to be reviewed in light of what is reasonably feasible; preparation of an EIR need not be interminably delayed to include all

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potential comments or results of works in progress which might shed some additional light on subject of the impact statement; the courts should look for adequacy and completeness in an impact statement, not perfection. *San Francisco Ecology Center v. City and County of San Francisco* (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584.

Environmental impact report which was filed in response to order of the court was adequate under § 21000 et seq., where it covered those matters which the court deemed to have been inadequately reported previously, and where it also pledged that the water district would prepare an additional detailed report before making any decision to proceed with the alternatives described, and that the district would further conduct studies as to the environmental impact associated with any water system expansion beyond that presently to be undertaken. *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 104 Cal.Rptr. 714, 28 C.A.3d 512.

9. Evidence

While an environmental impact report does not require public agency to act in any particular manner, it constitutes evidence which must be considered by public agency in passing upon proposed project, along with other evidence which may be presented to agency. *City of Carmel-By-The-Sea v. Monterey County Bd. of Sup'rs* (1977) 139 Cal.Rptr. 214, 71 C.A.3d 84; *Carmel Valley View, Ltd. v. Board of Sup'rs, in and for Monterey County* (1976) 130 Cal.Rptr. 249, 58 C.A.3d 817.

Environmental impact reports constituted evidence which city council could consider in determining whether to enact amendments to general plan changing land use designation. *Karlson v. City of Camarillo* (1980) 161 Cal. Rptr. 260, 100 C.A.3d 789.

The rules of evidence which govern the trial of a court action do not apply to the collection of data in preparation of an environmental impact report; supporting studies need not be physically attached to the EIR; they only need be available and accessible. *San Francisco Ecology Center v. City and County of San Francisco* (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584.

10. Cost-benefit computations

The environmental impact report on airport expansion was not incomplete for not containing cost-benefit computations, since neither the Environmental Quality Act nor the National Environmental Policy Act requires computation of a cost-benefit ratio; such studies may be useful, but they are not indispensable to an environmental impact statement. *San Francisco Ecology Center v. City and County of San Francisco* (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584.

11. Forecasts

While requirements of Environmental Quality Act § 21000 et seq. cannot be avoided by chopping up proposed projects into bite size pieces which when taken individually may have no significant adverse effect on the environment, where future development is unspecified and uncertain, no purpose can be served by requiring environmental impact report to engage in sheer speculation as to future environmental consequences. *Lake County Energy Council v. Lake County* (1977) 139 Cal.Rptr. 176, 70 C.A.3d 851.

The ecology center and others could not complain that environmental impact report regarding expansion of airport might have overestimated the number of passengers who would use the airport in 1985 or the projections of aircraft noise levels in 1986 since decision makers are not precluded from forecasting future needs but are encouraged to make reasonable forecasts in preparation of the EIR; if subsequent studies undermine the projections upon which the EIR is based, opponents should bring new data to the attention of the decision makers. *San Francisco Ecology Center v. City and County of San Francisco* (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584.

12. Consideration and review of report

County zoning administrator's decision to issue use permit for proposed motel development was defective under Environmental Quality Act (§ 21000 et seq.) in view of administrator's failure to give environmental impact report a significant role in considering use permit application, and in absence of evidence of, or a discussion concerning, economic or social values in proposed project overriding the adverse effects disclosed by environmental impact report. *City of Carmel-By-The-Sea v. Monterey County Bd. of Sup'rs* (1977) 139 Cal. Rptr. 214, 71 C.A.3d 84.

In reviewing an environmental impact report regarding application for water service connection or pipeline extension permit, the Marin municipal water district must consider effects of such projects upon all aspects of the environment. 58 Ops.Atty.Gen. 438, 6-20-75.

13. Response to report

County's responses to general concerns about increased noise levels which a commercial development would possibly produce, contained in letter from department of health, office of noise control commenting on environmental impact report of effect of proposed commercial development in primarily agricultural area of county, were sufficient. *Cleary v. Stanislaus County* (1981) 173 Cal. Rptr. 390, 118 C.A.3d 348.

Response to environmental impact report, like the report itself, must be in writing, and it was not sufficient that oral comments of coun-

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ty board members allegedly adequately answered adverse environmental impact information, despite contention that it was incumbent on the opponent of the project to make a record of such proceedings, which were on tape. *Society for California Archaeology v. Butte County* (1977) 135 Cal.Rptr. 679, 65 C.A.3d 832.

14. Permits

Permit issued by coastal zone conservation commission to convert day-use parking lot located in city of Coronado to an overnight camping area was invalid for failure to comply with environmental impact requirements of the Environmental Quality Act § 21000 et seq. *City of Coronado v. California Coastal Zone Conservation Commission* (1977) 138 Cal.Rptr. 241, 69 C.A.3d 570.

In view of state guidelines implementing State Environmental Quality Act and defining discretionary projects and ministerial projects, and in view of municipal code governing issuance of grading permits by city engineer, which code imposed many requirements which were discretionary as well as many technical and clearly ministerial requirements, and in view of city engineer's exercise of discretion by attaching numerous conditions to issuance of grading permit, environmental impact report should have been required for issuance of permit. *Day v. City of Glendale* (1975) 124 Cal. Rptr. 569, 51 C.A.3d 817.

15. Exploratory wells

Where drilling of exploratory geothermal wells was necessary before assessment could be made whether location was suitable for development and meaningful inquiry into consequences of development could be made, approval of exploratory wells did not commit county board of supervisors to approval of general commercial development, and, before any facilities for geothermal production were constructed, state energy commission would have to evaluate and certify such facilities, scope of inquiry in environmental impact statement for exploratory wells did not have to include effects of commercial geothermal production. *Lake County Energy Council v. Lake County* (1977) 139 Cal.Rptr. 176, 70 C.A.3d 851.

16. Radioactive materials

The California highway patrol is required to prepare an "environmental assessment" under the California Environmental Quality Act (§ 21000 et seq.) before adopting radioactive material transportation routes pursuant to Veh.C. § 33000. 66 Ops.Atty.Gen. 461, 12-15-83.

17. Discretion

It is not mandatory under the Environmental Quality Act for an agency to conduct every

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test and perform all research, study and experimentations recommended to it to determine true and full environmental impact, before it can approve a proposed project; agency in the sound exercise of its discretion may direct that the project site be made available for a certain period for testing by persons other than the developer and at their own expense. *Society for California Archaeology v. Butte County* (1977) 135 Cal.Rptr. 679, 65 C.A.3d 832.

Fact that resolution of city council carried by a bare eight to seven majority compelled conclusion that, with respect to oil drilling project, city's use of erroneous test which limited use of an environmental impact report to projects which may have an important or momentous effect of semipermanent duration, and which excluded presence of disputed factual issues of public controversy as criteria suggesting preparation of a report, constituted prejudicial abuse of discretion. *No Oil, Inc. v. City of Los Angeles* (1974) 118 Cal.Rptr. 34, 529 P.2d 66, 13 C.3d 68.

18. Findings

The findings of airport commission and board of supervisors adopting environmental impact report and approving the expansion of San Francisco international airport were supported by substantial evidence showing, inter alia, that the project would make the airport an exceptionally convenient, safe and compact airport, that the extended terminals would reduce the noise levels, that adjacent communities would benefit from noise reduction, that quality of effluent entering San Francisco Bay would be improved, and that project would have significant environmental as well as economic benefits weighing against the environmental disadvantages. *San Francisco Ecology Center v. City and County of San Francisco* (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584.

19. Mandamus

Where associations were not afforded fair opportunity to express their views at a time sufficiently early to receive evenhanded consideration on draft and revised environmental impact reports on proposed subdivision, writ of mandamus would be issued requiring city to vacate its approval and reconsider application. *Woodland Hills Residents Ass'n, Inc. v. City Council of City of Los Angeles* (Super.1980) 164 Cal.Rptr. 255, 609 P.2d 1029, 26 C.3d 938.

Ordinance rezoning landowners' property for agricultural use with one-acre minimum building site could not be attacked or county's decision set aside for failure to prepare environmental impact report since any action or proceedings to attack or set aside county's decision on such ground had to be done through administrative mandamus. *Pan Pac. Properties, Inc. v. Santa Cruz County* (1978) 146 Cal. Rptr. 428, 81 C.A.3d 244.

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20. Review

Trial court, in reviewing city's decision approving a final environmental impact report for annexation and development of certain agricultural lands, employed incorrect standard of review by improperly substituting its independent judgment in determining that, even in absence of procedural errors under Environmental Quality Act (§ 21000 et seq.) guidelines, city would have reached same result. *Rural Land Owners Ass'n v. Lodi City Council* (1983) 192 Cal.Rptr. 325, 143 C.A.3d 1013.

Where environmental impact report with respect to proposed residential development

raised significant environmental issue with respect to the archaeological significance of the site, county board in approving the project did not sufficiently review, comment upon and respond to the archaeological information, both as contained in the report and presented to the board at hearing, where proceedings following the draft report, including the minutes of the board meetings, showed only the receipt of further adverse archaeological information, followed by approval of the report and of the subdivision without meaningful comment thereon. *Society for California Archaeology v. Butte County* (1977) 135 Cal.Rptr. 679, 65 C.A.3d 832.

§ 21061.1. Feasible

"Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(Added by Stats.1976, c. 1312, § 5.1.)

§ 21062. Local agency

"Local agency" means any public agency other than a state agency, board, or commission. For purposes of this division a redevelopment agency and a local agency formation commission are local agencies, and neither is a state agency, board, or commission.

(Added by Stats.1972, c. 1154, p. 2271, § 1, eff. Dec. 5, 1972. Amended by Stats.1975, c. 222, § 1, eff. July 5, 1975.)

Historical Note

The 1975 amendment, in the second sentence following "redevelopment agency" substituted "and a local agency formation commission are

local agencies, and neither is" for "is a local agency, and not", and it inserted a comma following "board".

Cross References

Local agency formation commission, see Government Code § 5600 et seq.
Redevelopment agencies, see Health and Safety Code § 33100 et seq.

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Library References

Health and Environment ⇐25.10(2).
C.J.S. Health and Environment §§ 70 et seq.,
119 et seq.

Notes of Decisions

1. In general

County fairgrounds was a state agency or local agency for purposes of the California Environmental Quality Act (§ 21000 et seq.) and therefore, 180-day limitation provided in § 21152 applied to suit against county fairgrounds and state racing association seeking cancellation of their contract for racing at fair-

grounds, as filing of notice of exemption was required to be made with county clerk, and notice was not posted. *Lewis v. Seventeenth Dist. Agr. Ass'n* (Central State Racing Ass'n) (App. 3 Dist.1985) 211 Cal.Rptr. 884, 165 C.A.3d 823.

Local agency formation commission was governmental agency to which provisions of

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Environmental Quality Act concerning preparation of environmental impact reports were applicable. *Bozung v. Local Agency Formation Commission of Ventura County* (1975) 118 Cal.Rptr. 249, 529 P.2d 1017, 13 C.3d 263.

While CEQA applies to the whole of a project including those parts of a project occurring

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beyond the boundaries of the state, each responsible agency must consider the whole of a project, including those parts occurring beyond the boundaries of the state, when each such agency is determining to carry out the project. 58 Ops.Atty.Gen. 614, 9-26-75.

§ 21063. Public agency

"Public agency" includes any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision.

(Added by Stats.1972, c. 1154, p. 2271, § 1, eff. Dec. 5, 1972.)

Cross References

Redevelopment agencies, see Health and Safety Code § 33100 et seq.

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Library References

Health and Environment ⇐25.10(2).
C.J.S. Health and Environment §§ 70 et seq.,
119 et seq.

Words and Phrases (Perm.Ed.)

Notes of Decisions

1. In general

The existence of a project for purposes of California Environmental Quality Act cannot depend upon the outcome of the inquiry which the Act contemplates only after the existence of a project is established; the Act was not intended to and cannot reasonably be construed to

make a project out of every activity of a public agency, regardless of the nature and objective of the activity. *Simi Val. Recreation and Park Dist. v. Local Agency Formation Commission of Ventura County* (1975) 124 Cal.Rptr. 635, 51 C.A.3d 648.

§ 21064. Negative declaration

"Negative declaration" means a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report.

(Added by Stats.1976, c. 1312, § 6.)

Library References

Health and Environment ⇐25.10(2).
C.J.S. Health and Environment §§ 70 et seq.,
119 et seq.

Notes of Decisions

1. In general

A "negative declaration" is written statement by responsible public agency that proposed project will not have significant impact on environment and does not require preparation of environmental impact report giving reasons for such conclusion. *Asia Inv. Co., Ltd. v. Borowski* (1982) 184 Cal.Rptr. 317, 133 C.A.3d 832.

If there is substantial evidence that proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of environmental impact report and adopt a negative declaration; therefore, if trial court perceives substantial evidence that project might have such an impact, but agency failed to secure preparation of required envi-

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ronmental impact report, agency's action is to be set aside because the agency abused its discretion by failing to proceed in the manner required by law. *Friends of "B" St. v. City of Hayward* (1980) 165 Cal.Rptr. 514, 106 C.A.3d 988.

A public agency's decision to prepare an environmental impact report invokes agency's duty to disapprove a project if it will have significant effects on environment as proposed; adoption of a negative declaration operates to dispense with that duty because it is a decision that proposed project will not effect environment at all. *Plaggmier v. City of San Jose* (1980) 161 Cal.Rptr. 886, 101 C.A.3d 842.

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Negative declaration which was filed by city, which asserted that ordinance amending city's waste discharge regulations would not have significant effect on environment and which attached and incorporated copy of environmental assessment prepared by city's director of public works was not defective. *Pacific Water Conditioning Ass'n v. City Council of City of Riverside* (1977) 140 Cal.Rptr. 812, 73 C.A.3d 546.

A negative declaration is a type of environmental impact report and subject to the same procedural requirements. *Petitions of Peninsula Commute and Transit Committee, et al.* (1973) 75 Cal.P.U.C. 243.

§ 21065. Project

"Project" means the following:

(a) Activities directly undertaken by any public agency.

(b) Activities undertaken by a person which are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(c) Activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(Added by Stats.1972, c. 1154, p. 2271, § 1, eff. Dec. 5, 1972.)

Cross References

Hiring, see Civil Code § 1925 et seq.

Leases between public entity and another or nonprofit corporation, exemption from certain laws, see Civil Code § 1952.6.

Limitation of actions, see § 21167.

Local agency, approval of project, certificate, see § 21152.

Moratorium on application of division to activities described in subd. (c), see § 21171.

State agency, approval of project, certificate, see § 21108.

Validation of project defined in subd. (c), see § 21169.

Law Review Commentaries

Application of California Environmental Quality Act to municipal annexations of land. (1976) 64 C.L.Rev. 532.

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Judicial development of the California Environmental Quality Act. Daniel P. Selmi (1984) 18 U.C.D.Law Rev. 197.

Project approval under the California Environmental Quality Act. Barbara Sahm (1979) 19 Santa Clara L.Rev. 579.

Statutory requirements of California Environmental Quality Act. (1975) 8 Loyola L.Rev. (Calif.) 736.

Library References

Health and Environment §25.10(2), (4), (6.1).

C.J.S. Health and Environment §§ 70 et seq., 74, 77, 119 et seq., 122.

Notes of Decisions

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1. In general

Where annexation was prerequisite for proposed development, because of need for city

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services, annexation was "project" within Environmental Quality Act (§ 21000 et seq.) for which at least initial threshold study was required. *Pistoresi v. City of Madera* (1982) 188 Cal.Rptr. 136, 138 C.A.3d 284.

Transportation district's fare increase for travel upon bus line was a "project" within meaning of the California Environmental Protection Act and thus Act applied to fare increase and required a consideration by district as to effect of action on environment; however an environmental impact report would not necessarily be required. *Shawn v. Golden Gate Bridge* (1976) 131 Cal.Rptr. 867, 60 C.A.3d 699.

A "project," for purposes of Environmental Quality Act, is an effort of the public works type to be constructed, acquired or developed by the government or a similar project of private parties with which government has a required minimal link, such as a governmental agency having taken action necessary for the carrying out of the private project, involving a physical change in the environment. *Simi Val. Recreation and Park Dist. v. Local Agency Formation Commission of Ventura County* (1975) 124 Cal.Rptr. 635, 51 C.A.3d 648.

Amendment to Environmental Quality Act defining word "project," added in 1972, applied in suit involving necessity of environmental impact report on action of local agency formation commission taken before amendment was adopted. *Bozung v. Local Agency Formation Commission of Ventura County* (1975) 118 Cal. Rptr. 249, 529 P.2d 1017, 13 C.3d 263.

Because no permit or license is required for lines under 200 kv, it is not a "project" by definition, and thus no environmental impact report is required under this section. Investigation of Planning and Construction of Electric Transmission Facilities (1976) 80 Cal.P. U.C. 111.

The California Environmental Quality Act (CEQA) does not require preparation of an environmental impact report (EIR) in connection with development of the California coastal zone conservation plan because such plan will be a legislative proposal and therefore does not constitute a project within the meaning of CEQA and because the California Coastal Zone Conservation Act requires that the plan be developed by a functionally equivalent process to the EIR process. 58 Ops.Atty.Gen. 814, 11-28-75.

Timber-harvesting plans submitted to state forester for approval under requirements of the Z'berg-Nejedly Forest Practice Act of 1973, § 4511 et seq., are subject to the California Environmental Quality Act and may require filing of environmental impact reports. 57 Ops.Atty.Gen. 587, 11-22-74.

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2. Acts constituting project, generally

City was required to prepare environmental impact report prior to implementation of ordinance requiring residential hotel owners to provide relocation assistance to residents before converting hotel to any other use; ordinance reasonably portended possible future environmental impact flowing from cumulative effect of probable replacement construction projects. *Terminal Plaza Corp. v. City & County of San Francisco* (App. 1 Dist.1986) 223 Cal.Rptr. 379, 177 C.A.3d 892.

State board of education could not argue that its approval of plan for creation of unified school district out of existing district was not "project" within meaning of § 21100 requiring environmental report to be prepared on projects which might have significant effect on environment, even though further decisions were required to be made before schools were actually constructed, bus routes changed, and pupils reassigned, since board's approval was necessary step in chain of events which would culminate in physical impact on environment. *Fullerton Joint Union High School Dist. v. State Bd. of Educ.* (1982) 187 Cal.Rptr. 398, 654 P.2d 168, 32 C.3d 779.

Actions by board of education of closing elementary school and transferring pupils to another elementary school were not "project" within meaning of California Environmental Quality Act, and thus compliance with the Act was not required. *Prentiss v. Board of Ed. of South Pasadena Unified School Dist.* (1980) 169 Cal.Rptr. 5, 111 C.A.3d 847.

City's act of placing initiative measure on ballot in response to citizen's petition was not a "project" contemplated by California Environmental Quality Act (§ 21000 et seq.). *Stein v. City of Santa Monica* (1980) 168 Cal.Rptr. 39, 110 C.A.3d 458.

Amendment of city general plan was "project" which was subject to California Environmental Quality Act and section of guidelines of resources agency providing for such application of the Act was valid. *City of Santa Ana v. City of Garden Grove* (1979) 160 Cal. Rptr. 907, 100 C.A.3d 521.

Department of transportation's grant of amended airport permit was a "project" within meaning of this section for which it could require city to prepare an environmental impact report. *Bakman v. State, Dept. of Transp.* (1979) 160 Cal.Rptr. 583, 99 C.A.3d 665.

Proposal to deannex 25 square miles of territory currently part of the city of San Diego was a "project" subject to the California Environmental Quality Act and environmental impact report requirements. *People ex rel. Younger v. Local Agency Formation Commission of San Diego County* (1978) 146 Cal.Rptr. 400, 81 C.A.3d 464.

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Timber harvesting plan submitted under Forest Practice Act (Pub.Res.C. § 4511 et seq.) constituted "project" within meaning of California Environmental Protection Act, and Act therefore required that environmental impact report be prepared in conjunction with such plan. Natural Resources Defense Council, Inc. v. Arcata Nat. Corp. (1976) 131 Cal.Rptr. 172, 59 C.A.3d 959.

Action of county board and local agency formation commission in detaching area of land from recreation and park district did not constitute a "project" for which an environmental impact report would be required under the Environmental Quality Act. Simi Val. Recreation and Park Dist. v. Local Agency Formation Commission of Ventura County (1975) 124 Cal.Rptr. 635, 51 C.A.3d 648.

Where a gas and electric company acts as nothing more than a conduit for changes occurring in markets not regulated by California, there is no project within the meaning of this section. App. of Pacific Gas and Electric Co. (1973) 75 Cal.P.U.C. 312.

3. Public projects

Regional water quality control board's promulgation of cease and desist order directing city to comply with prior board order establishing limitations upon chemical content of sewage effluent discharged by city was not a governmental activity which might have significant effect on environment within meaning of § 21100 providing for preparation of environmental impact report for an activity which is directly undertaken by public agency and which may have significant effect on environment. Pacific Water Conditioning Ass'n v. City Council of City of Riverside (1977) 140 Cal. Rptr. 812, 73 C.A.3d 546.

Decision by county board of supervisors to authorize an additional type of extended service, viz., road improvement and maintenance service, in certain county service area, and to hold an election on the question whether the maximum tax rate within the area should be increased in order to provide the additional service, was a discretionary act embraced within the statutory definition of "project" under this section. Erven v. Riverside County Bd. of Sup'rs (1975) 126 Cal.Rptr. 285, 53 C.A.3d 1004.

City's April, 1971 authorization to lessee of city land to demolish buildings on site and to build a new building pertained to "projects" within meaning of this section and by reason of grandfather clause under § 21169 applicable to projects started before December 5, 1972 they were legal and valid. Bresnahan v. City of Pasadena (1975) 121 Cal.Rptr. 750, 48 C.A.3d 297.

Supreme Court decision [No Oil, Inc. v. City of Los Angeles (1974) 118 Cal.Rptr. 34, 529 P.2d 66, 13 Cal.3d 68] requiring that agency

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determine whether project may have significant environmental impact and thus whether environmental impact report is required before it approves project and impliedly holding that the adoption of ordinance is a project within meaning of Environmental Quality Act is retroactive in its application. Rosenthal v. Board of Sup'rs of Los Angeles County (1975) 119 Cal.Rptr. 282, 44 C.A.3d 815.

Approval by local agency formation commission of city annexation of predominantly rural land as part of plan for property's development for residential, commercial and recreational uses was "project," within meaning of this section, and was not excluded from operation of Act as involving mere "feasibility and planning studies." Bozung v. Local Agency Formation Commission of Ventura County (1975) 118 Cal. Rptr. 249, 529 P.2d 1017, 13 C.3d 263.

Widening of portion of avenue was a municipal capital improvement project and as such was not a private project within subd. (c) of this section, but instead was a public work subject to provisions of subd. (a) of this section and was not covered by either validating provisions or moratorium provision with respect to private projects. Plan For Arcadia, Inc. v. Arcadia City Council (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

For purposes of the Environmental Quality Act, city's expanded groundwater extraction after effective date of the Act was a "project" separate and divisible from aqueduct largely constructed prior to the effective date where, inter alia, aqueduct could be and had been filled entirely by surface runoff, extraction of subsurface water was steadily increasing, and approximately 95 percent of estimated cost of construction of aqueduct had been expended, but only 50 percent of the estimated cost of construction of additional wells to bring subsurface extraction to its full projected capacity had been spent. Inyo County v. Yorty (1973) 108 Cal.Rptr. 377, 32 C.A.3d 795.

Mendocino county annual budgeting and expenditure of funds for trapping animals as part of a predatory animal damage control program constitutes a "project" which may have a significant effect on the environment within the meaning of this section so that the environmental impact report must be prepared prior to such expenditures. 59 Ops.Atty.Gen. 173, 3-30-76.

While CEQA applies to the whole of a project including those parts of a project occurring beyond the boundaries of the state, each responsible agency must consider the whole of a project, including those parts occurring beyond the boundaries of the state, when each such agency is determining to carry out the project. 58 Ops.Atty.Gen. 614, 9-26-75.

The Santa Clara Valley water district must prepare an environmental impact report or

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reports in connection with its cloud-seeding activities. 57 Ops.Atty.Gen. 490, 10-25-74.

4. Private projects

Within meaning of California Environmental Protection Act, term "project" includes any private activity for which permit is required, and before environmental impact report becomes necessary for any such activity, all that must be shown is that government has some minimal link with activity, either by direct proprietary interest or by permitting, regulating, or funding private activity. Natural Resources Defense Council, Inc. v. Arcata Nat. Corp. (1976) 131 Cal.Rptr. 172, 59 C.A.3d 959.

Shopping center and parking lot projects were private projects within this section and thus anything done prior to December 5, 1972, the effective date of Act's amendment pertaining to private projects, with respect to public agency approval or the issuance of any entitlement for use had been confirmed, validated and declared legally effective under express terms of Act, notwithstanding a failure to comply with Act. Plan For Arcadia, Inc. v. Arcadia City Council (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

In some instances an environmental impact report or a negative declaration must be prepared prior to application of an economic poison which is not a restricted material or restricted herbicide, however, where no use permit is required for application by a private party, an environmental impact report or negative declaration need not be prepared. 59 Ops. Atty.Gen. 300, 5-4-76.

5. Single project

Where by its terms Eastside 1 Service Area project covered area in Eastside 2 Service Area being condemned for pipeline, and where negative declaration as to need for environmental impact report and notice of determination covered entire project from turnout No. 5 on the California aqueduct to point D in Eastside 2 Service Area and entire area in Eastside 1 Service Area, water district was not required to file environmental impact report or negative declaration covering Eastside 2 Service Area. Tsun Hai Lee v. Lost Hills Water Dist. (1978) 144 Cal.Rptr. 510, 78 C.A.3d 630.

Shopping center and parking lot projects, together with widening of portion of adjacent street were related to each other and in assessing their environmental impact they were required to be regarded as a single project under Environmental Quality Act. Plan For Arcadia, Inc. v. Arcadia City Council (1974) 117 Cal. Rptr. 96, 42 C.A.3d 712.

§ 21065.5. Geothermal exploratory project

"Geothermal exploratory project" means a project as defined in Section 21065 composed of not more than six wells and associated drilling and testing

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6. Ordinances

County board of supervisors' action in adopting each rezoning ordinance with respect to five parcels of undeveloped land to permit various types of residential developments involved a "project" within meaning of this section thereby requiring board to consider and resolve whether each ordinance might have a significant factor on the environment before its adoption. Rosenthal v. Board of Sup'rs of Los Angeles County (1975) 119 Cal.Rptr. 282, 44 C.A.3d 815.

Ordinances and resolutions adopted by a local agency are "projects" within the meaning of the California Environmental Quality Act (this section and § 21151) and an adequate environmental impact report must be prepared for each project; lot splits of less than five acres and reversions to acreage are not excluded from CEQA requirements. (1977) 60 Ops.Atty. Gen. 335.

7. Public utility rates

Were rate increases "projects", it is questionable whether a gas offset increase proceeding would involve a new project; the gas in question was committed to the California market and the rate spread established long before the Environmental Quality Act became effective; moreover, a cent per therm basis is environmentally neutral. App. of Pacific Gas and Electric Co. (1973) 75 Cal.P.U.C. 312.

Because questions of rate design involve questions of basic policy which cut across the lines of particular cases and are not susceptible to precise measurement, they are best left to a process of orderly evolution on a case-by-case approach, in order that the effects over time can be properly evaluated and the prevailing theories tested before being strictly or comprehensively applied; requiring an environmental impact report would add nothing but delay. Petitions of Peninsula Commute and Transit Committee, et al. (1973) 75 Cal.P.U.C. 243.

A rate-making proceeding before the public utilities commission is not a project within the meaning of this section. In re Environmental Impact Reports (1973) 75 Cal.P.U.C. 133.

Authorization by the public utilities commission for a 111 percent Southern Pacific Transportation Company rate increase would constitute a project within the meaning of the California Environmental Quality Act and may have a significant effect on the environment to require PUC preparation of an environmental impact report. 58 Ops.Atty.Gen. 708, 7-15-75.

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equipment, whose chief and original purpose is to evaluate the presence and characteristics of geothermal resources prior to commencement of a geothermal field development project as defined in Section 65928.5 of the Government Code. Wells included within a geothermal exploratory project must be located at least one-half mile from geothermal development wells which are capable of producing geothermal resources in commercial quantities.

(Added by Stats.1978, c. 1271, p. 4127, § 4.)

Library References

Health and Environment ⇒25.5(1) to (4), seq., 119 et seq., 125 et seq., 129 et seq., 25.10(1) et seq. 130, 132 et seq.
C.J.S. Health and Environment §§ 61 et seq., 67 et seq., 91 et seq., 106 et seq., 115 et

§ 21066. Person

“Person” includes any person, firm, association, organization, partnership, business, trust, corporation, company, district, county, city and county, city, town, the state, and any of the agencies and political subdivisions of such entities.

(Added by Stats.1972, c. 1154, p. 2271, § 1, eff. Dec. 5, 1972.)

Cross References

Jurisdiction over and protection of persons, see Government Code § 270.

Person, defined,

In general, see Civil Code § 14; Commercial Code § 1201; Fish and Game Code § 67; Government Code § 17; Harbors and Navigation Code § 19; Health and Safety Code § 19; Streets and Highways Code § 19; Water Code § 19.

Air resources, see Health and Safety Code § 39047.

Coastal act, see § 30111.

Oil spills, see Government Code § 8574.5; Harbors and Navigation Code § 293.

Rights of state over persons, see Government Code § 200 et seq.

§ 21067. Lead agency

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

(Added by Stats.1972, c. 1154, p. 2271, § 1, eff. Dec. 5, 1972.)

Cross References

Commission proceedings for changes of organization or reorganization, applications, exception, see Government Code § 56828.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26. Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Notes of Decisions

1. In general

The city's department of transportation, as a local “lead agency” within meaning of this section had primary responsibility to prepare environmental impact report in conjunction with

application for amended airport permit and state department of transportation, as a “responsible agency” within § 21069, was not required to do so. *Bakman v. State, Dept. of*

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Transp. (1979) 160 Cal.Rptr. 583, 99 C.A.3d 665.

Where two or more public agents equally qualify as the lead agency for the purpose of preparing an environmental impact report, agency which is to act first on project in question shall be the lead agency. Citizens Task Force On Sohio v. Board of Harbor Commissioners of Port of Long Beach (1979) 153 Cal. Rptr. 584, 591 P.2d 1236, 23 C.3d 812.

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Local agency formation commission, not city, was "lead agency" charged with obligation to prepare environmental impact report on projected environmental effects of commission's approval or disapproval of city's proposed annexation of agricultural land with view toward land's development for residential, commercial and recreational uses. Bozung v. Local Agency Formation Commission of Ventura County (1975) 118 Cal.Rptr. 249, 529 P.2d 1017, 13 C.3d 263.

§ 21068. Significant effect on the environment

"Significant effect on the environment" means a substantial, or potentially substantial, adverse change in the environment.

(Added by Stats.1976, c. 1312, § 7.)

Law Review Commentaries

Judicial development of the California Environmental Quality Act. Daniel P. Selmi (1984) 18 U.C.D.Law Rev. 197.

Library References

Health and Environment ⇐25.10(3).
C.J.S. Health and Environment §§ 71, 73,
120, 121.

Notes of Decisions

In general 1 Evidence 2

1. In general

For purposes of § 21081, requiring certain findings where environmental impact report identifies significant effect on the environment, "significant effect on the environment" means a substantial, or potentially substantial, adverse change in environment, and means effect on environment of persons in general and not particular persons such as resident of condominium located adjacent to proposed condominium. Markley v. City Council of City of Los Angeles (1982) 182 Cal.Rptr. 659, 131 C.A.3d 656.

Phrase "significant effect on the environment," within Environmental Quality Act, means a substantial or potentially substantial adverse change in or effect on the environment, and the effect on the environment of construction of an individual dwelling, in the absence of unusual circumstances, is not sig-

nificant. Gabric v. City of Rancho Palos Verdes (1977) 140 Cal.Rptr. 619, 73 C.A.3d 183.

In the absence of unusual and exceptional circumstance, administrative decision on the meaning of "significant effect" within state environmental laws should not be inconsistent with this section, the state guidelines, or the local ordinances. Id.

2. Evidence

Where there was no evidence to show that any impact on the environment from replacement of cement manufacturing facilities would not be mitigated, and no evidence to show that the effects remaining after such mitigation would have a substantial adverse impact on the environment, conclusion of county board of supervisors that granting replacement facilities an exemption from the Environmental Quality Act (§ 21000 et seq.) would have no substantial adverse impact on the environment was unsailable. Dehne v. Santa Clara County (1981) 171 Cal.Rptr. 753, 115 C.A.3d 827.

§ 21068.5. Tiering or tier

"Tiering" or "tier" means the coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program or ordinance followed by narrower or site-specific environmental impact reports which incorporate by reference the discussion in any prior environmental impact report and which concentrate on the environmental

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effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior environmental impact report.

(Added by Stats.1983, c. 967, § 1.)

Library References

Health and Environment §25.10(4).
C.J.S. Health and Environment §§ 74, 119 et seq.

§ 21069. Responsible agency

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

(Added by Stats.1976, c. 1312, § 7.1.)

Law Review Commentaries

Judicial development of the California Environmental Quality Act. Daniel P. Selmi (1984)
18 U.C.D.Law Rev. 197.

Notes of Decisions

1. In general

Transportation Department was responsible agency for purposes of the California Environmental Quality Act [West's Ann.Cal.Pub.Res. Code § 21000 et seq.] and, thus, county board was to file its negative declarations relating to proposed shopping center development with State Clearinghouse. Citizens Ass'n for Sensible Development of Bishop Area v. County of Inyo (Crumpler and Kruger Commercial Real Estate, Inc.) (App. 4 Dist.1985) 217 Cal.Rptr. 893, 172 C.A.3d 151.

County local agency formation commission's review of city's proposed annexation of agricultural land did not preclude city's requirement to consider, in environmental impact report, combined effect of the annexation and interrelated development. Rural Land Owners Ass'n v. Lodi City Council (1983) 192 Cal.Rptr. 325, 143 C.A.3d 1013.

The city's department of transportation, as a local “lead agency” with meaning of § 21067, had primary responsibility to prepare environmental impact report in conjunction with ap-

plication for amended airport permit and state department of transportation, as a “responsible agency” within this section, was not required to do so. Bakman v. State, Dept. of Transp. (1979) 160 Cal.Rptr. 583, 99 C.A.3d 665.

Where the port of Long Beach was the first to act on project in question, it became the lead agency and hence was required to defend adequacy of entire environmental impact report under § 21167 and the public utilities commission, which had helped prepare the report, thereby became a “responsible” agency and could not properly be made a party to action seeking to compel board of harbor commissioners of port to comply with California Environmental Quality Act as its joinder would deprive the superior court of subject matter jurisdiction. Citizens Task Force On Sohio v. Board of Harbor Commissioners of Port of Long Beach (1979) 153 Cal.Rptr. 584, 591 P.2d 1236, 23 C.3d 812.

The “responsible agency” must consider the whole of a local project and its impact. 58 Ops.Atty.Gen. 614.

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21080. Application to discretionary projects; non-application of division; negative declarations.
- 21080.01. California Men's Colony West Facility in San Luis Obispo County; inapplicability of division to reopening and operation.
- 21080.02. Kings County; vicinity of Corcoran; new prison facilities; application of division.

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- 21080.03. Kings and Amador (Ione) Counties; prisons; application of division.
- 21080.07. Riverside and Del Norte Counties; planning and construction of new prison facilities; application of division.
- 21080.1. Environmental impact report or negative declaration; determination by lead agency; finality.
- 21080.2. Issuance of lease, permit, license, certificate or other entitlement; determination by lead agency; time.
- 21080.3. Consultation with responsible agencies; assistance by office of planning and research.
- 21080.4. Environmental impact report; requirement determined by lead agency; duties of responsible agencies; consultation; assistance by office of planning and research.
- 21080.5. Plan or other written documentation; submission in lieu of impact report; regulatory programs; criteria; certification; proposed changes; review; commencement of actions; state agencies; duration of section.
- 21080.5. Plan or other written documentation; submission in lieu of impact report; regulatory programs; criteria; certification; proposed changes; review; commencement of actions; state agencies.
- 21080.7. Environmental impact report or negative declaration; exemption for construction of housing or neighborhood commercial facilities; lead agency determinations; notice.
- 21080.9. Local coastal programs or long-range land use development; university or governmental activities and approvals; non-application of division.
- 21080.10. Inapplicability of division; general plans and financial assistance for residential housing.
- 21080.11. Inapplicability of division; settlements by state lands commission.
- 21080.13. Railroad grade separation projects; application of division.
- 21080.15. Repealed.
- 21080.16. Folsom prison and Southern Maximum Security Prison at Tehachapi, changes which increase number of inmates per cell; inapplicability of division; duration of section.
- 21080.17. Inapplicability of division to ordinances implementing law relating to construction of dwelling units and second units.
- 21080.18. Inapplicability of division to closing of public school maintaining kindergarten or any of grades 1 through 12.
- 21080.19. Restriping of streets or highways; inapplicability of division.
- 21080.21. Inapplicability of division to public right-of-way pipeline projects less than one mile in length.
- 21081. Necessary findings where environmental impact report identifies effects.
- 21081.5. Feasibility of mitigation measures or project alternatives; basis for findings.
- 21082. Public agencies; adoption of objectives, criteria and procedures; consistency with guidelines.
- 21082.1. Environmental impact report or negative declaration; preparation by public agency.
- 21082.2. Significant effect on environment; determination.
- 21083. Office of planning and research; preparation and development of guidelines; conditions.
- 21083.2. Effect on archaeological resources; environmental impact report; mitigation measures; duration of section.
- 21083.3. Application of division to approval of subdivision map or other project; limitation; mitigation measures under prior environmental impact report; public hearing; finding.
- 21083.5. Environmental impact statement or report; submission in lieu of impact report.
- 21083.6. Combined environmental impact report and statement; time limits.
- 21083.7. Use of impact statement as the impact report; consultations.
- 21084. List of exempt classes of projects; projects damaging scenic resources.

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21085. Housing developments; reduction of units as mitigation measure or project alternative.
- 21085.5, 21085.6. Repealed.
21086. Addition or deletion of exempt classes of projects; procedure.
21087. Reviewal of guidelines; changes or amendments.
21088. Distribution of guidelines, amendments and changes; notice.
21089. Fees.
21090. Redevelopment plan deemed single project.
- 21090.1. Geothermal exploratory project deemed separate and distinct from field development project.
21091. Blank.
21092. Public notice of preparation of environmental impact report or negative declaration; publication.
- 21092.1. Addition of new information; notice and consultation.
21093. Legislative findings and declaration; public agencies may tier environmental impact reports.
21094. Later projects; tiered environmental impact reports; initial study; use of prior reports.

Chapter 2.6 was added by Stats.1972, c. 1154, p. 2272, § 2.3, eff. Dec. 5, 1972.

Law Review Commentaries

Compatibility of economic and environmental objectives in governmental decision making. (1974) 5 Pacific L.J. 92.

§ 21080. Application to discretionary projects; non-application of division; negative declarations

(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 (except where the project is exempt from the preparation of an environmental impact report pursuant to Section 21166).

(b) This division shall not apply to the following:

(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 power-plant 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 or negative declaration or other document, or documents, 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; provided that the environmental impact report, negative declaration or other document, or documents, shall include 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 (1) meeting operating expenses, including employee wage rates and fringe benefits, (2) purchasing or leasing supplies, equipment, or materials, (3) meeting financial reserve needs and requirements, (4) obtaining funds for capital projects necessary to maintain service within existing service areas, or (5) 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) Actions taken prior to January 1, 1982, by a public agency to implement the transition from the property taxation system in effect prior to June 1, 1978, to the system provided for by Article XIII A of the California Constitution. Those actions shall be limited to projects defined in subdivision (a) or (b) of Section 21065 which initiate or increase fees, rates, or charges charged for any existing public service, program, or activity; reduce or eliminate the availability of an existing public service, program, or activity; close publicly owned or operated facilities; or reduce or eliminate the availability of an existing publicly owned transit service, program, or activity.

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

(11) 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.

(12) 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.

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

(14) A project for the development of a regional transportation improvement program or the state transportation improvement program.

(15) 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 or similar state laws of that state. Any emissions or discharges that would have a significant effect on the environment in the State of California are subject to this division.

(16) 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 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 the provisions of this division, does 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 before the agency that the project may have a significant effect on the environment.

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

(Added by Stats.1983, c. 872, § 4, eff. Sept. 16, 1983, operative Aug. 1, 1984. Amended by Stats.1985, c. 392, § 2.)

Historical Note

The 1985 amendment made nonsubstantive grammatical changes; and deleted former pars. (17) and (18) of subd. (b) which read:

"(17) A project for the granting of an easement or franchise for the use of highway or street rights-of-way for high-speed intercity passenger rail purposes.

"(18) A project for the granting of a certificate of public convenience and necessity for a railroad corporation whose primary business is the transportation of passengers, notwithstanding Sections 1001 and 1002 of the Public Utilities Code, except that the commission may require the applicant to submit information regarding energy requirements."

The 1985 amendment also deleted former subd. (d), which read:

"This section shall become operative on August 1, 1984."

Former § 21080, added by Stats.1972, c. 1154, p. 2272, § 2.3, amended by Stats.1976, c. 1312, § 8; Stats.1977, c. 854, p. 2581, § 1;

Stats.1977, c. 1045, p. 3168, § 1; Stats.1977, c. 1200, p. 4007, § 22; Stats.1978, c. 356, p. 752, § 1; Stats.1978, c. 760, p. 2372, § 1; Stats.1978, c. 1093, p. 3336, § 2; Stats.1979, c. 337, p. 1201, § 1; Stats.1979, c. 697, p. 2171, § 1; Stats.1980, c. 526, p. 1467, § 1; Stats.1981, c. 402, p. 1588, § 1; Stats.1982, c. 70, p. 211, § 1; Stats.1982, c. 1440, p. 5503, § 4; Stats.1982, c. 1553, p. 6076, § 3; Stats.1983, c. 771, § 1; Stats.1983, c. 872, § 1; Stats.1983, c. 872, § 3, relating to similar subject matter, was repealed by force of its own terms on Aug. 1, 1984.

Amendment of § 21080 and the addition of a § 21080 by §§ 2 and 3, respectively, of Stats. 1983, c. 771, failed to become operative under the provisions of § 4 of that Act.

Addition of a § 21080 by § 2 of Stats.1983, c. 872, failed to become operative under the provisions of § 5 of that Act.

Derivation: Former § 21080, added by Stats. 1972, c. 1154, p. 2272, § 2.3, amended by Stats. 1976, c. 1312, § 8; Stats. 1977, c. 854, p. 2581, § 1; Stats.1977, c. 1045, p. 3168, § 1; Stats.

1977, c. 1200, p. 4007, § 22; Stats.1978, c. 356, p. 752, § 1; Stats.1978, c. 760, p. 2372, § 1; Stats.1978, c. 1093, p. 3336, § 2; Stats. 1979, c. 337, p. 1201, § 1; Stats.1979, c. 697, p. 2171, § 1; Stats.1980, c. 526, p. 1467, § 1; Stats.1981, c. 402, p. 1588, § 1; Stats.1982, c. 70, p. 211, § 1; Stats.1982, c. 1440, p. 5503, § 4; Stats. 1982, c. 1553, p. 6076, § 3; Stats.1983, c. 771, § 1; Stats.1983, c. 872, § 1; Stats.1983, c. 872, § 3.

Cross References

Conditional use permits, see Government Code §§ 65863.5, 65909.
 Disaster damage repair, exemption of projects, see § 21172.
 Emergency, see § 21060.3.
 Limitation of actions, see § 21167.
 Local agency, approval of project, certificate, see § 21152.
 Negative declaration, see § 21064.
 Planning and zoning, generally, see Government Code § 65000 et seq.
 Project, see § 21065.
 Public agency, see § 21063.
 State agency, approval of project, certificate, see § 21108.
 State environmental goals and policy report, see Government Code § 65041 et seq.
 Subdivision maps, generally, see Government Code § 66410 et seq.
 Subsequent or supplemental impact report, conditions, see § 21166.
 Zoning ordinances, see Government Code § 65850 et seq.
 Zoning variances, see Government Code §§ 65863.5, 65906, 65911.

Administrative Code References

Activities not requiring an initial study, see 20 Cal.Adm. Code 2304.
 Applicability and exemptions, state water resources control board, see 23 Cal.Adm. Code 2710 et seq.
 Urban open space and recreation program, see 14 Cal.Adm. Code 4933.

Law Review Commentaries

Application of emergency exemptions under CEQA. (1984) 15 Pacific L.J. 1089.
 California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.
 Coastal Zone Conservation Act. (1974) 4 Golden Gate L.Rev. 307.
 Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.
 Friends of Mammoth: Vox populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 137.
 Judicial development of the California Environmental Quality Act. Daniel P. Selmi (1984) 18 U.C.D.Law Rev. 197.
 Land development and the environment: Subdivision Map Act. (1974) 5 Pacific L.J. 55.
 New developments in historic preservation. (1979) 19 Santa Clara L.Rev. 719.

Library References

Health and Environment ⇐25.10(2), (3).
 C.J.S. Health and Environment §§ 70 et seq., 119 et seq.

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1. In general

There was no requirement that California highway commission file environmental impact statement before rescinding state highway location, particularly where such a "no project" decision was one of the options discussed in the environmental impact statement prepared before the highway location was designated. *City of National City v. State* (1983) 189 Cal. Rptr. 682, 140 C.A.3d 598.

Requiring payment of increased sewer connection fee to mitigate claimed environmental

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impacts of development was not authorized by California Environmental Quality Act where increase in the fee was not adopted in manner required under Health and Safety Code. *Pine-wood Investors v. City of Oxnard* (1982) 184 Cal.Rptr. 417, 133 C.A.3d 1030.

County board of supervisors could not amend district rules relaxing oxides of nitrogen emission standards for certain facilities in county based on its determination that relaxation of standards was categorically exempt from Environmental Quality Act (§ 21000 et seq.) as action taken for protection of environment and of natural resources since doubling of oxides of nitrogen emissions allowed into atmosphere could have significant effect on environment. *International Longshoremen's and Warehousemen's Union Local 35, v. Board of Sup'rs* (1981) 171 Cal.Rptr. 875, 116 C.A.3d 265.

Actions by board of education of closing elementary school and transferring pupils to another elementary school were not "project" within meaning of California Environmental Quality Act, and thus compliance with the Act was not required. *Prentiss v. Board of Ed. of South Pasadena Unified School Dist.* (1980) 169 Cal.Rptr. 5, 111 C.A.3d 847.

City's act of placing initiative measure on ballot in response to citizen's petition was not a "project" contemplated by California Environmental Quality Act (§ 21000 et seq.). *Stein v. City of Santa Monica* (1980) 168 Cal.Rptr. 39, 110 C.A.3d 458.

Use of words "but not limited to" preceding various governmental actions relating to land use specifically mentioned in subd. (a) of former § 21080 (repealed; see, now, this section) manifested legislative intent that subd. (a) not be given construction based upon principal of "expressio unius est exclusio alterius." *City of Santa Ana v. City of Garden Grove* (1979) 160 Cal.Rptr. 907, 100 C.A.3d 521.

Applicability of State Environmental Quality Act cannot depend upon unfettered discretion of local agencies, which must act in accordance with state guidelines and objectives of the Act; their actions must also reflect stated intent of the enabling legislation. *Day v. City of Glendale* (1975) 124 Cal.Rptr. 569, 51 C.A.3d 817.

The provisions of the California Environmental Quality Act (§ 21000 et seq.) require an environmental impact report or a negative declaration prior to the amendment of "spheres of influence" by a local agency formation commission, if such action could possibly have a significant effect on the environment. 63 Ops. Atty.Gen. 758, 10-1-80.

Ordinances and resolutions adopted by a local agency are "projects" within the meaning of the California Environmental Quality Act (§§ 21065 and 21151) and an adequate envi-

ronmental impact report must be prepared for each project; lot splits of less than five acres and reversions to acreage are not excluded from CEQA requirements. 60 Ops.Atty.Gen. 335, 9-30-77.

2. Discretionary projects

It was within discretion of county local agency information commission to adopt a policy of discouraging annexation of territory pre-zoned for agricultural use exclusively and, therefore, even if municipality's proposed annexations of two parcels of undeveloped land came within description of a class categorical exemption, "unusual circumstances" of inconsistency between pre-zoning and general plan removed the proposals from that exemption and, as the annexations would have a significant effect on the environment, commission's denial of petition for annexation was improperly set aside. *City of Santa Clara v. Santa Clara County Local Agency Formation Com'n* (1983) 189 Cal.Rptr. 112, 139 C.A.3d 923.

Under county's guidelines defining as "discretionary" a project which requires the exercise of judgment, deliberation, or decision on the part of the public agency, as distinguished from "ministerial" situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations, granting of use permit to allow property owner to construct a machinery manufacturing complex on land zoned "heavy industrial" and "scenic highway" was "discretionary" in nature and therefore invalid for failure to prepare and consider an environmental impact report under former § 21080 (repealed; see, now, this section) which provided that a local agency should obtain and consider an environmental impact report when engaging in a "discretionary project." *Starbird v. San Benito County* (1981) 176 Cal.Rptr. 149, 122 C.A.3d 657.

Generally speaking, discretionary act of public official, for purposes of applicability of California Environmental Protection Act, is one which requires personal deliberation, decision and judgment, while ministerial act, as to which CEQA does not apply, amounts only to performance of duty in which officer is left no choice of his own. *Natural Resources Defense Council, Inc. v. Arcata Nat. Corp.* (1976) 131 Cal.Rptr. 172, 59 C.A.3d 959.

State Environmental Quality Act must be interpreted to afford fullest possible protection to environment within reasonable scope of statutory language, and project of mixed ministerial-discretionary character should be treated as discretionary project. *Day v. City of Glendale* (1975) 124 Cal.Rptr. 569, 51 C.A.3d 817.

If, under the California Environmental Quality Act, a project is a "discretionary" one, agency may not grant the permit without first determining in writing whether the proposal has

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significant environmental impact. *People v. Department of Housing and Community Development* (1975) 119 Cal.Rptr. 266, 45 C.A.3d 185.

3. Ministerial projects

California Environmental Quality Act, extends to projects of mixed ministerial-discretionary character, and doubts whether project is ministerial or discretionary should be resolved in favor of latter characterization. *Natural Resources Defense Council, Inc. v. Arcata Nat. Corp.* (1976) 131 Cal.Rptr. 172, 59 C.A.3d 959.

Action of county board in detaching certain land from recreation and park district pursuant to recommendation made by local agency formation commission was purely ministerial where there was no majority protest within the area affected and where there had been a determination that the area affected was uninhabited, so that the action was exempt from Environmental Quality Act requirements. *Simi Val. Recreation and Park Dist. v. Local Agency Formation Commission of Ventura County* (1975) 124 Cal.Rptr. 635, 51 C.A.3d 648.

Municipal building permit for mobile home park, premised upon compliance with local building code, was a "ministerial project" or act under the California Environmental Quality Act. *People v. Department of Housing and Community Development* (1975) 119 Cal.Rptr. 266, 45 C.A.3d 185.

City council's action in approving final building plans with respect to shopping center project was not a discretionary act but was instead ministerial and thus not within coverage of former § 21080 (repealed; see, now, this section). *Plan for Arcadia, Inc. v. Arcadia City Council* (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

Those projects within the ministerial project exemption should be determined on a case-by-case basis by the public utilities commission; the motion procedure should be used to obtain a prompt determination of whether a particular project does not require an environmental impact report because it falls under a ministerial exemption. In re *Environmental Impact Reports* (1973) 75 Cal.P.U.C. 133.

4. Hybrid projects

Review and approval of timber harvesting plans under Forest Practice Act (§ 4511 et seq.) constitutes hybrid or compound project to which environmental impact report requirement of California Environmental Quality Act is applicable. *Natural Resources Defense Council, Inc. v. Arcata Nat. Corp.* (1976) 131 Cal.Rptr. 172, 59 C.A.3d 959.

Since the California Environmental Quality Act should be interpreted to afford the fullest possible protection to the environment within

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the reasonable scope of its statutory language, former § 21080 (repealed; see, now, this section) which prohibited agency from granting permit for discretionary project without first determining in writing whether the proposal had a significant environmental impact and which did not require such determination for ministerial projects, required such a determination for projects of a mixed ministerial-discretionary character, and doubt whether a project was ministerial or discretionary should have been resolved in favor of the discretionary characterization. *People v. Department of Housing and Community Development* (1975) 119 Cal.Rptr. 266, 45 C.A.3d 185.

5. Exemption declaration

Exemption declaration from staff of zoning board, which was filed with county clerk, was sufficient to dispense with requirement of environmental impact report, absent showing that it was improperly approved by planning commission. *Jacobson v. Los Angeles County* (1977) 137 Cal.Rptr. 909, 69 C.A.3d 374.

6. Zoning

County board of supervisors' action in adopting each rezoning ordinance with respect to five parcels of undeveloped land to permit various types of residential developments involved a "project" within meaning of Environmental Quality Act thereby requiring board to consider and resolve whether each ordinance might have a significant factor on the environment before its adoption. *Rosenthal v. Board of Supervisors of County of Los Angeles* (1975) 119 Cal.Rptr. 282, 44 C.A.3d 815.

Where county retained jurisdiction to grant or deny application to amend zoning ordinance to permit construction of mountain subdivision and zone change was not approved until after effective date of provision of § 21169 validating projects which were undertaken or approved before provision's effective date and which did not comply with Act, environmental impact report was required for proposed project. *People v. Kern County* (1974) 115 Cal.Rptr. 67, 39 C.A.3d 830.

The enactment and amendment of zoning ordinances had to have been preceded, pursuant to subd. (a) of former § 21080 (repealed; see, now, this section) and § 21151, by preparation of an environmental impact report if the proposed ordinance may have had a significant effect on the environment, and this conclusion applied to zoning ordinances which may have been adopted during the moratorium period of December 5, 1972 to April 5, 1973. 56 Ops. Atty.Gen. 404, 9-26-73.

Rezoning is a phrase used to connote the amendment or enactment of different zoning regulations for particular areas, and as such, if a proposed enactment or amendment may have had a significant effect on the environ-

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ment an environmental impact report was required under subd. (a) of former § 21080 (repealed; see, now, this section) and 21151. Id.

7. Subdivisions

Where unquestioned real purpose of owner of parcels of land seeking approval of a land division from county board of supervisors was to create three new parcels of land, formerly used for grazing cattle, for use as homesites the proposed land division involved something different from a minor alteration in condition of land, and conclusion that application involved a minor land division within meaning of county environmental administrative handbook and was entitled to a categorical exemption did not conform to the Environmental Quality Act and the state environmental impact report guidelines. *Myers v. Board of Sup'rs of Santa Clara County* (1976) 129 Cal.Rptr. 902, 58 C.A.3d 413.

8. City general plan

Amendment of city general plan was "project" which was subject to California Environmental Quality Act and section of guidelines of resources agency providing for such application of the Act was valid. *City of Santa Ana v. City of Garden Grove* (1979) 160 Cal. Rptr. 907, 100 C.A.3d 521.

9. Use permits

Where property proposed for mobile home park had been zoned for light industrial use since 1956, no discretionary use permit or variance was needed at the municipal level under the California Environmental Quality Act; only city building permit was needed. *People v. Department of Housing and Community De-*

velopment (1975) 119 Cal.Rptr. 266, 45 C.A.3d 185.

10. Rates and fees

In light of this section Environmental Quality Act (§ 21000 et seq.) did not apply to adoption by municipal improvement district of ordinance which increased rates and connection fees for water service within district. *Condit v. Solvang Mun. Imp. Dist.* (App. 2 Dist.1983) 194 Cal.Rptr. 683, 146 C.A.3d 997.

11. High-speed, intercity passenger rail project

The creation of a high-speed intercity passenger rail project would not be exempt in its entirety from the provisions of the California Environmental Quality Act (§ 21000 et seq.). 66 Ops.Atty.Gen. 340, 10-4-83.

12. Radioactive materials

The California highway patrol is required to prepare an "environmental assessment" under the California Environmental Quality Act (§ 21000 et seq.) before adopting radioactive material transportation routes pursuant to Veh.C. § 33000. 66 Ops.Atty.Gen. 461, 12-15-83.

13. Auto racing

Auto racing at county fairground racetrack immediately adjacent to residential area was not categorically exempt from California Environmental Quality Act (§ 21000 et seq.). *Lewis v. Seventeenth Dist. Agr. Ass'n (Central State Racing Ass'n)* (App. 3 Dist.1985) 211 Cal.Rptr. 884, 165 C.A.3d 823.

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

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

(Added by Stats.1983, c. 958, § 6.5, eff. Sept. 20, 1983.)

Library References

Health and Environment ⇐25.10(2).
C.J.S. Health and Environment §§ 70 et seq.,
119 et seq.

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

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

(Added by Stats.1985, c. 931, § 3, eff. Sept. 25, 1985.)

Library References

Health and Environment ⇨25.10(2).
C.J.S. Health and Environment §§ 70 et seq.,
119 et seq.

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

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

(Added by Stats.1985, c. 931, § 4, eff. Sept. 25, 1985.)

Library References

Health and Environment ⇨25.10(2).
C.J.S. Health and Environment §§ 70 et seq.,
119 et seq.

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

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

- (a) The County of Riverside.
- (b) The County of Del Norte.

(Added by Stats.1985, c. 933, § 2.6, eff. Sept. 25, 1985.)

Historical Note

1985 Legislative findings regarding the need to expand prison facilities, see Historical Note under Penal Code § 2048.7.

Library References

Health and Environment ⇨25.10(2).
C.J.S. Health and Environment §§ 70 et seq.,
119 et seq.

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

The lead agency shall have the responsibility for determining whether an environmental impact report or a negative declaration shall be required for any project subject to the provisions of this division. Such determination shall be final and conclusive on all persons, including responsible agencies, unless challenged as provided in Section 21167.

(Added by Stats.1977, c. 1200, p. 3997, § 3.)

Administrative Code References

Implementation of the California Environmental Quality Act of 1970, see 14 Cal. Adm. Code 1681 et seq.
Negative declaration, see 20 Cal. Adm. Code 2306.

Library References

Health and Environment ⇨25.10, 25.15. C.J.S. Health and Environment §§ 64 to 82,
82 et seq., 83 to 90, 101, 102, 104, 105, 111
to 113, 115 to 124, 146 et seq.

Notes of Decisions

1. In general

Failure of plaintiffs to appeal environmental hearing officer's issuance of negative declaration, stating that 900-cow dairy would have no significant environmental effect, to environmental resources board did not deprive trial court of jurisdiction to consider propriety of action of board of supervisors approving negative declaration, as county code, which pro-

vides that the ERB shall hear appeals from the EHO and that appeals must be brought within 14 days, curtails rights provided by state law, which specifically allows 30 days from filing of notice of determination by board of supervisors in which to institute any action or proceeding challenging negative declaration. *Newberry Springs Water Ass'n v. San Bernardino County* (App. 4 Dist. 1984) 198 Cal. Rptr. 100, 150 C.A.3d 740.

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

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

(Added by Stats. 1977, c. 1200, p. 3998, § 4. Amended by Stats. 1984, c. 586, § 1.)

Historical Note

The 1984 amendment added the second sentence.

Law Review Commentaries

Project approval under the California Environmental Quality Act. Barbara Sahm (1979) 19 Santa Clara L. Rev. 579.

Library References

Health and Environment ⇨25.10(5).
C.J.S. Health and Environment §§ 75, 76,
122.

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

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

(b) In order to expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist such lead agency in determining the various responsible agencies for a proposed

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project. In the case of a project described in subdivision (c) of Section 21065, such a request may also be made by the project applicant.

(Added by Stats.1977, c. 1200, p. 3998, § 5. Amended by Stats.1978, c. 1113, p. 3403, § 8.2, eff. Sept. 26, 1978.)

Historical Note

The 1978 amendment added to subd. (a) the language following "shall consult with all responsible agencies".

Library References

Health and Environment ⇐25.10(5).
C.J.S. Health and Environment §§ 75, 76,
122.

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

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

(b) In order to expedite the requirements of subdivision (a), the lead agency or any responsible agency or public agency having jurisdiction by law over natural resources affected by the project which are held in trust for the people of the State of California may request one or more meetings between representatives of those agencies for the purpose of assisting the lead agency to determine the scope and content of the environmental information any responsible agency may require. In the case of a project described in subdivision (c) of Section 21065, the request may also be made by the project applicant. The meetings shall be convened by the lead agency as soon as possible, but no later than 30 days, after they have been requested.

(c) In order to expedite the requirements of subdivision (a), the Office of Planning and Research, upon request of a lead agency, shall assist the lead agency in determining the various responsible agencies and any federal agencies which have responsibility for carrying out or approving a proposed project. In the case of a project described in subdivision (c) of Section 21065, such a request may also be made by the project applicant.

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

(Added by Stats.1977, c. 1200, p. 3998, § 6. Amended by Stats.1978, c. 1113, p. 3403, § 8.3, eff. Sept. 26, 1978; Stats.1983, c. 688, § 1.)

Historical Note

The 1978 amendment inserted "or an equivalent procedure" and "and to those public agencies having jurisdiction by law over natural resources affected by the project which are held in trust for the people of the State of California" in the first sentence in subd. (a); inserted "or equivalent procedure" in the third sentence of subd.(a); and inserted "or public

agency having jurisdiction by law over natural resources affected by the project which are held in trust for the people of the State of California" in the first sentence of subd.(b) and in subd. (d).

The 1983 amendment substituted "30 days" for "45 days" in the third sentence of subd. (a); and made nonsubstantive changes.

Library References

Health and Environment ⇨25.10(5).
C.J.S. Health and Environment §§ 75, 76,
122.

Notes of Decisions

1. In general

Court of Appeal does not pass on correctness of environmental impact report's environmental conclusions, but only upon its sufficiency as informative document; however, court must be satisfied that board of supervisors has fully

complied with procedural requirements of state's Environmental Quality Act (§ 21000 et seq.). Village Laguna of Laguna Beach, Inc. v. Board of Sup'rs of Orange County (1982) 185 Cal.Rptr. 41, 134 C.A.3d 1022.

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

Text of section operative until Jan. 1, 1988

(a) When the regulatory program of a state agency, board, or commission requires a plan or other written documentation, containing environmental information and complying with the requirements of paragraph (3) of subdivision (d), to be submitted in support of any of the activities listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division; provided, that the Secretary of the Resources Agency has certified the regulatory program pursuant to this section.

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

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

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

(c) A regulatory program certified pursuant to this section is exempt from the provisions of Chapter 3 (commencing with Section 21100) and Chapter 4 (commencing with Section 21150) and Section 21167.

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

(1) The enabling legislation of the regulatory program shall:

(i) Include protection of the environment among its principal purposes.

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

(2) The rules and regulations adopted by the administering agency shall:

(i) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

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

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

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

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

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

(3) The plan or other written documentation required by the regulatory program shall:

(i) Include a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse environmental impact.

(ii) Be available for a reasonable time for review and comment by other public agencies and the general public.

(e) The Secretary of the Resources Agency shall certify a regulatory program which the secretary determines meets all the qualifications for certifica-

tion set forth in this section, and withdraw certification on determination that the regulatory program has been altered so that it no longer meets those qualifications. Certification and withdrawal of certification shall occur only after compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

In determining whether or not a regulatory program meets the qualifications for certification set forth in this section, the inquiry of the Secretary of the Resources Agency shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The inquiry shall not extend to individual decisions to be reached under the regulatory program, including the nature of specific alternatives or mitigation measures which might be proposed to lessen any significant adverse environmental effects of the activity.

In the event that the Secretary of the Resources Agency determines that the regulatory program submitted for certification does not meet the qualifications for certification set forth in this section, the secretary shall adopt findings setting forth the reasons for the determination.

(f) After a regulatory program has been certified pursuant to this section, any proposed change in the program which could affect compliance with the qualifications for certification specified in subdivision (d) may be submitted to the Secretary of the Resources Agency for review and comment. The scope of the secretary's review shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The review shall not extend to individual decisions to be reached under the regulatory program, including specific alternatives or mitigation measures which might be proposed to lessen any significant adverse environmental effects of the activity. The secretary shall have 30 days after receipt of the proposed change to notify the state agency, board, or commission whether the proposed change will alter the regulatory program so that it no longer meets the qualification for certification established in this section and will result in a withdrawal of certification as provided in this section.

(g) Any action or proceeding to attack, review, set aside, void, or annul a determination or decision of a state agency, board, or commission approving or adopting a proposed activity under a regulatory program which has been certified pursuant to this section on the basis that the plan or other written documentation prepared pursuant to paragraph (3) of subdivision (d) does not comply with the provisions of this section shall be commenced no later than 30 days from the date of the filing of notice of the approval or adoption of the activity.

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

In any action brought under this subdivision, the inquiry shall extend only to whether there was a prejudicial abuse of discretion by the Secretary of the Resources Agency. Abuse of discretion is established if the secretary has not

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proceeded in a manner required by law or if the determination is not supported by substantial evidence.

(i) For purposes of this section, any county agricultural commissioner shall be considered a state agency.

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

(k) Any program for the regulation of pesticides certified pursuant to this section and Chapter 308 of the Statutes of 1978 shall apply to the use of pesticides by any state agency acting under authority of Divisions 4 (commencing with Section 5001) and 5 (commencing with Section 9101) of the Food and Agricultural Code in eradicating a plant or animal pest.

(l) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1988, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1988, pursuant to Section 9611 of the Government Code, Section 21080.5 of the Public Resources Code, as amended by Section 1 of Chapter 58 of the Statutes of 1982, shall have the same force and effect as if this temporary provision had not been enacted.

(Added by Stats.1975, c. 1187, § 1. Amended by Stats.1977, c. 1200, p. 3999, § 6.5; Stats.1978, c. 308, p. 645, § 6, eff. June 30, 1978; Stats.1978, c. 760, p. 2375, § 2.3; Stats.1981, c. 714, p. 2747, § 369; Stats.1981, c. 480, p. 1821, § 1; Stats.1982, c. 58, p. 187, § 1, eff. Feb. 18, 1982; Stats.1985, c. 1282, § 4; Stats.1986, c. 20, § 4, eff. March 17, 1986.)

For text of section operative Jan. 1, 1988, see § 21080.5, post

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

Text of section operative Jan. 1, 1988

(a) When the regulatory program of a state agency, board, or commission requires a plan or other written documentation, containing environmental information and complying with the requirements of paragraph (3) of subdivision (d), to be submitted in support of any of the activities listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division; provided, that the Secretary of the Resources Agency has certified the regulatory program pursuant to this section.

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

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

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

(c) A regulatory program certified pursuant to this section is exempt from the provisions of Chapter 3 (commencing with Section 21100) and Chapter 4 (commencing with Section 21150) and Section 21167.

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

(1) The enabling legislation of the regulatory program shall:

(i) Include protection of the environment among its principal purposes.

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

(2) The rules and regulations adopted by the administering agency shall:

(i) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

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

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

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

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

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

(3) The plan or other written documentation required by the regulatory program shall:

(i) Include a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse environmental impact.

(ii) Be available for a reasonable time for review and comment by other public agencies and the general public.

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

In determining whether or not a regulatory program meets the qualifications for certification set forth in this section, the inquiry of the Secretary of the Resources Agency shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The inquiry shall not extend to individual decisions to be reached under the regulatory program, including the nature of specific alternatives or mitigation measures which might be proposed to lessen any significant adverse environmental effects of the activity.

In the event that the Secretary of the Resources Agency determines that the regulatory program submitted for certification does not meet the qualifications for certification set forth in this section, the secretary shall adopt findings setting forth the reasons for the determination.

(f) After a regulatory program has been certified pursuant to this section, any proposed change in the program which could affect compliance with the qualifications for certification specified in subdivision (d) may be submitted to the Secretary of the Resources Agency for review and comment. The scope of the secretary's review shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The review shall not extend to individual decisions to be reached under the regulatory program, including specific alternatives or mitigation measures which might be proposed to lessen any significant adverse environmental effects of the activity. The secretary shall have 30 days after receipt of the proposed change to notify the state agency, board, or commission whether the proposed change will alter the regulatory program so that it no longer meets the qualification for certification established in this section and will result in a withdrawal of certification as provided in this section.

(g) Any action or proceeding to attack, review, set aside, void, or annul a determination or decision of a state agency, board, or commission approving or adopting a proposed activity under a regulatory program which has been certified pursuant to this section on the basis that the plan or other written documentation prepared pursuant to paragraph (3) of subdivision (d) does not comply with the provisions of this section shall be commenced no later than 30 days from the date of the filing of notice of the approval or adoption of the activity.

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

In any action brought under this subdivision, the inquiry shall extend only to whether there was a prejudicial abuse of discretion by the Secretary of the

Resources Agency. Abuse of discretion is established if the secretary has not proceeded in a manner required by law or if the determination is not supported by substantial evidence.

(i) For purposes of this section, any county agricultural commissioner shall be considered a state agency.

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

(Amended by Stats.1977, c. 1200, p. 3999, § 6.5; Stats.1978, c. 308, p. 645, § 6, eff. June 30, 1978; Stats.1978, c. 760, p. 2375, § 2.3; Stats.1981, c. 714, p. 2747, § 369; Stats. 1981, c. 480, p. 1821, § 1; Stats.1982, c. 58, p. 187, § 1, eff. Feb. 18, 1982.)

For text of section operative until Jan. 1, 1988, see § 21080.5, ante

Historical Note

Section 2 of Stats.1975, c. 1187, provided:

"Section 1 of this act shall not be construed by implication to either confirm or repeal any administrative regulation, and shall not be construed as affecting the authority of the Secretary of the Resources Agency to adopt, amend, or repeal guidelines pursuant to Sections 21083 to 21087, inclusive, of the Public Resources Code."

The 1977 amendment substantially rewrote the section which had read:

"(a) When the regulatory program of a state agency, board, or commission requires a plan or other written documentation, containing environmental information and complying with the requirements of paragraph (3) of subdivision (b) of this section, to be submitted in support of the issuance to a person, other than a public agency, of a lease, permit, license, certificate, or other entitlement for use, such plan or other written documentation may be submitted in lieu of the environmental impact report required by this division; provided, that the Secretary of the Resources Agency has certified the regulatory program pursuant to this section. A regulatory program certified pursuant to this section is exempt from the provisions of Chapter 3 (commencing with Section 21100) of this division.

"(b) In order to qualify for certification pursuant to this section, a regulatory program shall meet all of the following criteria:

"(1) The enabling legislation of the regulatory program shall:

"(i) Include protection of the environment among its principal purposes.

"(ii) Contain authority for the administering agency to promulgate rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation.

"(iii) Require utilization of an interdisciplinary approach which will ensure the integrated use of the natural and social sciences in decisionmaking.

"(2) The rules and regulations adopted by the administering agency shall:

"(i) Require that a project will not be approved as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the project may have on the environment.

"(ii) Include guidelines for the orderly evaluation of projects and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program.

"(iii) Require the administering agency to consult with all public agencies which have jurisdiction, by law, with respect to the activity involving the issuance of the lease, permit, license, certificate, or other entitlement for use.

"(iv) Require that final action on the issuance of a lease, permit, license, certificate, or other entitlement for use include the written responses of the issuing authority to significant environmental points raised during the evaluation process.

"(v) Require the filing of a notice of the issuance of a lease, permit, license, certificate, or other entitlement for use with the Secretary of the Resources Agency. Such notices shall be available for public inspection, and a list of such notices shall be posted on a weekly basis in the office of the Resources Agency. Each such list shall remain posted for a period of 30 days.

"(vi) Require notice of the filing of the plan or other written documentation to be made to the public and to any person who requests, in

writing, such notification. The notification shall be made in a manner that will provide the public or any such person with sufficient time to review and comment on such filing.

"(3) The plan or other written documentation required by the regulatory program shall:

"(i) Include a description of the project with alternatives to the project, and mitigation measures to minimize any significant adverse environmental impact.

"(ii) Be available for a reasonable time for review and comment by other public agencies and the general public.

"(c) The Secretary of the Resources Agency shall certify a regulatory program which the secretary determines meets all the qualifications for certification set forth in this section, and withdraw certification on determination that the regulatory program no longer meets such qualifications. Certification and withdrawal of certification shall occur only after compliance with Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

"(d) Any action or proceeding to attack, review, set aside, void, or annul a determination or decision of a state agency, board, or commission to issue a lease, permit, license, certificate, or other entitlement for use under a regulatory program which has been certified pursuant to this section on the basis that the plan or other written documentation submitted in support of such issuance does not comply with the provisions of this section shall be commenced no later than 30 days from the date of the filing of notice of issuance.

"(e) This section shall remain in effect only until January 1, 1978, and as of that date is repealed."

The 1978 amendment by c. 308 substituted "and Chapter 4 (commencing with Section 21150) of this division and Section 21167" for "of this division" in subd. (c); added the last 2 paragraphs to subd. (e); added subd. (f) and redesignated former subd. (f) as subd. (g); and added subd. (h).

The 1978 amendment by c. 760 amending Stats.1978, c. 308, deleted "other than a public agency" following "The issuance to a person" in subd. (b)(1).

Sections 3, 5 and 7 of Stats.1978, c. 308, p. 643, provide, in part:

"Sec. 3. In view of the findings of Section 1, the Legislature hereby declares that it is the policy of the State of California that environmental review of the pesticide regulatory program required by Division 6 (commencing with Section 11401) and by Chapters 1 (commencing with Section 12501), 2 (commencing with Section 12751), 3 (commencing with Section 14001), and 3.5 (commencing with Section 14101) of Division 7 of the Food and Agri-

cultural Code should be achieved through the procedures established in Section 21080.5 of the Public Resources Code and not by requiring environmental impact reports or negative declarations in connection with the issuance of pesticide permits."

"Sec. 5. (a) In order to prevent disruption of California agriculture during the period when the Director of Food and Agriculture is seeking to obtain certification pursuant to Section 3 of this act, and in order to provide adequate time for the Legislature to act in the event that such certification is not obtained, the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code shall not apply to any action or activity governed by Division 6 (commencing with Section 11401) or by Chapters 1 (commencing with Section 12501), 2 (commencing with Section 12751), 3 (commencing with Section 14001), and 3.5 (commencing with Section 14101) of Division 7 of the Food and Agricultural Code until such time as certification is obtained as provided in subdivision (b), or, in the event that such certification is not obtained, until January 1, 1981."

"Sec. 7. The provisions of subdivision (c) of Section 21080.5 of the Public Resources Code shall apply to any pesticide regulatory program required by Division 6 (commencing with Section 11401) or by Chapter 1 (commencing with Section 12501), 2 (commencing with Section 12751), 3 (commencing with Section 14101) of Division 7 of the Food and Agricultural Code which has been certified pursuant to Section 21080.5 of the Public Resources Code. Pesticide permits issued pursuant to such a certified program for the use of restricted or nonrestricted materials shall be exempt from the provisions of Chapter 3 (commencing with Section 21100) and Chapter 4 (commencing with Section 21150) of Division 13 of the Public Resources Code, from the provisions of Section 21167 of the Public Resources Code, from the provisions of subdivision (g) of Section 21080.5 of the Public Resources Code, and from those provisions of subdivision (d) of Section 21080.5 of the Public Resources Code specified in subdivision (d) of Section 5 of this act."

The 1981 amendment by c. 480 added subd. (j) (now rewritten; see 1982 amendment note).

Subordination of legislation by Stats.1981, c. 714, to other legislation during the 1981 portion of the 1981-82 Regular Session which is effective on or before Jan. 1, 1982, see Historical Note under Bus. and Prof. C. § 726.

Section 3 of Stats.1981, c. 480, p. 995, provided:

"The Legislature hereby finds and declares that the amendments made to Section 21080.5 of the Public Resources Code by Section 1 of this act are not intended and shall not be construed in such a manner as to preclude an

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air quality management district from determining that a regulatory program, in whole or in part, is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, if that regulatory program is otherwise eligible for an exemption."

The 1982 amendment rewrote subd. (j), which previously read:

"(j) For purposes of this section, any air quality management district shall be considered a state agency, except that any activities of an air quality management district undertaken in order to comply with the provisions of Chapter 2.5 (commencing with Section 41650) of Part 4 of Division 26 of the Health and Safety Code shall not be subject to the provisions of this section."

Section 3 of Stats.1982, c. 58, p. 190, provides:

"The Legislature hereby finds and declares that the amendments made to Section 21080.5 of the Public Resources Code by Section 1 of this act are not intended and shall not be construed in such a manner as to preclude an air quality management district from determining that a regulatory program, in whole or in part is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, if that regulatory program is otherwise eligible for an exemption."

The 1985 amendment added subds. (k) and (l).

The 1986 amendment substituted in subd. (k) "eradicating a plant" for "eradicating or controlling a plant".

Cross References

Environmental impact report, see § 21061.

Person, see § 21066.

Power facility and site certification, adoption of regulations and submission of regulatory program for certification, see § 25541.5.

Library References

Health and Environment ⇔25.10.

C.J.S. Health and Environment §§ 64 to 90,
115 to 124.

Notes of Decisions

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1. In general

Although California Environmental Quality Act § 21000 et seq., provides for evaluation of proposed project's effect on archaeological resources and provides for mitigation of damages to be caused thereby, as neither that statute nor Forest Practice Act § 4511 et seq., expressly requires preparation of written report, public disclosure of written archaeological report on proposed timber harvesting site was not required by this section which requires project plan or other written documentation required by regulatory program be available for public inspection. *Environmental Protection Information Center, Inc. v. Johnson* (App.1 Dist.1985) 216 Cal.Rptr. 502, 170 C.A.3d 604.

Under this section, once certification requirements are met, project is exempt from EIR requirements of both state and local agencies. *Seghesio v. Napa County* (1982) 185 Cal. Rptr. 224, 135 C.A.3d 371.

An environmental impact report is required in connection with coastal zone conservation commission's permit-granting function; there is no implied exemption of the EIR requirements of the Environmental Quality Act, § 21000 et seq., as regard the commission. *City of Coronado v. California Coastal Zone Conservation Commission* (1977) 138 Cal.Rptr. 241, 69 C.A.3d 570.

Timber companies were not freed from requirement of submitting environmental impact reports on timber harvesting operations carried on pursuant to Forest Practice Act (§ 4511 et seq.) on theory that that Act was "functional equivalent" of California Environmental Quality Act. *Natural Resources Defense Council, Inc. v. Arcata Nat. Corp.* (1976) 131 Cal.Rptr. 172, 59 C.A.3d 959.

This section provides for an abbreviated environmental review procedure, as an alternative to, and the functional equivalent of, a full-scale environmental impact report, by which the general intent and purpose of Chapter 1 of Division 13 of this Code are met. *Op.Leg.Counsel*, 1978, A.J. 17013.

2. Alternatives

One of the major functions of an environmental impact report is to assure that all reasonable alternatives to proposed projects are thoroughly assessed by responsible official-

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dom. City of Coronado v. California Coastal Zone Conservation Commission (1977) 138 Cal. Rptr. 241, 69 C.A.3d 570.

Neither requirements of Environmental Quality Act, § 21000 et seq., for either a full EIR or the abbreviated EIR permitted to be filed by environmentally oriented agencies are met by procedures used by coastal zone conservation commission in its permit-granting function where, among other things, there is no requirement that the commission propose projects containing alternatives and mitigation measures and there is no requirement that a project be disapproved if there are feasible alternatives which would substantially lessen any significant adverse impact on the environment. Id.

3. Regulatory programs, in general

In order to qualify to use the "functional equivalent" of a full-scale environmental impact report in its permit-granting function the coastal zone conservation commission must adopt and adhere to a regulatory program determined by the secretary of the resources agency to satisfy statutory criteria. City of

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Coronado v. California Coastal Zone Conservation Commission (1977) 138 Cal.Rptr. 241, 69 C.A.3d 570.

4. Pesticide regulatory program

Once the pesticide regulatory program is certified pursuant to this section, as provided by Stats.1978, c. 308, the issuance of a permit under the certified regulatory program would not be subject to challenge under any other section of the California Environmental Quality Act. Op.Leg. Counsel, 1978 A.J. 17013.

5. Time for response to objections

The ten-day time period in which Director of California Department of Forestry or his appropriate designee must respond to significant environmental objections as part of notice of approval of timber harvesting plan is duty imposed by regulations and must be strictly followed; thus, failure to proceed in manner required by law by following regulation was prejudicial abuse of discretion. Environmental Protection Information Center, Inc. v. Johnson (App. 1 Dist.1985) 216 Cal.Rptr. 502, 170 C.A.3d 604.

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

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

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

(i) That the project is consistent with a specific plan which has been adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Title 7 of the Government Code or, in the coastal zone, a local coastal program certified pursuant to Article 2 (commencing with Section 30510) of Chapter 6 of Division 20.

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

(iii) That the plan or program has been the subject of an environmental impact report.

(iv) That the environmental impact report is sufficiently detailed so that the significant adverse effects of the project on the environment and measures necessary to mitigate or avoid any such effects can be determined, including significant physical effects on existing structures and neighborhoods of histor-

ical or aesthetic significance, if any, exist in the area covered by the plan or program, and measures necessary to mitigate those effects.

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

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

(b) As used in this section:

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

(2) "Urbanized area" means a central city or cities and surrounding closely settled territory, as defined by the United States Department of Commerce Bureau of the Census in the Federal Register, Volume 39, Number 85, for Wednesday, May 1, 1974, at pages 15202-15203 and as periodically updated. (Added by Stats.1978, c. 760, p. 2378, § 2.5. Amended by Stats.1984, c. 1009, § 39.)

Historical Note

The 1984 amendment inserted "all of the following" at the end of the introductory paragraph of subd. (a)(1); deleted "Article 9 (commencing with Section 65500), and Article 10 (commencing with Section 65550)" following "with Section 65450)" in subd. (a)(1)(i); and

substituted "Article 8 (commencing with Section 65450)" for "Article 9 (commencing with Section 65500)" in subd. (a)(1)(ii).

Legislative intent relating to Stats.1984, c. 1009, see Historical Note under Educ. C. § 39002.

Library References

Health and Environment ⇨25.10(2).
C.J.S. Health and Environment §§ 70 et seq.,
119 et seq.

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

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

(Added by Stats.1978, c. 1075, p. 3296, § 1, eff. Sept. 26, 1978. Amended by Stats.1979, c. 961, p. 3307, § 1.)

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Historical Note

The 1979 amendment inserted "or long-range land use development plan" throughout the section; and inserted "or any state university or college, as defined in Section 30119, as" in the first sentence.

Cross References

Alternative procedure for residential development projects, see Government Code § 65457.

Library References

Health and Environment ⇐25.5(2).

C.J.S. Health and Environment §§ 61 et seq., 91 et seq., 106 et seq., 115 et seq., 125 et seq., 133 et seq.

§ 21080.10. Inapplicability of division; general plans and financial assistance for residential housing

This division does not apply to any of the following:

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

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

(Added by Stats.1980, c. 1154, p. 3829, § 17.5, eff. Sept. 29, 1980. Amended by Stats.1984, c. 1009, § 40; Stats.1985, c. 172, § 1.)

Historical Note

The 1984 amendment inserted "any of" in the introductory paragraph, and substituted "Section 65361" for "Section 65302.6" in subd. (a). twice inserted "or insurance", and substituted "public agency" for "agency" at the end of subd. (b).

The 1985 amendment substituted "does" for "shall" in the introductory paragraph; inserted "or the California Housing Finance Agency",

Legislative intent relating to Stats.1984, c. 1009, see Historical Note under Educ.C. § 39002.

Library References

Health and Environment ⇐25.5(2).

C.J.S. Health and Environment §§ 61 et seq., 91 et seq., 106 et seq., 115 et seq., 125 et seq., 133 et seq.

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

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

(Added by Stats.1982, c. 1463, p. 5626, § 6.)

Library References

Health and Environment ⇐25.5(2).

C.J.S. Health and Environment §§ 61 et seq.,
91 et seq., 106 et seq., 115 et seq., 125 et
seq., 133 et seq.

§ 21080.13. Railroad grade separation projects; application of division

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

(Added by Stats.1982, c. 58, p. 190, § 2, eff. Feb. 18, 1982.)

Library References

Health and Environment ⇐25.5(2).

C.J.S. Health and Environment §§ 61 et seq.,
91 et seq., 106 et seq., 115 et seq., 125 et
seq., 133 et seq.

§ 21080.15. Repealed by Stats.1983, c. 912, § 1, operative Jan. 1, 1986

Historical Note

The repealed section, added by Stats.1983, c. 912, § 1, relating to the inapplicability of Division 13 to certain projects at the ports of Los

Angeles and Long Beach, was repealed by its own terms on Jan. 1, 1986.

§ 21080.16. Folsom prison and Southern Maximum Security Prison at Tehachapi, changes which increase number of inmates per cell; inapplicability of division; duration of section

(a) This division does not apply to changes in the utilization of prison space which increase the number of inmates per cell, or changes in the prison or prison service facilities associated with those increases, at the new Folsom prison and the Southern Maximum Security Prison at Tehachapi.

(b) This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1990, deletes or extends that date.

(Added by Stats.1983, c. 912, § 2.)

Repeal

Section 21080.16 is repealed by its own terms on Jan. 1, 1990.

Library References

Health and Environment ⇐25.5(2).

C.J.S. Health and Environment §§ 61 et seq.,
91 et seq., 106 et seq., 115 et seq., 125 et
seq., 133 et seq.

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

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

(Added by Stats.1983, c. 1013, § 10, eff. Sept. 22, 1983.)

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Library References

Health and Environment ⇌25.5(2).

C.J.S. Health and Environment §§ 61 et seq., 91 et seq., 106 et seq., 115 et seq., 125 et seq., 133 et seq.

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

This division does not apply to the closing of any public school in which kindergarten or any of grades 1 through 12 is maintained.

(Added by Stats.1984, c. 1250, § 1.)

Library References

Health and Environment ⇌25.5(2).

C.J.S. Health and Environment §§ 61 et seq., 91 et seq., 106 et seq., 115 et seq., 125 et seq., 133 et seq.

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

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

(Added by Stats.1984, c. 750, § 1.)

Library References

Health and Environment ⇌25.5(2).

C.J.S. Health and Environment §§ 61 et seq., 91 et seq., 106 et seq., 115 et seq., 125 et seq., 133 et seq.

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

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

(Added by Stats.1984, c. 1650, § 1.)

Library References

Health and Environment ⇌25.5(2).

C.J.S. Health and Environment §§ 61 et seq., 91 et seq., 106 et seq., 115 et seq., 125 et seq., 133 et seq.

§ 21081. Necessary findings where environmental impact report identifies effects

Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been completed which identifies one or more significant effects thereof unless such public agency makes one, or more, of the following findings:

(a) Changes or alterations have been required in, or incorporated into, such project which mitigate or avoid the significant environmental effects thereof as identified in the completed environmental impact report.

(b) Such changes or alterations are within the responsibility and jurisdiction of another public agency and such changes have been adopted by such other agency, or can and should be adopted by such other agency.

(c) Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

(Added by Stats.1976, c. 1312, § 9.)

Cross References

Feasible, see § 21061.1.

Significant effect on environment, see § 21068.

Law Review Commentaries

Judicial development of the California Environmental Quality Act. Daniel P. Selmi (1984) 18 U.C.D.Law Rev. 197.

Library References

Health and Environment § 25.10.

C.J.S. Health and Environment §§ 64 to 90,
115 to 124.

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1. In general

When environmental impact report identifies that a proposed project will have a significant effect on the environment, this code mandates that the lead agency make finding that changes or alterations have been required which mitigate the significant effects or that such changes are within the responsibility of another agency and can be adopted by that agency, or that specific economic, social, or other considerations make the mitigation measures or project alternatives identified in the EIR infeasible. *San Bernardino Valley Audubon Soc., Inc. v. San Bernardino County* (App. 4 Dist.1984) 202 Cal.Rptr. 423, 155 C.A.3d 738.

Resolution of city council satisfied requirements of California Environmental Quality Act (§ 21000 et seq.) so as to permit implementation of master plan for development of municipal airport, where resolution contained findings that city council had reviewed and considered environmental impact report prior to making decision on master plan for development, that adverse environmental effects of development either did not exist, were of short-term duration, or were able to be mitigated, and that public interest in proceeding with

development outweighed any unmitigated impacts of development. *City of Lomita v. City of Torrance* (App. 2 Dist.1983) 196 Cal.Rptr. 538, 148 C.A.3d 1062.

For purposes of this section, "significant effect on the environment" means a substantial, or potentially substantial, adverse change in environment, and means effect on environment of persons in general and not particular persons such as resident of condominium located adjacent to proposed condominium. *Markley v. City Council of City of Los Angeles* (1982) 182 Cal.Rptr. 659, 131 C.A.3d 656.

Environmental impact report prepared in connection with application for permit to demolish building designated as state historical landmark and construct new building for use as retail outlet was not rendered inadequate by virtue of fact that it was based on data supplied by developer; nor did the report fail to properly discuss the alternatives. *Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco* (1980) 165 Cal.Rptr. 401, 106 C.A.3d 893.

County zoning administrator's decision to issue permit for proposed motel development was defective under Environmental Quality Act (§ 21000 et seq.) in view of administrator's failure to give environmental impact report a significant role in considering use permit application, and in absence of evidence of, or a discussion concerning, economic or social values in proposed project overriding the adverse

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effects disclosed by environmental impact report. *City of Carmel-By-The-Sea v. Monterey County Bd. of Sup'rs* (1977) 139 Cal.Rptr. 214, 71 C.A.3d 84.

If significant adverse environmental effects identified with respect to tentative map of subdivision relate to design of or proposed improvements of subdivision, local agency may not approve the map under this section. 68 Ops.Atty.Gen. 108, 5-17-85.

2. Alternatives

There was good faith, reasonable, and substantial compliance with requirement under California Environmental Quality Act of discussing no project alternative with respect to project which approved demolition of registered historic monument, where retention of monument maintained existing environment, environmental impact report included that option and four of stated alternatives, and agency thoroughly considered alternatives in several contexts. *Dusek v. Anaheim Redevelopment Agency* (App. 4 Dist.1985) 219 Cal.Rptr. 346, 173 C.A.3d 1029.

Findings of county board of supervisors, in support of its adoption of amendment of county's general plan, were inadequate in failing to discuss environmental impact report alternatives other than "No Development" alternative and in failing to explain why alternative that was mentioned was economically infeasible. *Village Laguna of Laguna Beach, Inc. v. Board of Sup'rs of Orange County* (1982) 185 Cal.Rptr. 41, 134 C.A.3d 1022.

Defendant city did not abuse its discretion under the California Environmental Quality Control Act in rejecting as infeasible various alternatives to community planning area project proposed by plaintiff city, since defendant city considered and reasonably rejected the project alternatives as infeasible in view of social and economic realities in the region. *City of Del Mar v. City of San Diego* (1982) 183 Cal.Rptr. 898, 133 C.A.3d 401.

3. Mitigation measures

California Department of Forestry's response to public objections to proposed timber harvesting plan, addressing sufficiency of measures to mitigate damage to Native American archaeological site located in harvest grove, was inadequate, where response contained no analysis of issues of protection of archaeological site, contained no specific information to communicate basis for rejection of objection, and referred to draft report relied upon by unknown archaeologists, one hired by logging company and other employed by very agency whose actions had been questioned, but did not make report available. *Environmental Protection Information Center, Inc. v. Johnson* (App. 1 Dist.1985) 216 Cal.Rptr. 502, 170 C.A.3d 604.

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Mitigation measure proposed in environmental impact report to be incorporated in general plan need not be literally incorporated into plan. *Twain Harte Homeowners Ass'n, Inc. v. Tuolumne County* (1982) 188 Cal.Rptr. 233, 138 C.A.3d 664.

4. Failure to make findings

California Department of Forestry's failure to consider impact of cumulative effects of past logging activities, combined with proposed harvest, on ecology of grove of proposed timber harvest, or its consideration of such effects under erroneous conception of cumulative impact, when it authorized logging of 75-acre grove of old-growth redwoods, some of which were over a thousand years old, was prejudicial abuse of discretion. *Environmental Protection Information Center, Inc. v. Johnson* (App. 1 Dist.1985) 216 Cal.Rptr. 502, 170 C.A.3d 604.

That draft environmental impact report "required" construction of improvements to mitigate traffic impacts relative to project, while, at developer's request, the word "assured" was substituted in city's findings on project did not eliminate requirement that traffic facility improvements be constructed; therefore, city did not fail to follow mandate of this section prohibiting approval of project where EIR identifies significant environmental effects unless specific findings are made as to such effects. *City of Poway v. City of San Diego* (App. 4 Dist.1984) 202 Cal.Rptr. 366, 155 C.A.3d 1037.

Where environmental impact report in connection with proposal to reclassify 190-acre parcel from permanent agricultural to agricultural-residential contained finding of potentially significant adverse environmental effects, the Sacramento County board of supervisors erred in failing to make findings of mitigation before it amended the general plan reclassifying the parcel. *Environmental Council of Sacramento v. Board of Sup'rs of Sacramento County* (1982) 185 Cal.Rptr. 363, 135 C.A.3d 428.

Failure of county board of supervisors to make one or more of required findings as to changes or alterations to mitigate or avoid significant environmental effects, as identified in environmental impact report concerning proposed commercial development in primarily agricultural area, was prejudicially erroneous. *Cleary v. Stanislaus County* (1981) 173 Cal.Rptr. 390, 118 C.A.3d 348.

College trustees' omission to make findings that necessity of athletic stadium project outweighed adverse environmental facts did not render its determination invalid, since trustees' failure to make findings was consistent with then existing law, given fact that provision of this section governing necessary findings where environmental impact report identifies effects could only be considered prospectively

because it did not by its terms provide for retroactive application; moreover, proceedings before trustees revealed more than ample consideration of all environmental consequences

of going forward with project. Residents Ad Hoc Stadium Committee v. Board of Trustees of California State University and Colleges (1979) 152 Cal.Rptr. 585, 89 C.A.3d 274.

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

In making the findings required by subdivision (c) of Section 21081, the public agency shall base its findings on substantial evidence in the record. (Added by Stats.1984, c. 1514, § 5.)

Library References

Health and Environment ⇨25.10(8).
C.J.S. Health and Environment §§ 78, 122.

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

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

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, eff. Dec. 5, 1972. Amended by Stats.1975, c. 242, § 1; Stats.1976, c. 1312, § 9.5.)

Historical Note

The 1975 amendment added the second sentence which relates to school districts.

The 1976 amendment, in the first sentence, inserted "and negative declarations".

Cross References

Negative declaration, see § 21064.

Ordinances,

Cities, see Government Code § 36900 et seq.

County, see Government Code § 25120 et seq.

Resources agency, see Government Code §§ 12800, 12805, 12807.

Rules and regulations, in general, see Government Code § 11342 et seq.

Secretary of resources agency, see Government Code §§ 12801, 12807.

State lands commission leases, compliance with rules under this section, see § 6371.

Administrative Code References

Environmental impact evaluation, see 10 Cal.Adm.Code 2820 et seq.

Rules and regulations, see 23 Cal.Adm. Code 500 et seq.

State guidelines, food and agriculture, see 3 Cal.Adm.Code 200 et seq.

State water resources control board, implementation of E.Q.A. of 1970, see 23 Cal.Adm.Code 2700 et seq.

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Library References

Health and Environment ⇐25.5, 25.10.

C.J.S. Health and Environment §§ 61 to 90, 94, 104, 110, 115 to 126, 128, 129, 132, 133, 135, 137 to 140, 142, 144 to 153.

Notes of Decisions

1. In general

City's response to property owner's application for use permit, especially prerequisites of noise analysis and environmental impact report, were reasonably necessary and not unduly oppressive and, combined with officially and unofficially expressed desire for public acquisition of the subject property, did not establish a taking without just compensation. *Trust of Three v. City of Emeryville* (D.C.1977) 430 F.Supp. 833.

It could not be implied that city council resolution required an environmental impact statement in building homes. *Gabric v. City of Rancho Palos Verdes* (1977) 140 Cal.Rptr. 619, 73 C.A.3d 183.

An environmental impact report is required in connection with coastal zone conservation commission's permit-granting function; there is no implied exemption of the EIR requirements of the Environmental Quality Act, § 21000 et seq., as regard the commission. *City of Coronado v. California Coastal Zone Conservation Commission* (1977) 138 Cal.Rptr. 241, 69 C.A.3d 570.

Applicability of State Environmental Quality Act cannot depend upon unfettered discretion of local agencies, which must act in accordance with state guidelines and objectives of the Act; their actions must also reflect stated intent of the enabling legislation. *Day v. City of Glendale* (1975) 124 Cal.Rptr. 569, 51 C.A.3d 817.

§ 21082.1. Environmental impact report or negative declaration; preparation by public agency

Any environmental impact report or negative declaration prepared pursuant to the requirement of this division shall be prepared directly by, or under contract to, a public agency.

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

(Added by Stats.1976, c. 1312, § 9.6. Amended by Stats.1981, c. 480, p. 1823, § 2.)

Historical Note

The 1981 amendment inserted "or other comments" in the first and second sentences of the second paragraph, and inserted "shall be considered by the public agency" in the second sentence of the second paragraph.

No legislative finding that 1976 addition declaratory of existing law, see Historical Note under § 21002.

Section 4 of Stats.1981, c. 480, p. 1824, provided:

"The Legislature hereby finds and declares that the amendments made to Section 21082.1 of the Public Resources Code by Section 2 of this act are intended to clarify that public agencies preparing environmental impact reports

or negative declarations are required by law to consider any comments they receive with respect to the environmental impact report or negative declaration which is under preparation and to clarify further that those agencies have no affirmative statutory responsibility to seek comments from organizations or individual members of the public or to consider comments at any particular point in time prior to completion of the environmental impact report or negative declaration. With respect to this issue, the amendments to Section 21082.1 are intended to clarify any uncertainties which may have resulted from the holding in *Woodland Hills Residents Assn., Inc. v. City Council*, 26 Cal.3d 938."

Cross References

Environmental impact report, see § 21061.
Negative declaration, see § 21064.
Person, see § 21066.

Administrative Code References

Activities not requiring an initial study, see 20 Cal.Adm. Code 2304.
Contents of environmental impact reports, see 14 Cal.Adm. Code 15120 et seq.
Implementation of the California Environmental Quality Act of 1970, see 14 Cal.Adm. Code 1681 et seq.
Initial study, see 20 Cal.Adm. Code 2305.
Negative declaration, see 20 Cal.Adm. Code 2306.
Preparation and procedure, see 20 Cal.Adm. Code 2307.

Library References

Health and Environment ⇨25.10(6).
C.J.S. Health and Environment §§ 77, 122.

Notes of Decisions

1. In general

Negative declaration which was filed by city, which asserted that ordinance amending city's waste discharge regulations would not have significant effect on environment and which attached and incorporated copy of environmental assessment prepared by city's director of public works was not defective. Pacific Water Conditioning Ass'n v. City Council of

City of Riverside (1977) 140 Cal.Rptr. 812, 73 C.A.3d 546.

If after an initial study a public agency determines that a proposed project which could possibly have significant effect on environment will, in fact, not have a significant effect, agency may so declare in negative declaration and no environmental impact report is required. Id.

§ 21082.2. Significant effect on environment; determination

(a) The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in the record. The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence before the agency that the project may have a significant effect on the environment.

(b) Statements in an environmental impact report and comments with respect to an environmental impact report shall not be deemed determinative of whether the project may have a significant effect on the environment.

(Added by Stats.1984, c. 1514, § 6.)

Library References

Health and Environment ⇨25.10(2), (5).
C.J.S. Health and Environment §§ 70 et seq.,
75, 76, 119 et seq., 122.

Notes of Decisions

1. In general

Alleged conflict between proposed shopping center project and express policies and land use objectives of city's general plan did not necessarily require preparation of environmen-

tal impact report. Citizens Ass'n for Sensible Development of Bishop Area v. County of Inyo (Crumpler and Kruger Commercial Real Estate, Inc.) (App. 4 Dist.1985) 217 Cal.Rptr. 893, 172 C.A.3d 151.

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

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

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

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

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

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

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

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

The Office of Planning and Research shall develop and prepare the proposed guidelines as soon as possible and shall transmit them immediately to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt the guidelines pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, the guidelines shall not be adopted without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, eff. Dec. 5, 1972. Amended by Stats.1976, c. 1312, § 10; Stats.1981, c. 714, p. 2749, § 370.)

Historical Note

The 1976 amendment, in the first paragraph, inserted "and negative declarations"; in the second sentence of the second paragraph following "a finding" it substituted "that a project may have a" for "of"; it added the second sentence to subd. (b) of the second paragraph and it added the fourth paragraph relating to

the inclusion of criteria for public agencies in the guidelines.

The 1981 amendment created the second and third sentences in the last paragraph by substantially rewriting the second sentence therein which had read: "No later than 60 days after the effective date of this section the Secretary

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of the Resources Agency shall certify and adopt such guidelines pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1, Division 3, Title 2 of the Government Code, which shall become effective upon the filing thereof, provided that such guidelines shall not

be adopted without compliance with Sections 11423, 11424, and 11425 of the Government Code."

Derivation: Former § 21103, added by Stats. 1970, c. 1433, p. 2782, § 1.

Cross References

Amendment of guidelines, see §§ 21086, 21087.

Environmental impact report, see § 21061.

Lead agency, see §§ 21067, 21165.

Negative declaration, see § 21064.

Office of planning and research, see Government Code § 65025 et seq.

Administrative Code References

Guidelines, see 14 Cal. Adm. Code 15000 et seq.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Compatibility of economic and environmental objectives in governmental decision making. (1974) 5 Pacific L.J. 92.

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Environmental decision making under CEQA. (1977) 24 U.C.L.A. Law Rev. 838.

Judicial development of the California Environmental Quality Act. Daniel P. Selmi (1984) 18 U.C.D. Law Rev. 197.

Statutory requirements of California Environmental Quality Act. (1975) 8 Loyola L.Rev. 736.

Library References

Health and Environment ⇄25.10.

C.J.S. Health and Environment §§ 64 to 90, 115 to 124.

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Ana v. City of Garden Grove (1979) 160 Cal. Rptr. 907, 100 C.A.3d 521.

Administrative guidelines making optional the applicability of environmental impact report requirement whenever right-of-way or construction funds were budgeted for highway project prior to November 23, 1970 does not provide a lawful alternative to the preparation of an initial environmental impact report. People By and Through Dept. of Public Works v. Bosio (1975) 121 Cal.Rptr. 375, 47 C.A.3d 495.

1. In general

Coastal commission, in denying property owners' application for a permit for their minor subdivision, erroneously relied on the precedential impact of the owners' proposed subdivision and the difficulty of rejecting other future requests for similar minor subdivisions; the commission clearly has the authority to prohibit any future development whose cumulative effect is both significant and adverse. Billings v. California Coastal Commission (1980) 163 Cal.Rptr. 288, 103 C.A.3d 729.

Amendment of city general plan was "project" which was subject to California Environmental Quality Act and section of guidelines of resources agency providing for such application of the Act was valid. City of Santa

2. Delegation of powers

Delegation to resources agency of power to adopt implementing guidelines under California Environmental Quality Act did not constitute improper delegation of legislative power. City of Santa Ana v. City of Garden Grove (1979) 160 Cal.Rptr. 907, 100 C.A.3d 521.

3. Environmental effect—In general

In determining whether to grant approval of proposed shopping center development, county board was to consider environmental consequences of economic and social changes; specifically, board was to consider whether proposed shopping center would take business away from downtown shopping area and

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thereby cause business closures and eventual physical deterioration of the downtown area. Citizens Ass'n for Sensible Development of Bishop Area v. County of Inyo (Crumpler and Kruger Commercial Real Estate, Inc.) (App. 4 Dist.1985) 217 Cal.Rptr. 893, 172 C.A.3d 151.

Even if it were assumed that two-story homes were environmentally detrimental, the time span over which changes might take place was fact to be considered in determining "environmental effect." Gabric v. City of Rancho Palos Verdes (1977) 140 Cal.Rptr. 619, 73 C.A.3d 183.

Requirements of Environmental Quality Act cannot be avoided by chopping up proposed projects into bite size pieces which, individually considered, might be found to have no significant effect on environment or to be only ministerial. Plan for Arcadia, Inc. v. Arcadia City Council (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

Public agencies using salt to deice roads in Lake Tahoe region are required to prepare an environmental impact report because such use has significant effect upon environment. 58 Ops.Atty.Gen. 77, 1-22-75.

4. — Cumulative impact, environmental effect

Reason for requirement that Environmental Impact Report discuss cumulative effect upon environment of subject project in conjunction with other closely related past, present and reasonably foreseeable probable future projects, under West's Ann.Cal.Pub.Res.Code § 21083, is that consideration of effects of project or projects as if no other existed would encourage piecemeal approval of several projects that, taken together, could overwhelm natural environment and disastrously overburden man-made infrastructure and vital community services. Las Virgenes Homeowners Federation, Inc. v. Los Angeles County By and Through Bd. of Sup'rs (Currey-Riach Co.) (App. 2 Dist.1986) 223 Cal.Rptr. 18, 177 C.A.3d 300.

5. Adverse effects

The negative declaration of planning department and the reasons why it was made should have been considered and sustained by city council, unless as matter of law it appeared that project, on application for building permit for a two-story single-family residence, as a whole would have a substantial adverse impact on environment. Gabric v. City of Rancho Palos Verdes (1977) 140 Cal.Rptr. 619, 73 C.A.3d 183.

Adverse effect on persons evicted from beach as result of clearing beach structures and restoring area to its natural condition could not alone require filing of environmental impact report, but issue was whether demolition of structures would adversely affect environment of persons in general, not particular persons.

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Topanga Beach Renters Ass'n v. Department of General Services (1976) 129 Cal.Rptr. 739, 58 C.A.3d 188.

6. Cumulative effects

California Department of Forestry's failure to consider impact of cumulative effects of past logging activities, combined with proposed harvest, on ecology of grove of proposed timber harvest, or its consideration of such effects under erroneous conception of cumulative impact, when it authorized logging of 75-acre grove of old-growth redwoods, some of which were over a thousand years old, was prejudicial abuse of discretion. Environmental Protection Information Center, Inc. v. Johnson (App. 1 Dist.1985) 216 Cal.Rptr. 502, 170 C.A.3d 604.

7. Reports

Ordinarily, the requirement of furnishing an environmental impact statement under California State Environmental Quality Act and all of its progeny is inapplicable to the construction of a family home. Gabric v. City of Rancho Palos Verdes (1977) 140 Cal.Rptr. 619, 73 C.A.3d 183.

County water district which entered into contract with general contractor for construction of water treatment plant was subject to implied covenant to provide environmental impact report as necessary condition to contractor's performance, and contractor was creditor beneficiary under contract entered into between water district and engineering company for preparation of such a report; therefore, judgment dismissing without leave to amend, contractor's breach of contract complaint against engineering company would be reversed and cause remanded to permit contractor to file amended complaint. COAC, Inc. v. Kennedy Engineers (1977) 136 Cal.Rptr. 890, 67 C.A.3d 916.

One-time chance destruction of a few shrubs in course of demolition of buildings on beach in order to return beach to its natural condition could not require a filing of environmental impact report. Topanga Beach Renters Ass'n v. Department of General Services (1976) 129 Cal.Rptr. 739, 58 C.A.3d 188.

Agency's negative declaration that project will not have substantial adverse impact on environment and thus that environmental impact report is not required will be sustained unless as matter of law it appears that project as a whole will have substantial adverse impact on environment. Running Fence Corp. v. Superior Court of California, Sonoma County (1975) 124 Cal.Rptr. 339, 51 C.A.3d 400.

Under Environmental Quality Act requiring local agency prior to completing environmental impact report to consult with and obtain comments from any public agency which has jurisdiction with respect to project and with

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any person who has special expertise with respect to environmental impact involved and guidelines for Act requiring final report to contain comments received and the response to environmental points and specify why suggestions were not accepted, county was required in final environmental impact report regarding proposed subdivision to respond with specificity as to disposition of environmental issues raised to draft report and set forth reasons why such objections were rejected and why it considered development of project to be of overriding importance and its failure to do so rendered the final report fatally defective. *People v. County of Kern* (1974) 115 Cal.Rptr. 67, 39 C.A.3d 830.

Mendocino county annual budgeting and expenditure of funds for trapping animals as part of a predatory animal damage control program constitutes a "project" which may have a significant effect on the environment within the meaning of §21065 so that the environmental impact report must be prepared prior to such expenditures. 59 Ops.Atty.Gen. 173, 3-30-76.

Authorization by the public utilities commission for a 111 percent southern pacific transportation company rate increase would constitute a project within the meaning of the California Environmental Quality Act and may have a significant effect on the environment to require PUC preparation of an environmental impact report. 58 Ops.Atty.Gen. 708, 7-15-75.

§ 21083.2. Effect on archaeological resources; environmental impact report; mitigation measures; duration of section

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

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

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

(c) To the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, mitigation measures shall be required as provided in this subdivision. The project applicant shall provide a guarantee to the lead agency to pay one-half the estimated cost of mitigating the significant effects of the project on unique archaeological resources. In determining payment, the lead agency shall give due consideration to the in-kind value of project design or expenditures that are intended to permit any or all archaeological resources or California Native American culturally significant sites to be preserved in place or left in an undisturbed state. When a final decision is made to carry out or approve the project, the lead agency shall, if necessary, reduce the specified mitigation measures to those which can be funded with the money guaranteed by the project applicant plus the

money voluntarily guaranteed by any other person or persons for those mitigation purposes. In order to allow time for interested persons to provide the funding guarantee referred to in this subdivision, a final decision to carry out or approve a project shall not occur sooner than 60 days after completion of the recommended special environmental impact report required by this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) As used in this section, "nonunique archaeological resource" means an archaeological artifact, object, or site which does not meet the criteria set forth in subdivision (g). A nonunique archaeological resource need be given no further consideration, other than the simple recording of its existence by the lead agency if it so elects.

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

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

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

(l) This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

(Added by Stats.1982, c. 1623, p. 6486, § 1. Amended by Stats.1985, c. 287, § 1.)

Repeal

Section 21083.2 is repealed on Jan. 1, 1994, according to its terms.

Historical Note

Stats.1984, c. 1289, amending provisions of Article 2 of Chapter 1 of Division 5 (commencing with section 5020) of this code, provided in § 7:

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

The 1985 amendment inserted "any of the following" at the end of the introductory para-

graph of subd. (b); inserted "units" at the end of subd. (e)(3)(C); divided the first sentence of subd. (f) into the first and second sentences by substituting "However" for "provided that" and inserted "or she" in the second sentence; substituted "(g)" for "(e)" in the first sentence of subd. (h); substituted "does" for "shall" in the first and second sentences of subd. (j); and twice substituted "1994" for "1986" and also substituted "enacted" for "chaptered" in subd. (l).

Library References

Health and Environment ⇐25.10(5), (6).
C.J.S. Health and Environment §§ 75 to 77,
122.

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

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

Where a community plan is the basis for application of this section, any rezoning action consistent with the community plan shall be a project subject to exemption from this division in accordance with the provisions of this subdivision.

(b) As used in subdivision (a), "community plan" means a part of the general plan of a city or county which (1) applies to a defined geographic portion of the total area included in the general plan, (2) complies with Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code by including or referencing each of the mandatory elements specified in Section 65302 of the Government Code, and (3) contains specific development policies adopted for the area included in the community plan and identifies measures to implement those policies, so that the policies which will apply to each parcel can be determined.

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

(d) Any community plan adopted prior to January 1, 1982, which does not comply with the definitional criteria specified in subdivision (b) may be amended to comply with that criteria, in which case, the plan shall be deemed a "community plan" within the meaning of subdivision (b); provided, that, (1) an environmental impact report was certified for adoption of the plan and (2), at the time of the conforming amendment, the environmental impact report has not been held inadequate by a court of this state, and the environmental impact report is not the subject of pending litigation challenging its adequacy.

(Added by Stats.1981, c. 962, p. 3656, § 1. Amended by Stats.1982, c. 1346, p. 5034, § 8; Stats.1984, c. 440, § 1.)

Historical Note

The 1982 amendment substituted "project to the mitigation measures identified in the prior environmental impact report" for "project prepared" in the first sentence of subd. (c).

The 1984 amendment inserted the second and third sentences in subd. (a); and inserted "community" preceding "plan adopted prior to" in subd. (d).

Law Review Commentaries

Judicial development of the California Environmental Quality Act. Daniel P. Selmi (1984) 18 U.C.D.Law Rev. 197.

Library References

Health and Environment ⇨25.10(1), (4).
Municipal Corporations ⇨43.
C.J.S. Health and Environment §§ 67 et seq.,
74, 119 et seq.

C.J.S. Municipal Corporations §§ 83, 84.

§ 21083.5. Environmental impact statement or report; submission in lieu of impact report

The guidelines prepared and adopted pursuant to Section 21083 shall provide that, when an environmental impact statement has been, or will be, prepared for the same project pursuant to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) and implementing regulations, or an environmental impact report has been, or will be, prepared for the same project pursuant to the requirements of the Tahoe Regional Planning Compact (Section 66801 of the Government Code) and implementing regulations, all or any part of that statement or report may be submitted in lieu of all or any part of an environmental impact report

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required by this division, if that statement or report, or the part which is used, complies with the requirements of this division and the guidelines adopted pursuant thereto.

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, eff. Dec. 5, 1972. Amended by Stats.1977, c. 1200, p. 4000, § 7; Stats.1984, c. 928, § 2.)

Historical Note

The 1977 amendment substituted "shall" for "may" following "pursuant to Section 21083".

The 1984 amendment substantially rewrote the section which had read:

"The guidelines prepared and adopted pursuant to Section 21083 shall provide that when an environmental impact statement has been, or will be, prepared for the same project pursu-

ant to the requirements of the National Environmental Policy Act of 1969 and implementing regulations thereto, all or any part of such statement may be submitted in lieu of all or any part of an environmental impact report required by this division, provided that such statement, or the part thereof so used, shall comply with the requirements of this division and the guidelines adopted pursuant thereto."

Cross References

Environmental impact report, see § 21061.

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Library References

Health and Environment ⇨25.10(2).
C.J.S. Health and Environment §§ 70 et seq.,
119 et seq.

Notes of Decisions

1. In general

When an environmental impact statement has been prepared for the same project pursuant to requirements of National Environmental Policy Act (42 U.S.C.A. 4321 et seq.), any or all of that statement may be submitted in lieu

of all or any part of an environmental impact report, provided that the statement or the part used complies with requirements of Environmental Quality Act (§ 21000 et seq.). *Bakman v. State, Dept. of Transp.* (1979) 160 Cal.Rptr. 583, 99 C.A.3d 665.

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

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

(Added by Stats.1977, c. 1200, p. 4001, § 8.)

Library References

Health and Environment ⇨25.10.
C.J.S. Health and Environment §§ 64 to 90,
115 to 124.

Notes of Decisions

1. In general

Where combined environmental impact report and federal environmental impact statement is prepared, and an additional time is required to prepare the combined document, though less total time than to have the state

and federal agencies prepare six separate documents, the requirement that lead agencies complete and certify the environmental impact reports within one year may be waived. PG&E (1978) 1 Cal.P.U.C.2d 77.

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

In the event that a project requires both an environmental impact report prepared pursuant to the requirements of this division and an environmental impact statement prepared pursuant to the requirements of the National Environmental Policy Act of 1969, the lead agency shall, whenever possible, use the environmental impact statement as such environmental impact report as provided in Section 21083.5. In order to implement the provisions of this section, each lead agency to which this section is applicable shall consult, as soon as possible, with the agency required to prepare such environmental impact statement.

(Added by Stats.1977, c. 1200, p. 4001, § 9.)

Library References

Health and Environment ⇐25.10(2).
C.J.S. Health and Environment §§ 70 et seq.,
119 et seq.

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

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

(b) No project of the Department of Transportation which will result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within an official state scenic highway, as designated pursuant to Section 262 of the Streets and Highways Code, shall be exempted from this division pursuant to subdivision (a).

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, eff. Dec. 5, 1972. Amended by Stats.1976, c. 1312, § 10.5.)

Historical Note

The 1976 amendment designated the original text as subd. (a) and added subd. (b).

Cross References

Addition or deletion of exempt classes or projects, see § 21086.
Department of transportation, see Government Code § 14000 et seq.
Disaster damage repair, exemption of projects, see § 21172.
Project, see § 21065.

Administrative Code References

Activities not requiring an initial study, see 20 Cal. Adm. Code 2304.
 Applicability and exemptions, state water resources control board, see 23 Cal. Adm. Code 2710 et seq.
 Categorical exemptions, see 14 Cal. Adm. Code 1684 et seq., 15300 et seq.
 Initial study by state water resources control board, see 23 Cal. Adm. Code 2721.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution. (1974) 5 Pacific L.J. 26.
 Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.
 Friends of Mammoth: Vox populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 137.
 Judicial development of the California Environmental Quality Act. Daniel P. Selmi (1984) 18 U.C.D.Law Rev. 197.
 Land development and the environment: Subdivision Map Act. (1974) 5 Pacific L.J. 55.

Library References

Health and Environment ⇐25.10.
 C.J.S. Health and Environment §§ 64 to 90, 115 to 124.

Notes of Decisions

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The construction of a drill track and a new grade crossing are not projects included in the categorical exemptions set forth in the California Environmental Quality Act guidelines issued by the California resources agency. App. of Southern Pacific Transportation Co. (1973) 75 Cal.P.U.C. 548.

2. Due process

Procedures by which city determined that lot split was exempt from Environmental Quality Act (§ 21050 et seq.) and by which planning commission declined any further input from homeowners association, of which adjacent landowner was a member, or the public generally, and without further notice to adjacent landowner or other adjacent landowners, voted to approve lot split deprived adjacent landowner of his due process rights to notice and hearing. Kennedy v. City of Hayward (1980) 165 Cal.Rptr. 132, 105 C.A.3d 953.

3. Negative declaration

Determination that a project does not require an environmental impact report, when that project is not exempt from environmental study under Environmental Quality Act or guidelines, must take form of a written negative declaration. No Oil, Inc. v. City of Los Angeles (1974) 118 Cal.Rptr. 34, 529 P.2d 66, 13 Cal.3d 68.

4. Public utilities commission

The construction of an industrial spur track and a new grade crossing are not projects included in the categorical exemptions set forth in the guidelines; it is not within the public utilities commission's power to add to, or delete from the list of categorical exemp-

1. In general

Amendment of city general plan was "project" which was subject to California Environmental Quality Act and section of guidelines of resources agency providing for such application of the Act was valid. City of Santa Ana v. City of Garden Grove (1979) 160 Cal. Rptr. 907, 100 C.A.3d 521.

Exemption from requirements of Environmental Quality Act for a project not having an effect on environment is not limited to a project not having a significant adverse effect on environment. Wildlife Alive v. Chickering (1976) 132 Cal.Rptr. 377, 553 P.2d 537, 18 C.3d 190.

Guidelines established by state resources agency, which took effect on February 10, 1973, were not applied retroactively to decisions of court or city council rendered before guidelines went into effect, but court made use of guidelines as a suggested interpretation of Environmental Quality Act and as an illustration of procedures which resource agency finds necessary to enforcement of statute. No Oil, Inc. v. City of Los Angeles (1974) 118 Cal.Rptr. 34, 529 P.2d 66, 13 Cal.3d 68.

tions. App. of Southern Pacific Transportation Co. (1973) 75 Cal.P.U.C. 570.

If a specific project subject to public utilities commission approval may have, as shown from past experience, a significant effect on the environment, the public utilities commission cannot properly include it in its list of categorical exemptions. Petitions of Peninsula Commute and Transit Committee, et al. (1973) 75 Cal.P.U.C. 243.

When a project within a general categorical exemption may have a substantial environmental impact, the public utilities commission would exercise its general jurisdiction and require a full development of environmental considerations in the proceeding. In re Environmental Impact Reports (1973) 75 Cal.P.U.C. 133.

5. Environmental effect

County board of supervisors could not amend district rules relaxing oxides of nitrogen emission standards for certain facilities in county based on its determination that relaxation of standards was categorically exempt from Environmental Quality Act (§ 21000 et seq.) as action taken for protection of environment and of natural resources since doubling of oxides of nitrogen emissions allowed into atmosphere could have significant effect on environment. International Longshoremen's and Warehousemen's Union Local 35, v. Board of Sup'rs (1981) 171 Cal.Rptr. 875, 116 C.A.3d 265.

Where there was no evidence to show that any impact on the environment from replacement of cement manufacturing facilities would not be mitigated, and no evidence to show that the effects remaining after such mitigation would have a substantial adverse impact on the environment, conclusion of county board of supervisors that granting replacement facilities an exemption from the Environmental Quality Act (§ 21000 et seq.) would have no substantial adverse impact on the environment was unassailable. Dehne v. Santa Clara County (1981) 171 Cal.Rptr. 753, 115 C.A.3d 827.

City council's conclusion that permitting a two-story home would "affect the character" of the neighborhood as used by city in its decision and based on testimony was not a decision of adverse environmental effect but was a conclusion relevant to zoning and properly controllable by zoning ordinance. Gabric v. City of Rancho Palos Verdes (1977) 140 Cal.Rptr. 619, 73 C.A.3d 183.

Where there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption from the requirements of the Environmental Quality Act is improper. Wildlife Alive v. Chickering (1976) 132 Cal.Rptr. 377, 553 P.2d 537, 18 C.3d 190.

Assertions of objectors to proposed land division, which involved possible construction of two dwellings on adjoining lots of over 2½ acres each in a rural area, even if exaggerated or untrue were sufficient to remove project from class where it could be said with certainty that there was no possibility that the activity in question may have a significant effect on the environment within regulation exempting such projects from necessity of an environmental impact report. Myers v. Board of Sup'rs of Santa Clara County (1976) 129 Cal.Rptr. 902, 58 C.A.3d 413.

6. Home construction

Ordinarily, the requirement of furnishing an environmental impact statement under California State Environmental Quality Act and all of its progeny is inapplicable to the construction of a family home. Gabric v. City of Rancho Palos Verdes (1977) 140 Cal.Rptr. 619, 73 C.A.3d 183.

7. Waste discharge

Cease and desist order issued to city by regional water quality control board and directing compliance with waste discharge requirements of board was exempt from requirements of the Environmental Quality Act under Administrative Code exemption for actions authorized by state law to assure maintenance, restoration, enhancement and protection of environment and natural resources; thus, environmental impact report did not have to be prepared and considered prior to issuance of order. Pacific Water Conditioning Ass'n v. City Council of Riverside (1977) 140 Cal.Rptr. 812, 73 C.A.3d 546.

8. Deannexation

Proposed deannexation, a "project" under the California Environmental Quality Act, was not exempt from CEQA and environmental impact report requirements by the fact that one step in the entire process requires submittal of the deannexation question to the voters of the county. People ex rel. Younger v. Local Agency Formation Commission of San Diego County (1978) 146 Cal.Rptr. 400, 81 C.A.3d 464.

9. Hunting and fishing

Fish and game commission's activity in setting hunting and fishing seasons has potential for significant environmental impact, both favorable and unfavorable, and thus is not an activity exempt from requirements of Environmental Quality Act. Wildlife Alive v. Chickering (1976) 132 Cal.Rptr. 377, 553 P.2d 537, 18 C.3d 190.

10. Public roads

If county board of supervisors should decide to widen existing public roads in service area or to acquire private road easements, by con-

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demnation or dedication, and improve them, such an action would not qualify for exemption from the California Environmental Quality Act, and compliance therewith would be required either by the preparation and consideration of an environmental impact report or by a negative declaration. *Erven v. Riverside County Bd. of Sup'rs* (1975) 126 Cal.Rptr. 285, 53 C.A.3d 1004.

Action by county board of supervisors authorizing an additional type of extended service (road improvement and maintenance) in certain county service area was exempt from the California Environmental Quality Act under the implementing guidelines issued by the state resources agency, where the board action

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merely authorized repair and maintenance of public roads in the service area. *Id.*

11. Wage orders

Industrial welfare commission did not violate California Environmental Quality Act (§ 21000 et seq.) in promulgating 1980 wage orders, since such orders were specifically exempted from statutory requirements (of C.E. Q.A.) under California Administrative Code (former § 15124 of title 14; repealed). *Industrial Welfare Commission v. Superior Court of Kern County* (1980) 166 Cal.Rptr. 331, 613 P.2d 579, 27 C.3d 690, appeal dismissed and certiorari denied 101 S.Ct. 602, 449 U.S. 1029, 66 L.Ed.2d 492, certiorari denied 101 S.Ct. 610, 449 U.S. 1034, 66 L.Ed.2d 496.

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

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

(Added by Stats.1982, c. 1375, p. 5255, § 1.)

Historical Note

Former § 21085, added by Stats.1972, c. 1154, p. 2272, § 2.3, amended by Stats.1976, c. 1312, p. 5894, § 11, providing exemptions from Division 13, was repealed by Stats.1979, c. 697, p. 2173, § 2.

§§ 21085.5, 21085.6. Repealed by Stats.1979, c. 697, p. 2173, §§ 3, 4

Historical Note

Section 21085.5, added by Stats.1978, c. 791, p. 2541, § 1, exempted certain railroad passenger service and facilities. Section 21085.6, added by Stats.1978, c. 791, p. 2542, § 1.5, exempted state or regional transportation improvement programs.

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

A public agency may, at any time, request the addition or deletion of a class of projects, to the list designated pursuant to Section 21084. Such a request shall be made in writing to the Office of Planning and Research and shall include information supporting the public agency's position that such class of projects does, or does not, have a significant effect on the environment.

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

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

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, eff. Dec. 5, 1972.)

Cross References

Office of planning and research, see Government Code §§ 65025, 65037 et seq.
Project, see § 21065.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Notes of Decisions

1. In general

Where unquestioned real purpose of owner of parcels of land seeking approval of land division from county board of supervisors was to create three new parcels of land, formerly used for grazing cattle, for use as homesites the proposed land division involved something different from a minor alteration in condition of land, and conclusion that application involved a minor land division within meaning of county environmental administrative handbook and was entitled to a categorical exemption did not conform to the Environmental Quality Act and the state environmental impact report guidelines. *Myers v. Board of Sup'rs of Santa Clara County* (1976) 129 Cal.Rptr. 902, 58 C.A.3d 413.

The construction of an industrial spur track and a new grade crossing are not projects

included in the categorical exemptions set forth in the guidelines; it is not within the public utilities commission's power to add to, or delete from the list of categorical exemptions. *App. of Southern Pacific Transportation Co.* (1973) 75 Cal.P.U.C. 570.

Reference in Rule 17.1(e) of the public utility commission's rules of practice and procedure to grade crossings is limited to alterations of existing crossings and any enlargement or deletion from that reference is outside the public utilities commission's power as amounting to an addition or deletion to the list of categorical exemptions in the California Environmental Quality Act. *App. of Southern Pacific Transportation Co.* (1973) 75 Cal.P.U.C. 548.

§ 21087. Reviewal of guidelines; changes or amendments

The Office of Planning and Research shall periodically review the guidelines adopted pursuant to Section 21083 and shall recommend proposed changes or amendments to the Secretary of the Resources Agency. Changes or amendments to the guidelines shall be adopted by the secretary in conformance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, eff. Dec. 5, 1972. Amended by Stats.1976, c. 1312, § 12; Stats.1981, c. 714, p. 2750, § 371.)

Historical Note

The 1976 amendment, at the end of the second sentence substituted the words which follow "Secretary of the Resources Agency in" for "the same manner as provided in Section 21083 for the adoption of the original guidelines."

The 1981 amendment substituted "secretary in conformance with Chapter 3.5 (commencing

with Section 11340) of Part 1 of Division 3 of" for "Secretary of the Resources Agency in conformance with Chapter 4.5 (commencing with Section 11371) of Part 1, Division 3" in the second sentence.

Cross References

Office of planning and research, see Government Code §§ 65025, 65037 et seq.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Library References

Administrative Law and Procedure ¶381 et seq.

C.J.S. Public Administrative Law and Procedure §§ 87, 91.

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

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

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, eff. Dec. 5, 1972.)

Cross References

Guidelines, see § 21083.
Person, see § 21066.
Project, see § 21065.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

§ 21089. Fees

A public agency may charge and collect a reasonable fee from any person proposing a project subject to the provisions of this division in order to recover the estimated costs incurred by the public agency in preparing a negative declaration or an environmental impact report for such project.

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, eff. Dec. 5, 1972. Amended by Stats.1976, c. 1312, § 13.)

Historical Note

The 1976 amendment inserted the words "a negative declaration or."

Cross References

Negative declaration, see § 21064.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Environmental impact statements, zoning and low-cost housing. (1973) 46 So.Cal.L.Rev. 754.

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Notes of Decisions

1. In general

The question who is the proponent of a project is a complex one, especially in com-

plaint and investigation cases, and makes necessary the use of the motion procedure to determine which party is the proponent with

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respect to the payment of fees for preparing the environmental impact report; proponents may challenge the reasonableness of a proposed deposit fee under the motion procedure. In re Environmental Impact Reports (1973) 75 Cal.P.U.C. 133.

The department of forestry may not lawfully charge a filing fee to cover its cost in processing timber harvesting plans. 64 Ops.Atty.Gen. 864, 11-3-81.

§ 21092

§ 21090. Redevelopment plan deemed single project

For all purposes of this division all public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan shall be deemed a single project.

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, eff. Dec. 5, 1972.)

Cross References

Project, see § 21065.

Notes of Decisions

1. In general

Requirements of Environmental Quality Act cannot be avoided by chopping up proposed projects into bite size pieces which, individually considered, might be found to have no sig-

nificant effect on environment or to be only ministerial. Plan for Arcadia, Inc. v. Arcadia City Council (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

§ 21090.1. Geothermal exploratory project deemed separate and distinct from field development project

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

(Added by Stats.1978, c. 1271, p. 4124, § 5.)

§ 21091. Blank

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

Any public agency which is preparing an environmental impact report or a negative declaration shall provide public notice of such fact within a reasonable period of time prior to final adoption by the public agency of such environmental impact report or negative declaration. Notice shall be given to all organizations and individuals who have previously requested such notice and shall also be given by at least one of the following procedures:

(a) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project.

(b) Posting of notice by the public agency on- and off-site in the area where the project is to be located.

(c) Direct mailing to the owners of contiguous property as such owners are shown on the latest equalized assessment roll.

The alternatives for providing notice specified in subdivisions (a) to (c), inclusive, shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this

section preclude a public agency from providing the public notice required herein at the same time and in the same manner as public notice otherwise required by law for such project.

(Added by Stats.1976, c. 1312, § 15. Amended by Stats.1980, c. 131, p. 303, § 1, eff. May 28, 1980.)

Historical Note

The 1980 amendment added "as such owners are shown on the latest equalized assessment roll" to subd. (c).

Section 4 of Stats.1980, c. 131, p. 304, provided:

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

"In addition, insofar as Plaggmier may also raise procedural uncertainties about the manner in which public notice requirements must be met generally, the Legislature hereby affirms the general principle that statutory requirements for public notice are fulfilled if the public agency responsible for giving the notice makes a good faith effort to follow the procedures prescribed by law for giving the notice, and that, in such circumstances, failure of any person to receive such notice shall not affect the validity of any action subsequently taken by such agency."

Cross References

Environment, see § 21060.5.

Environmental impact report, see § 21061.

Negative declaration, see § 21064.

Newspaper of general circulation, see Government Code §§ 6000, 6020 et seq.

Public agency, see § 21063.

Publications and official advertising, see Government Code § 6000 et seq.

Library References

Health and Environment ⇐25.10.

C.J.S. Health and Environment §§ 64 to 90, 115 to 124.

Notes of Decisions

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- Direct mailing** 2
- Review** 3

City of Riverside (1977) 140 Cal.Rptr. 812, 73 C.A.3d 546.

2. Direct mailing

Requirement of California Environmental Quality Act and state environmental impact report guidelines of "direct mailing" to owners of "contiguous" property of proposed negative declaration is not satisfied by mailing notice of proposed negative declaration to those "owners" as they were shown on the last equalized assessment roll published by county assessor which could be as much as one year out of date. Plaggmier v. City of San Jose (1980) 161 Cal.Rptr. 886, 101 C.A.3d 842.

3. Review

City's noncompliance with this section allowing notice of proposed negative declaration in environmental review process by "direct mailing" constituted a failure to proceed in manner required by law and could be reversed by reviewing court as a prejudicial abuse of discretion. Plaggmier v. City of San Jose (1980) 161 Cal.Rptr. 886, 101 C.A.3d 842.

1. In general

In approving application for 900-cow dairy, county complied with this section, as mailing of referral memos and notices of hearings demonstrated good faith effort by county to give notice of negative declaration, and plaintiffs response and testimony at hearings demonstrated actual notice within reasonable time. Newberry Springs Water Ass'n v. San Bernardino County (App. 4 Dist.1984) 198 Cal.Rptr. 100, 150 C.A.3d 740.

Negative declaration which was filed by city, which asserted that ordinance amending city's waste discharge regulations would not have significant effect on environment and which attached and incorporated copy of environmental assessment prepared by city's director of public works was not defective. Pacific Water Conditioning Ass'n v. City Council of

§ 21092.1. Addition of new information; notice and consultation

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

(Added by Stats.1984, c. 1514, § 7.)

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

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

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

(Added by Stats.1983, c. 967, § 2. Amended by Stats.1985, c. 418, § 1.)

Historical Note

The 1985 amendment substituted "environmental impact reports shall be tiered whenever feasible, as determined by the lead agency" for

"public agencies may tier environmental impact reports wherever possible" in subd. (b).

Library References

Statutes ⇄184.
C.J.S. Statutes § 323.

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

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

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

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

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

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

(Added by Stats.1984, c. 1514, § 8. Amended by Stats.1985, c. 418, § 2.)

Historical Note

The 1985 amendment inserted "and certified" following "has been prepared", substituted "shall" for "may" following "requirements of this section", and inserted "on the later project" following "except that the report" in subd. (a); substantially rewrote subd. (b) which had read:

"This section applies only to a later project which the lead agency finds (1) is consistent

with the previously approved program, plan, policy, or ordinance, (2) is consistent with any applicable local land use plan and zoning of the city and county in which the later project would be located, and (3) is not subject to Section 21166."; and inserted "lead" preceding "agency in making" and deleted "and findings" preceding "required by this section" in the first sentence in subd. (c).

Chapter 3

STATE AGENCIES, BOARDS AND COMMISSIONS

Section

- 21100. Environmental impact report on proposed state projects; significant effect.
- 21100.1. Information not required in certain environmental impact reports.
- 21100.2. Leases, permits, licenses, certificates and other entitlements; establishment of time limits for impact reports and negative declarations.
- 21101. Environmental impact report on proposed federal projects.
- 21102. Request for or authorization of expenditure of funds; statement of effect on environment.
- 21103. Repealed.
- 21104. State lead agency; consultations prior to completion of impact report.
- 21104.2. Consultation and findings; effect of projects on threatened or endangered species.
- 21105. Environmental impact report and comments as part of regular project report; availability to legislature and general public.
- 21106. Request of funds to protect environment.
- 21107. Repealed.

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21108. State agency, board or commission; approval or determination to carry out project; notice; contents; public inspection; posting.

Chapter 3 was added by Stats.1970, c. 1433, p. 2781, § 1.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Coastal zone management: The California experience. Robert B. Krueger (1972) 47 S.Bar J. 402.

Environmental impact reports: new legal framework. Richard G. Hildreth (1977) 17 Santa Clara L.Rev. 805.

Friends of Mammoth: Vox populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 137.

Land development and the environment: Subdivision Map Act. (1974) 5 Pacific L.J. 55.

Notice requirements to parties outside of city's zoning. (1973) 61 C.L.Rev. 597.

§ 21100. Environmental impact report on proposed state projects; significant effect

All state agencies, boards, and commissions shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they propose to carry out or approve which may have a significant effect on the environment. Such a report shall include a detailed statement setting forth the following:

(a) The significant environmental effects of the proposed project.

(b) Any significant environmental effects which cannot be avoided if the project is implemented.

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

(d) Alternatives to the proposed project.

(e) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(f) Any significant irreversible environmental changes which would be involved in the proposed project should it be implemented.

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

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

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

(Added by Stats.1970, c. 1433, p. 2781, § 1. Amended by Stats.1972, c. 1154, p. 2274, § 2.5, eff. Dec. 5, 1972; Stats.1974, c. 276, p. 501, § 1, operative Jan. 7, 1975; Stats.1976, c. 1312, § 16; Stats.1981, c. 264, p. 1351, § 1.)

Historical Note

As added in 1970, this section read:
"All state agencies, boards, and commissions shall include in any report on any project they

propose to carry out which could have a significant effect on the environment of the state, a

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detailed statement by the responsible state official setting forth the following:

"(a) The environmental impact of the proposed action.

"(b) Any adverse environmental effects which cannot be avoided if the proposal is implemented.

"(c) Mitigation measures proposed to minimize the impact.

"(d) Alternatives to the proposed action.

"(e) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

"(f) Any irreversible environmental changes which would be involved in the proposed action should it be implemented."

The 1972 amendment rewrote the introductory paragraph to read as it now appears and added subd. (g) to read:

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"The growth-inducing impact of the proposed action."

The 1974 amendment, in subd. (c) added "including, but not limited to, measures to reduce wasteful, inefficient, and unnecessary consumption of energy".

The 1976 amendment rewrote subd. (a) to read as it now appears; in subd. (b) it substituted "significant" for "adverse" and "project" for "proposal"; in subd. (c) it substituted "significant environmental effects" for "impact"; in subd. (d) it substituted "project" for "action"; in subd. (f) it inserted "significant" preceding "irreversible" and substituted "project" for "action"; in subd. (g) it substituted "project" for "action"; and it added the second to last paragraph.

The 1981 amendment added the final paragraph.

Cross References

Department of fish and game, determination of extent project protects salmon and steelhead resources, see Fish and Game Code § 1015.

Disaster damage repair, exemption of projects, see § 21172.

Environment, see § 21060.5.

Environmental impact report, see § 21061.

Contents, see § 21003.

General development plan as report on project for purposes of this section, see § 5002.2.

Inclusion in report of information specified in this section, see § 21061.

Project, see § 21065.

Proposed subdivision, use of factors in this section in environmental impact evaluation, see Government Code § 12037.

Report of state officers on federal project, inclusion of items listed in this section, see § 21101.

Significant effect on environment, see § 21068.

State agency, board or commission as a public agency, see § 21063.

Administrative Code References

Activities not requiring an initial study, see 20 Cal. Adm. Code 2305.

Contents of environmental impact reports, see 14 Cal. Adm. Code 15140 et seq.

Implementation of the California Environmental Quality Act of 1970, see 14 Cal. Adm. Code 1681 et seq.

Initial study, see 20 Cal. Adm. Code 2306.

State policies regarding use of environmental impact reports, see 23 Cal. Adm. Code 2700.7.

Law Review Commentaries

Application of California Environmental Quality Act to municipal annexations of land. (1976) 64 C.L.Rev. 532.

California Environmental Quality Act and eminent domain: Failure to comply with Act as defense to condemnation. (1975) 8 Loyola L.Rev. (Calif.) 734.

Compatibility of economic and environmental objectives in governmental decision making. (1974) 5 Pacific L.J. 92.

Developer-prepared EIR's. (1975) 10 U.S.F. L.Rev. 272.

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Environmental decision making under CEQA. (1977) 24 U.C.L.A. Law Rev. 838.

Friends of the Mammoth. (1973) 9 C.W.L. Rev. 536.

Indian archaeological sites and the Environmental Quality Act. (1975) 6 Golden Gate L.Rev. 1.

Judicial development of the California Environmental Quality Act. Daniel P. Selmi (1984) 18 U.C.D. Law Rev. 197.

When does a private construction project require an environmental impact report. Kevin P. Kane (1976) 52 Los Angeles Bar J. 142.

Library References

Health and Environment ⇔25.10.
C.J.S. Health and Environment §§ 64 to 90,
115 to 124.

Notes of Decisions

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Waste discharge, construction with other laws 3

1. In general

Regional water quality control board's promulgation of cease and desist order directing city to comply with prior board order establishing limitations upon chemical content of sewage effluent discharged by city was not a governmental activity which might have significant effect on environment within meaning of this section. *Pacific Water Conditioning Ass'n v. City Council of City of Riverside* (1977) 140 Cal.Rptr. 812, 73 C.A.3d 546.

This section and environmental impact report guidelines requiring that environmental impact report describe alternatives to proposed project apply only to project as whole, not to

various facets thereof. *Big Rock Mesas Property Owners Assn. v. Board of Sup'rs of Los Angeles County* (1977) 139 Cal.Rptr. 445, 73 C.A.3d 218.

In approving coastal development permit for proposed project, careful consideration of cumulative effect of project must be given not only to separate phases of overall project but to any single project in relation to conditions then existing and to conditions that would inevitably or probably result from accelerating or setting in motion trend productive of adverse impacts upon environment and ecology. *Coastal Southwest Development Corp. v. California Coastal Zone Conservation Commission* (1975) 127 Cal.Rptr. 775, 55 C.A.3d 525.

Under this section, there is no requirement that the adverse effects be considered significant before they are required to be listed. *Friends of Mammoth v. Board of Sup'rs of Mono County* (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

2. Construction with other laws—In general

Court has power and discretion, after balancing of equities, to allow portion of project to be performed even though provisions of National Environmental Policy Act (42 U.S.C.A. § 4332) and California Environmental Quality Act have not been met fully, where such partial work upon project is necessary for protection of public interest and halting of project in its entirety will pose threat to public welfare and safety of community's inhabitants. *City of South Pasadena v. Volpe* (D.C.1976) 418 F.Supp. 854, amended 424 F.Supp. 626.

Where corridor hearings had complied with statute and regulations in effect at the time of such hearings, but new design hearings were necessary because previous ones had not adequately considered the effect of freeway on air and noise pollution and National Environmental Policy Act (42 U.S.C.A. §§ 4331, 4332) and California Environmental Quality Act required officials to reconsider advisability of proceeding with freeway, new corridor hearings should also be held so that public could participate in process of determining the need for the freeway. *Keith v. Volpe* (D.C.1972) 352 F.Supp. 1324, affirmed 506 F.2d 696, certiorari denied 95 S.Ct. 826, 420 U.S. 908, 42 L.Ed.2d 837.

In determining adequacy of environmental impact report under the Environmental Quality Act the courts may refer to federal cases decided under the analogous National Environmental Policy Act. *San Francisco Ecology*

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Center v. City and County of San Francisco (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584.

3. — Waste discharge, construction with other laws

Under Water C. § 13389 providing that neither state board nor regional board shall be required to comply with the Environmental Quality Act prior to adoption of any waste discharge requirement, regional water quality control board properly prescribed by order waste discharge requirements for city without preparation of environmental impact report. Pacific Water Conditioning Ass'n v. City Council of City of Riverside (1977) 140 Cal.Rptr. 812, 73 C.A.3d 546.

Under Water C. § 13389 providing that neither state board nor regional board shall be required to comply with Environmental Quality Act prior to adoption of any waste discharge requirement, regional water quality control board had right to issue cease and desist order directing city to comply with waste discharge requirements promulgated by board without preparation of environmental impact report. *Id.*

4. — Radioactive materials, construction with other laws

The California highway patrol is required to prepare an "environmental assessment" under the California Environmental Quality Act (§ 21000 et seq.) before adopting radioactive material transportation routes pursuant to Veh.C. § 33000. 66 Ops.Atty.Gen. 461, 12-15-83.

5. Injunctions

Trial court has discretion to balance equities and determine whether work on entire project must be halted pending completion of environmental impact statement under National Environmental Policy Act (42 U.S.C.A. §§ 4331, 4332) and California Environmental Quality Act, and may balance equities and issue partial injunction as distinguished from blanket injunction when it is necessary to allow portion of project to be completed, when failure to do so would pose imminent threat to public safety or welfare, and where threat cannot be temporarily allayed by other means. City of South Pasadena v. Volpe (D.C.1976) 418 F.Supp. 854, amended 424 F.Supp. 626.

Court has authority to consider adequacy of environmental impact report which has been filed with and accepted by planning commission, and with respect thereto the court can properly use instrument of injunction to deal with a deed for effective equitable action. Environmental Defense Fund, Inc. v. Coastside County Water Dist. (1972) 104 Cal.Rptr. 197, 27 C.A.3d 695, supplemented 104 Cal.Rptr. 714, 28 C.A.3d 512.

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6. Statement

Board of county supervisors' statement that approval of tentative maps for subdivision required that the final maps comply with specific plan for the entire future development of the area in question and that the board recognized that development should not be considered and evaluated in a vacuum was insufficient to show required consideration, for environmental impact report purposes, of the overall impact of the project. People v. Kern County (1976) 133 Cal.Rptr. 389, 62 C.A.3d 761.

Where office building was leased to state prior to 1972 amendment of this section, environmental impact statement was not required unless there was some other report on the proposed project or a fund authorization in connection therewith. City of Orange v. Valenti (1974) 112 Cal.Rptr. 379, 37 C.A.3d 240.

7. Report—In general

By law, an environmental impact report must identify and examine significant environmental effects of a proposed project, feasible mitigation measures, unavoidable significant effects, significant irreversible environmental changes, and alternatives to the proposed action. Mira Monte Homeowners Ass'n v. San Buenaventura County By and Through Its Bd. of Sup'rs (Webb) (App. 2 Dist.1985) 212 Cal. Rptr. 127, 165 C.A.3d 357.

An environmental impact report must describe all reasonable alternatives to proposed project, including those capable of reducing or eliminating environmental effects and specific alternative of "no project" must also be evaluated; however, discussion of alternatives need not be exhausted and requirement as to discussion of alternatives is subject to a construction of reasonableness. Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco (1980) 165 Cal.Rptr. 401, 106 C.A.3d 893.

Though environmental impact report raised issues as to archaeological significance of proposed site of residential development, and though the true impact of the project on the archaeological potential of the area could not be fully determined without recommended tests, at estimated cost of \$1,900.60, and the tests were not conducted, the environmental impact report was not thereby rendered inadequate as a matter of law, and assuming existence of sound reason and its proper articulation in the report, county board could have properly decided, as it did, to approve the project subject to setting aside three lots for a limited period for exploration by third parties concerning the archaeological factor. Society for California Archaeology v. Butte County (1977) 135 Cal.Rptr. 679, 65 C.A.3d 832.

The final environmental impact report will be prepared at the conclusion of the hearing

and presented to the public utilities commission for its adoption; elementary fairness and good procedure indicate that the parties to a contested proceeding should have the opportunity to submit comments on or exceptions to the final environmental impact report before it is adopted by the public utilities commission. In re Environmental Impact Reports (1973) 75 Cal.P.U.C. 133.

8. — Purpose of report

A major function of environmental impact report is to ensure that all reasonable alternatives are thoroughly assessed by the responsible official or board. Inyo County v. City of Los Angeles (1977) 139 Cal.Rptr. 396, 71 C.A.3d 185, motion denied 144 Cal.Rptr. 71, 78 C.A.3d 82.

Purpose of an environmental impact report is to provide information only, with discretion reserved in the agency to accept or reject it, and agency has the discretion for good reason to approve a project which will admittedly have an adverse environmental impact. Society for California Archaeology v. Butte County (1977) 135 Cal.Rptr. 679, 65 C.A.3d 832.

9. — Disclosure of report

The two basic requirements imposed upon state and local governmental entities under the Environmental Quality Act of 1970 are: (1) preparation of written environmental impact report satisfying elements of statute, and (2) disclosure of the environmental impact report prior to the administrative decision so as to permit input from public and other agencies into making of the final report as well as the governmental decision based on that report. Russian Hill Improvement Ass'n v. Board of Permit Appeals (1974) 118 Cal.Rptr. 490, 44 C.A.3d 158, appeal dismissed 95 S.Ct. 2646, 422 U.S. 1030, 45 L.Ed.2d 687.

10. — Demolition permits, report

City's process for issuing demolition permit of historical site did not violate state Environmental Quality Act (§ 21000 et seq.) on ground that it did not expressly require environmental impact report or empower city council to deny demolition permit where city adopted environmental quality ordinance pursuant to Environmental Quality Act which required all city agencies to give major consideration to prevent environmental damage and called for preparation of environmental impact reports and where city's power under municipal code dealing with demolition permits to grant permit implied a power not to grant permit. San Diego Trust & Sav. Bank v. Friends of Gill (1981) 174 Cal.Rptr. 784, 121 C.A.3d 203.

11. — Failure to prepare report

Failure of division of highways of California department of public works to prepare an envi-

ronmental impact report required by California Environmental Quality Act does a procedural injury to persons or entities having a geographical nexus with site of the challenged project, and thus city had standing to maintain action for injunction against construction of interstate interchange between three and four miles from city based on failure of division of highways to prepare such a report. City of Davis v. Coleman (C.A.1975) 521 F.2d 661.

Trial court's findings and conclusions that regional water quality control board properly issued cease and desist order requiring city to comply with previously issued waste discharge requirements without obtaining or preparing environmental impact report and that city properly enacted ordinance amending its waste discharge regulations without first obtaining and preparing environmental impact report were adequate to support judgment denying writ of mandate to compel board to vacate cease and desist order and to compel city to vacate ordinance. Pacific Water Conditioning Ass'n v. City Council of City of Riverside (1977) 140 Cal.Rptr. 812, 73 C.A.3d 546.

Where city planning commission and permit appeals board did not prepare a formal, properly labeled environment impact report, the submission of three staff memoranda, holding of public hearings, consideration of supplemental reports and alternate designs, and fact that project conformed to environmental guidelines in urban design plan were not sufficient to comply with Environmental Quality Act's requirement that an environmental impact report be prepared. Russian Hill Improvement Ass'n v. Board of Permit Appeals (1974) 118 Cal.Rptr. 490, 44 C.A.3d 158, appeal dismissed 95 S.Ct. 2646, 422 U.S. 1030, 45 L.Ed.2d 687.

12. — Sufficiency of report

If some reasonable, albeit less exacting, analysis of onshore impact of outercontinental emissions could be performed, for purposes of environmental impact report on proposed modification of oil refinery, responsible county was required to do so and report results, assuming sophisticated technical analysis was not feasible; and if less exacting analysis yielded facts indicating cumulative impact of outercontinental shelf emissions was not significant, environmental impact report was required to at least briefly state and explain such conclusion. Citizens To Preserve The Ojai v. Ventura County By and Through Bd. of Sup'rs (USA Petrochem Co.) (App. 2 Dist.1985) 222 Cal. Rptr. 247, 176 C.A.3d 421.

Environmental impact report covering transportation corridor consisting of numerous potential transportation routes which would link interstate highway with freeway adequately confronted environmental concerns and issues presented by the project as it was presently

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envisioned. *Atherton v. Board of Supervisors of Orange County* (App. 4 Dist.1983) 194 Cal. Rptr. 203, 146 C.A.3d 346.

Despite contention that environmental impact report was inadequate for its failure to consider as an alternative the development of "some number" of dwelling units between 10,000 authorized by prior land use element and 20,000 opposed by developer, EIR evaluation of plans for development of 0, 7,500, 10,000, 20,000, and 25,000 dwelling units was sufficient to satisfy informational goal of state Environmental Quality Act (§ 21000 et seq.). *Village Laguna of Laguna Beach, Inc. v. Board of Sup'rs of Orange County* (1982) 185 Cal. Rptr. 41, 134 C.A.3d 1022.

Environmental impact report on mining operation was inadequate as informative document in that it failed to provide sufficient information concerning delivery of water to proposed mine and quantity of water needed by proposed mine. *Santiago County Water Dist. v. Orange County* (1981) 173 Cal.Rptr. 602, 118 C.A.3d 818.

Environmental impact report, which was prepared in connection with application for conditional use permit to drill single exploratory oil and gas well, which failed to make adequate reference to existing or planned drilling in area, and which was also deficient in its analysis of few cumulative impacts that were discussed, was fatally deficient in failing to adequately discuss cumulative impacts on environment associated with proposed project. *Whitman v. Board of Sup'rs of Ventura County* (1979) 151 Cal.Rptr. 866, 88 C.A.3d 397.

Environmental impact report for proposed subdivision in mountains was not shown to be defective on theory that it failed to discuss in sufficient detail the environmental consequences of proposed projects, where opponents of project cited, out of context, 13 statements in EIR and commented on each, intending to show its inadequacy, where such comments were not substantiated by any reference to evidence adduced at administrative proceedings. *Big Rock Mesas Property Owners Assn. v. Board of Sup'rs of Los Angeles County* (1977) 139 Cal.Rptr. 445, 73 C.A.3d 218.

Where court of appeal had previously defined project for which environmental impact report was required as city's program for increasing average rate of ground water extraction, for both export and in-valley use, by approximately 130 cubic feet per second, but environmental impact report included only alternatives to a project increasing such extraction, for in-valley use only, by 51 cubic feet per second, because of environmental impact report's failure to list alternatives to consistently viewed project and its further failure to include a genuine "no project" alternative, such environmental impact report did not comply with Environmental Quality Act's demand for

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reasonable alternatives. *Invo County v. City of Los Angeles* (1977) 139 Cal.Rptr. 396, 71 C.A.3d 185, motion denied 144 Cal.Rptr. 71, 78 C.A.3d 82.

For purpose of determining whether exhaustive staff report of coastal zone conservation commission satisfied requirement that commission consider environmental impact report before granting development permits, substance rather than form of document determines its nature and validity. *Natural Resources Defense Council, Inc. v. California Coastal Zone Conservation Commission* (1976) 129 Cal.Rptr. 57, 57 C.A.3d 76.

Even if the doctrine of substantial compliance is applicable to environmental impact report requirement, failure of allegedly substitute staff memoranda to discuss or analyze proposed development in terms of requirements of Environmental Quality Act of 1970 establishing criteria for environmental impacts reports and taking of testimony at hearing on day that planning commission reached its decision approving project were not sufficient to constitute substantial compliance with the report criteria or the citizen input requirements of the Environmental Quality Act of 1970. *Russian Hill Improvement Ass'n. v. Board of Permit Appeals* (1974) 118 Cal.Rptr. 490, 44 C.A.3d 158, appeal dismissed 95 S.Ct. 2646, 422 U.S. 1030, 45 L.Ed.2d 687.

13. — Mitigation measures, report

Environmental impact report for development project was not deficient in failing to consider reasonable mitigation measures and alternatives to development project as required by West's Ann.Cal.Pub.Res.Code § 21100(c, d), where report for project contained a no project alternative, a reduced density alternative, and incorporation of site into existing national recreation area, discussed impact upon natural and man-made environment of each of alternatives, considered mitigation measures, and supplied reasons for rejecting alternatives discussed. *Las Virgenes Homeowners Federation, Inc. v. Los Angeles County By and Through Bd. of Sup'rs (Currey-Riach Co.)* (App. 2 Dist.1986) 223 Cal.Rptr. 18, 177 C.A.3d 300.

Proposed condominium development project could not receive use and site development permits without an environmental impact report or a negative declaration with mitigation measures agreed to by developer and city. *Novi v. City of Pacifica* (App. 1 Dist.1985) 215 Cal.Rptr. 439, 169 C.A.3d 678.

Environmental impact report prepared on proposed subdivision was inadequate in addressing impact of subdivision on enrollment in school district where report, while acknowledging subdivision would increase student enrollment, failed to say anything about effects of such increase in student population and suggested no mitigation measures to deal with

such impact. *El Dorado Union High School Dist. v. City of Placerville* (1983) 192 Cal.Rptr. 480, 144 C.A.3d 123.

Resolution by which county approved proposed subdivision and responded to certain environmental criticism was fatally defective as a final environmental impact report in view of its failure to include a detailed statement setting forth mitigation measures proposed to reduce wasteful, inefficient, and unnecessary consumption of energy. *People v. Kern County* (1976) 133 Cal.Rptr. 389, 62 C.A.3d 761.

If adverse consequence to environment as pointed out in environmental impact report can be mitigated or if feasible alternatives are available, proposed activity such as issuance of a permit should not be approved, and in making these determinations concrete concepts, not mere aphorisms or generalities, must be considered. *Friends of Mammoth v. Board of Sup'rs of Mono County* (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

14. Necessity of report—In general

Where highway was in existence for many years and proposed use of adjacent tract, which was sought to be condemned to provide a relatively secure slope adjoining section of highway subject to earth slides, involved no major change in character of the area and tract was to be preserved in its present state, no environmental impact report was required. *People, By and Through Dept. of Transp. v. Sullivan* (1978) 144 Cal.Rptr. 100, 78 C.A.3d 120.

Applicability of the California Environmental Quality Act to certain projects does not automatically require preparation of an environmental impact report. *Shawn v. Golden Gate Bridge* (1976) 131 Cal.Rptr. 867, 60 C.A.3d 699.

A local agency is required to prepare an environmental impact report when (1) it is carrying out a "project," and (2) the project may have a significant effect on the environment. *Inyo County v. Yorty* (1973) 108 Cal. Rptr. 377, 32 C.A.3d 795.

The transfer of a water utility certificate in itself can be considered, with reasonable certainty, to be a project that will not have significant effect on the environment; and no environmental impact report is required. *App. of Pearl Friesen and Silverado Lakes Water Co.* (1973) 75 Cal.P.U.C. 292.

The California Environmental Quality Act (CEQA) does not require preparation of an environmental impact report (EIR) in connection with development of the California coastal zone conservation plan because such plan will be a legislative proposal and therefore does not constitute a project within the meaning of CEQA and because the California Coastal Zone Conservation Act requires that the plan be de-

veloped by a functionally equivalent process to the EIR process. 58 Ops.Atty.Gen. 814, 11-28-75.

Authorization by the public utilities commission for a 111 percent Southern Pacific Transportation Company rate increase would constitute a project within the meaning of the California Environmental Quality Act and may have a significant effect on the environment to require PUC preparation of an environmental impact report. 58 Ops.Atty.Gen. 708, 7-15-75.

Public agencies using salt to deice roads in Lake Tahoe region are required to prepare an environmental impact report because such use has significant effect upon environment. 58 Ops.Atty.Gen. 77, 1-22-75.

The Santa Clara Valley water district must prepare an environmental impact report or reports in connection with its cloud-seeding activities. 57 Ops.Atty.Gen. 490, 10-25-74.

15. — Filing of report, necessity of report

Additional work load to be imposed upon fish and game commission by requiring it to comply with requirements of the Environmental Quality Act including filing of environmental impact report did not preclude application of Act to the Commission. *Wildlife Alive v. Chickering* (1976) 132 Cal.Rptr. 377, 553 P.2d 537, 18 C.3d 190.

One-time chance destruction of a few shrubs in course of demolition of buildings on beach in order to return beach to its natural condition could not require a filing of environmental impact report. *Topanga Beach Renters Ass'n v. Department of General Services* (1976) 129 Cal.Rptr. 739, 58 C.A.3d 188.

Fact that building had been built and state office had been operating therein for over a year did not excuse filing of an environmental impact report on theory that it was too late to do anything about the office; report would be excused as impracticable only if the state could show that the costs of moving the office to another location would clearly outweigh the environmental benefits of such move. *City of Orange v. Valenti* (1974) 112 Cal.Rptr. 379, 37 C.A.3d 240.

Timber-harvesting plans submitted to state forester for approval under requirements of the Z'berg-Nejedly Forest Practice Act of 1973 are subject to the California Environmental Quality Act and may require filing of environmental impact reports. 57 Ops.Atty.Gen. 587, 11-22-74.

16. — Evidence requiring report, necessity of report

Evidence from which it could be fairly argued that present use of parcel was agricultural, that proposed development was residential, that county zoning required residential rural one-acre-minimum lots, that city's pre-

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zoning was one unit per forty-five hundred square feet, that on-site drainage facilities would "probably" be required and that adequate supply of recently annexed parcels were already available within city for residential development required finding that proposed annexation was "project" subject to Environmental Quality Act (§ 21000 et seq.) and finding that there was substantial evidence that annexation might have significant environmental effect, and such findings required an environmental impact report. *Pistoresi v. City of Madera* (1982) 188 Cal.Rptr. 136, 138 C.A.3d 284.

Preparation of environmental impact report is required whenever it can be fairly argued on basis of substantial evidence that project may have significant environmental impact, and "low threshold" of significance is usually imposed in interpreting application of the state Environmental Quality Act. *Simons v. City of Los Angeles* (1976) 133 Cal.Rptr. 721, 63 C.A.3d 455.

Environmental Quality Act requires the preparation of an environmental impact report whenever it can be fairly argued on basis of substantial evidence that project may have significant environmental impact. *No Oil, Inc. v. City of Los Angeles* (1974) 118 Cal.Rptr. 34, 529 P.2d 66, 13 C.3d 68.

A case-by-case assessment in many instances will establish existence of substantial evidence that the issuance of a use permit for restricted material or restricted herbicide may have significant effect on the environment to require preparation of an environmental impact report. 59 Ops.Atty.Gen. 300, 5-4-76.

17. — Negative declaration, necessity of report

If after an initial study a public agency determines that a proposed project which could possibly have significant effect on environment will, in fact, not have a significant effect, agency may so declare in negative declaration and no environmental impact report is required. *Pacific Water Conditioning Ass'n v. City Council of City of Riverside* (1977) 140 Cal.Rptr. 812, 73 C.A.3d 546.

Approval of proposed subdevelopment without an adequate environmental impact report or without a negative declaration that an EIR was not required was improper; although approval of the parcel map implied that board of county supervisors found that an EIR was not required, such an implied finding is not sufficient. *People v. Kern County* (1976) 133 Cal.Rptr. 389, 62 C.A.3d 761.

Negative impact declaration, determining that project for removal of 32 trees which were pushing up curbs, gutters, sidewalks, and driveways would have no significant adverse effect on the environment requiring preparation of an environmental impact report, suffi-

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ciently followed the factors to be considered and made a reviewable record, despite contention that negative declaration should take the form of a "Mini EIR," where such declaration considered, inter alia, noise and vehicle emissions, safety, and aesthetic qualities. *Hixon v. Los Angeles County* (1974) 113 Cal.Rptr. 433, 38 C.A.3d 370.

In some instances an environmental impact report or a negative declaration must be prepared prior to application of an economic poison which is not a restricted material or restricted herbicide, however, where no use permit is required for application by a private party, an environmental impact report or negative declaration need not be prepared. 59 Ops. Atty.Gen. 300, 5-4-76.

18. — Exemptions, necessity of report

An environmental impact report is required in connection with coastal zone conservation commission's permit-granting function; there is no implied exemption of the EIR requirements of the Environmental Quality Act, § 21000 et seq., as regard the commission. *City of Coronado v. California Coastal Zone Conservation Commission* (1977) 138 Cal.Rptr. 241, 69 C.A.3d 570.

Section 21102 providing that no state agencies shall authorize expenditures of funds for any project, other than a project involving only planning, which could have a significant effect on the environment unless such authorization is accompanied by an environmental impact report provides the minimum requirement for nonapplication of the report requirement to ongoing projects; no such project not fully funded prior to the effective date of the Environmental Quality Act is exempt. *People, By and Through Dept. of Public Work v. Bosio* (1975) 121 Cal.Rptr. 375, 47 C.A.3d 495.

19. Findings

Question whether negative declaration that project will not have significant effect on environment complies with applicable statutory and regulatory provisions is question of law upon which no finding of fact is required. *Pacific Water Conditioning Ass'n v. City Council of City of Riverside* (1977) 140 Cal.Rptr. 812, 73 C.A.3d 546.

Whether with respect to a proposed land division, which involved possible construction of two dwellings on adjoining lots of over 2½ acres each in a rural area, a negative declaration should be filed or an environmental impact report prepared had to be determined in compliance with Environmental Quality Act and state guideline, and either lead agency or county board of supervisors must make findings, either in form of a negative declaration or an environmental impact report, to permit reviewing court to bridge an analytic gap between evidence and ultimate decision approv-

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ing the proposed division. *Myers v. Board of Sup'rs of Santa Clara County* (1976) 129 Cal. Rptr. 902, 58 C.A.3d 413.

Provision of this section requiring an impact report on a project "which may have a significant effect on the environment" was inapplicable where coastal zone conservation commission had found that challenged project would not have any substantial adverse environmental or ecological effect. *Natural Resources Defense Council, Inc. v. California Coastal Zone Conservation Commission* (1976) 129 Cal.Rptr. 57, 57 C.A.3d 76.

20. Mandamus

Under the California Environmental Quality Act, mandamus would issue to set aside a permit which was issued for discretionary project without a determination whether the proposal had a significant environmental impact. *People v. Department of Housing and Community Development* (1975) 119 Cal.Rptr. 266, 45 C.A.3d 185.

21. Remand

County water district which entered into contract with general contractor for construction of water treatment plant was subject to implied covenant to provide environmental impact report as necessary condition to contractor's performance, and contractor was creditor beneficiary under contract entered into between water district and engineering company for preparation of such a report; therefore, judgment dismissing without leave to amend, contractor's breach of contract complaint against engineering company would be reversed and cause remanded to permit contractor to file amended complaint. *COAC, Inc. v. Kennedy Engineers* (1977) 136 Cal.Rptr. 890, 67 C.A.3d 916.

22. Review

Whenever a challenge is presented against a project planned and approved prior to California Environmental Quality Act's effective date, agency involved is vulnerable to charges of institutional bias, particularly so if its ultimate decision is in favor of proceeding with a

project previously conceived or planned, but court of appeal cannot apply act retroactively and condemn effort to comply with act's commands, and possibility that an agency which has published its prior approval of project will continue to favor it despite act cannot be a bar to compliance. *Residents Ad Hoc Stadium Committee v. Board of Trustees of California State University and Colleges* (1979) 152 Cal. Rptr. 585, 89 C.A.3d 274.

Where petitioner seeking review of grant of conditional use permit failed to assert lack of environmental impact report in trial court, that assertion could not be raised on appeal. *Jacobson v. Los Angeles County* (1977) 137 Cal.Rptr. 909, 69 C.A.3d 374.

A negative declaration with respect to effect of project on environment will be sustained unless as a matter of law it appears that the project as a whole will have a substantial adverse effect upon the environment. *Myers v. Board of Sup'rs of Santa Clara County* (1976) 129 Cal.Rptr. 902, 58 C.A.3d 413.

Supreme court would not make prospective only its decision relating to governmental agency approved private projects requiring the preparation of an environmental impact report merely because numerous projects were approved without requiring preparation of impact reports in the erroneous belief that such projects were exempt from Act, since it appeared that few would still be subject to attack, and there appeared no need for court to delay effective date of decision to allow additional time for governmental agencies to draw up guidelines. *Friends of Mammoth v. Board of Sup'rs of Mono County* (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

Court does not have duty of passing on validity of conclusions expressed in environmental impact report filed with and accepted by planning commission, but only on sufficiency of report as an informative document. *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 104 Cal.Rptr. 197, 27 C.A.3d 695, supplemented on other grounds 104 Cal. Rptr. 714, 28 C.A.3d 512.

§ 21100.1. Information not required in certain environmental impact reports

The information described in subdivisions (e) and (f) of Section 21100 shall be required only in environmental impact reports prepared in connection with the following:

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

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

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(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969.

(Added by Stats.1976, c. 1312, § 17.)

Cross References

Environmental impact report, see § 21061.

Inclusion in report of information specified in this section, see § 21061.

Local agency, see § 21062.

Local agency formation commission, see Government Code § 56000 et seq.

Public agency, see § 21063.

Library References

Health and Environment ⇐25.10(6).

C.J.S. Health and Environment §§ 77, 122.

§ 21100.2. Leases, permits, licenses, certificates and other entitlements; establishment of time limits for impact reports and negative declarations

Each state agency shall establish, by resolution or order, time limits, not to exceed one year for completing and certifying environmental impact reports, and 105 days for negative declarations, for projects described in subdivision (c) of Section 21065. Such time limits shall apply only to those circumstances in which such state agency is the lead agency for a project. Such resolutions or orders may establish different time limits for different types or classes of projects, but all such limits shall be measured from the date on which an application requesting approval of such project is received and accepted as complete by the state agency. The resolutions or orders required by this section may provide for a reasonable extension of such time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.

(Added by Stats.1977, c. 1200, p. 4001, § 10.)

Cross References

Multiple power facility sites, completion and certification of environmental impact report, see § 25540.4.

Notes of Decisions

1. In general

Where combined environmental impact report and federal environmental impact statement is prepared, and an additional time is required to prepare the combined document, though less total time than to have the state

and federal agencies prepare six separate documents, the requirement that lead agencies complete and certified the environmental impact reports within one year may be waived. PG&E (1978) 1 Cal.P.U.C.2d 77.

§ 21101. Environmental impact report on proposed federal projects

In regard to any proposed federal project in this state which may have a significant effect on the environment and on which the state officially comments, the state officials responsible for such comments shall include in their report a detailed statement setting forth the matters specified in Section 21100 prior to transmitting the comments of the state to the federal government.

No report shall be transmitted to the federal government unless it includes such a detailed statement as to the matters specified in Section 21100. (Added by Stats.1970, c. 1433, p. 2782, § 1.)

Administrative Code References

Federal projects, guidelines, see 14 Cal.Adm.Code 15063.

Library References

Health and Environment ⇨25.10(6).
C.J.S. Health and Environment §§ 77, 122.

Notes of Decisions

1. In general

Change in recreation management of lake from county to United States, policy requiring removal of privately owned boating structures, and restricting use of houseboats on lake, which along with surrounding land was owned by the United States, were not major federal actions that require preparation of environmental impact statement. *Lake Berryessa Tenants' Council v. U.S.* (C.A.1978) 588 F.2d 267.

Where proposed freeway had received some funding prior to effective date of California Environmental Quality Act of 1970, but state had not yet received design approval from federal agencies for two of eight segments of federal-aid freeway, state officials were required to comply with requirements of Act and file environmental impact statement. *Keith v. Volpe* (D.C.1972) 352 F.Supp. 1324.

In suit to restrain federal and state highway officials from proceeding with construction of

freeway project for failure to comply, as to federal defendants, with provisions of Federal Aid Highway Act and National Environmental Policy Act, and as to state defendant, with California Environmental Quality Act, evidence raised substantial issues of fact as to whether project was a "federal project" so as to be within subject matter jurisdiction of court and as to whether plaintiffs had standing, whether action was barred by laches or whether defendants were immune from suit under Eleventh Amendment, precluding summary judgment for defendants. *Sierra Club v. Volpe* (D.C.1972) 351 F.Supp. 1002.

Courts will not countenance abuse of the significant effect qualification of the Environmental Quality Act as a subterfuge to excuse the making of impact reports otherwise required by Act. *Friends of Mammoth v. Board of Sup'rs of Mono County* (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

§ 21102. Request for or authorization of expenditure of funds; statement of effect on environment

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

Feasibility and planning studies exempted by this section from the preparation of an environmental impact report shall nevertheless include consideration of environmental factors.

(Added by Stats.1970, c. 1433, p. 2782, § 1. Amended by Stats.1972, c. 1154, p. 2274, § 3, eff. Dec. 5, 1972.)

Historical Note

The 1972 amendment, following the words "involving only", substituted "feasibility or planning studies for possible future actions which the agency, board, or commission has

not approved, adopted or funded, which may" for "planning, which could", and following the words "accompanied by," substituted "an environmental impact report" for "a detailed state-

ment setting forth the matters specified in Section 21100"; and it added the second paragraph.

Cross References

Environmental impact report, see § 21061.

Contents, see § 21003.

Feasible, see § 21061.1.

State agency, board or commission as a public agency, see § 21063.

Library References

Health and Environment ⇐25.10(2).

C.J.S. Health and Environment §§ 70 et seq., 119 et seq.

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1. In general

University of California regents' considering environmental impact reports when final project recommendations and budgetary requests were submitted to regents constituted timely consideration of those reports. *Mount Sutro Defense Committee v. Regents of University of California* (1978) 143 Cal.Rptr. 365, 77 C.A.3d 20.

This section providing that no state agencies shall authorize expenditures of funds for any project, other than a project involving only planning, which could have a significant effect on the environment unless such authorization is accompanied by an environmental impact report provides the minimum requirement for nonapplication of the report requirement to ongoing projects; no such project not fully funded prior to the effective date of the Environmental Quality Act is exempt. *People By and Through Dept. of Public Works v. Bosio* (1975) 121 Cal.Rptr. 375, 47 C.A.3d 495.

Courts will not countenance abuse of the significant effect qualification of the Environmental Quality Act as a subterfuge to excuse the making of impact reports otherwise required by Act. *Friends of Mammoth v. Board of Sup'rs of Mono County* (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

2. Report

Regional transportation plan adopted by county and cities area planning coordination council was not exempt from requirement that

environmental impact report be prepared on ground that it was mere legislative proposal which was intended for incorporation into California transportation plan which, in turn, was to be adopted by state transportation board following appropriate legislative declaration of state wide transportation goals, objectives and policies. *Edna Valley Ass'n v. San Luis Obispo County and Cities Area Planning Coordinating Council* (1977) 136 Cal.Rptr. 665, 67 C.A.3d 444.

Inasmuch as circular letter of division of highways making optional the applicability of environmental impact report requirement whenever right-of-way or construction funds were budgeted for the project prior to November 23, 1970 was inconsistent with Environmental Quality Act insofar as letter dispensed with the report requirement in respect of projects not fully funded, the letter was not validated by 14 Cal.Adm.Code 15070 providing that if a project for which all funds have been authorized has not progressed to the point where all such funds have been spent, a report shall be prepared if it is feasible to modify the project or abandon it. *People By and Through Dept. of Public Works v. Bosio* (1975) 121 Cal.Rptr. 375, 47 C.A.3d 495.

3. Findings

Board of county supervisors would be required, in findings made in support of its action in approving private development plan, to show how potential economic and social benefits of plan outweighed environmental costs. *Mountain Defense League v. Board of Sup'rs, San Diego County* (1977) 135 Cal.Rptr. 588, 655 C.A.3d 723.

§ 21103. Repealed by Stats.1972, c. 1154, p. 2275, § 4, operative Dec. 5, 1972**Historical Note**

The repealed section, added by Stats.1970, c. 1433, p. 2782, § 1, required that the office of planning and research, in conjunction with state regional, and local agencies, coordinate development of objectives, etc. relating to impact reports. See, now, § 21083.

§ 21104. State lead agency; consultations prior to completion of impact report

Prior to completing an environmental impact report, the state lead agency shall consult with, and obtain comments from, each responsible agency and any public agency which has jurisdiction by law with respect to the project, and may consult with any person who has special expertise with respect to any environmental impact involved. In the case of a project described in subdivision (c) of Section 21065, the state lead agency shall, upon the request of the applicant, provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. The state lead agency may consult with persons identified by the applicant which the applicant believes will be concerned with the environmental effects of the project and may consult with members of the public who have made a written request to be consulted on the project. A request by the applicant for early consultation shall be made not later than 30 days after the determination required by Section 21080.1 with respect to the project.

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

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

(Added by Stats.1970, c. 1433, p. 2782, § 1. Amended by Stats.1972, c. 1154, p. 2275, § 6, eff. Dec. 5, 1972; Stats.1974, c. 176, p. 349, § 1; Stats.1977, c. 1200, p. 4001, § 11; Stats.1984, c. 637, § 1; Stats.1984, c. 1514, § 9.5.)

Historical Note

As added in 1970, this section read:

"Prior to the making of a detailed statement, the responsible state official shall consult with, and obtain comments from, any governmental agency which has jurisdiction by law or special expertise with respect to any environmental impact involved."

The 1972 amendment rewrote the section in language now constituting the first sentence of the first paragraph.

The 1974 amendment added the second [now third] paragraph.

The 1977 amendment substituted "state lead agency" and "each responsible agency and any public agency" for "responsible state agency" and "any public agency" in the first paragraph; and substituted "state lead agency" for "responsible state agency" in the second paragraph.

The 1984 amendment by c. 1514 added the second through the fourth sentences in the first paragraph; added the third paragraph; and made a nonsubstantive change.

Amendment of this section by § 2 of Stats. 1984, c. 637, failed to become operative under the provisions of § 5 of that Act.

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Amendment of this section by § 9 of Stats. 1984, c. 1514, failed to become operative under the provisions of § 15 of that Act.

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

Cross References

Inclusion in report of comments obtained under this section, see § 21061.
Person, see § 21066.
Public agency, see § 21063.
Similar provisions for local agencies, see § 21153.
State air resources board, see Health and Safety Code § 39500 et seq.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26. Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Library References

Health and Environment ⇐25.10.
C.J.S. Health and Environment §§ 64 to 90,
115 to 124.

Notes of Decisions

1. In general

Whatever is required to be considered in an environmental impact report under the Environmental Quality Act must be in the formal report, and what any official might have known from other writings or oral presentations cannot supply anything lacking in the report. *Russian Hill Improvement Ass'n v. Board of Permit Appeals* (1974) 118 Cal.Rptr. 490, 44 C.A.3d 158, appeal dismissed 95 S.Ct. 2646, 422 U.S. 1030, 45 L.Ed.2d 687.

The two basic requirements imposed upon state and local governmental entities under the Environmental Quality Act of 1970 are: (1) preparation of written environmental impact report satisfying elements of statute, and (2)

disclosure of the environmental impact report prior to the administrative decision so as to permit input from public and other agencies into making of the final report as well as the governmental decision based on that report. *Id.*

This section requires consultation with other agencies only when a detailed environmental impact statement is required, and thus if no detailed statement was required in connection with leasing of office building by state, there could be no separate cause of action for failure of state to consult with city in which building was located. *City of Orange v. Valenti* (1974) 112 Cal.Rptr. 379, 37 C.A.3d 240.

§ 21104.2. Consultation and findings; effect of projects on threatened or endangered species

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

(Added by Stats.1984, c. 1240, § 3.)

Library References

Health and Environment ⇐25.10.
C.J.S. Health and Environment §§ 64 to 90,
115 to 124.

§ 21105. Environmental impact report and comments as part of regular project report; availability to legislature and general public

The state lead agency shall include the environmental impact report as a part of the regular project report used in the existing review and budgetary

process. It shall be available to the Legislature. It shall also be available for inspection by any member of the general public, who may secure a copy thereof by paying for the actual cost of such a copy. It shall be filed by the state lead agency with the appropriate local planning agency of any city, county, or city and county which will be affected by the project.

(Added by Stats.1970, c. 1433, p. 2783, § 1. Amended by Stats.1972, c. 1154, p. 2275, § 7, eff. Dec. 5, 1972; Stats.1977, c. 1200, p. 4002, § 12.)

Historical Note

As added in 1970, this section read:
"The responsible state official shall include the environmental impact report, together with any comments received from other governmental agencies pursuant to Section 21104, as a part of the regular project report used in the existing review and budgetary process. It shall be available to the Legislature and to the general public."

The 1972 amendment rewrote the section to read as it now appears, except as amended in 1977.

The 1977 amendment substituted "state lead agency" for "responsible state agency" twice throughout the section; and inserted "any member of" preceding "the general public" in the third sentence.

Library References

Health and Environment ⇨25.10.
Records ⇨1 et seq.
C.J.S. Health and Environment §§ 64 to 90,
115 to 124.

C.J.S. Records § 1.

Notes of Decisions

In general 1
Public inspection or comment 2

Conservation Commission (1977) 138 Cal.Rptr. 241, 69 C.A.3d 570.

1. In general

There is no rigid timetable for preparation of required environmental impact report, but such document must be included as part of regular project report ultimately submitted to decision maker for its consideration and action. *Mount Sutro Defense Committee v. Regents of University of California* (1978) 143 Cal.Rptr. 365, 77 C.A.3d 20.

An environmental impact report is required in connection with coastal zone conservation commission's permit-granting function; there is no implied exemption of the EIR requirements of the Environmental Quality Act, § 21000 et seq., as regard the commission. *City of Coronado v. California Coastal Zone*

2. Public inspection or comment

The "revised final" environmental impact report for construction of tomato paste processing plant should have been circulated for public and agency comment since it contained significant new information. *Sutter Sensible Planning, Inc. v. Sutter County Bd. of Sup'rs* (1981) 176 Cal.Rptr. 342, 122 C.A.3d 813.

The preparation and submission of a formal environmental impact report well in advance of the public hearing on the application for a site permit is the only way in which the public input requirement of the Environmental Quality Act can be satisfied. *Russian Hill Improvement Ass'n v. Board of Permit Appeals* (1974) 118 Cal.Rptr. 490, 44 C.A.3d 158, appeal dismissed 95 S.Ct. 2646, 422 U.S. 1030, 45 L.Ed.2d 687.

§ 21106. Request of funds to protect environment

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

(Added by Stats.1970, c. 1433, p. 2782, § 1.)

Library References

States ⇨131.
C.J.S. States §§ 230, 234 to 239.

§ 21107
Repealed

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§ 21107. Repealed by Stats.1972, c. 1154, p. 2275, § 8, eff. Dec. 5, 1972

Historical Note

The repealed section, added by Stats.1970, c. 1433, p. 2782, § 1, required every state agency, board and commission to review its present authority, rules, regulations, etc., and to propose legislation in order to comply with intent, policies and procedures of this division.

§ 21108. State agency, board or commission; approval of determination to carry out project; notice; contents; public inspection; posting

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

(b) Whenever a state agency, board, or commission determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172, and it approves or determines to carry out that project, it, or the person specified in subdivision (b) or (c) of Section 21065, may file notice of the determination with the Office of Planning and Research. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the state agency, board, or commission responsible for making the determination that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080, or pursuant to Section 21085 or 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the state agency, board, or commission.

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

(Added by Stats.1972, c. 1154, p. 2275, § 9, eff. Dec. 5, 1972. Amended by Stats.1974, c. 56, p. 124, § 1, eff. March 4, 1974; Stats.1984, c. 571, § 1.)

Historical Note

The 1974 amendment inserted subdivision designations and added subs. (b) and (c).
The 1984 amendment deleted "the provisions of" preceding "this division" throughout the section; substituted "Office of Planning and Research" for "Secretary of the Resources Agency" in the first sentence of subd. (a) and the first sentence of subd. (b); substituted "Office of Planning and Research" for "Office of the Resources Agency" in the first sentence of subd. (c); and made nonsubstantive changes throughout the section.

Cross References

Disaster damage repair, exemption of projects, see § 21172.
Environmental impact report, see § 21061.
Limitation of actions, see § 21167.
Person, see § 21066.
Project, see § 21065.
Public agency, see § 21063.

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§ 21150

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Secretary of resources agency, see Government Code §§ 12801, 12807.

Significant effect on environment, see § 21068.

Similar provision for local agencies, see § 21152.

State agency, board or commission as a public agency, see § 21063.

Administrative Code References

Conservation department, review procedures, see 14 Cal. Adm. Code 1685.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Library References

Health and Environment ¶25.10.

C.J.S. Health and Environment §§ 64 to 90, 115 to 124.

Notes of Decisions

1. In general

Association which represented more than 500 private employers was barred by 30-day statute of limitations (§ 21167) from asserting that industrial welfare commission, which issued orders regulating wages, hours, and conditions of employment in particular industries, failed to prepare environmental impact report

or conduct initial investigation prior to filing negative declaration and that commission failed to comply with requirement of this section in filing its notice of determination only one day prior to promulgation of the orders. *California Mfrs. Ass'n v. Industrial Welfare Commission* (1980) 167 Cal.Rptr. 203, 109 C.A.3d 95.

Chapter 4

LOCAL AGENCIES

Section

- 21150. Environmental impact report required before allocation of state or federal funds.
- 21151. Local agencies; preparation and completion of impact report; submission as part of general plan report; significant effect.
- 21151.5. Time limits for preparation of environmental impact reports and negative declarations.
- 21151.6. Contracts with private entities or persons to permit agencies to meet time limits; powers; fees; construction; duration of section.
- 21152. Local agency; approval or determination to carry out project; notice; contents; public inspection; posting.
- 21153. Local lead agency; consultations prior to completion of impact report.
- 21154. Issuance of project order by state; effect on impact report of local agency.
- 21155. Economic practices manual; development and contents.

Chapter 4 was added by Stats.1970, c. 1433, p. 2782, § 1.

Law Review Commentaries

Environmental impact reports: new legal framework. Richard G. Hildreth (1977) 17 Santa Clara L.Rev. 805.

Friends of Mammoth: Vox populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 137.

§ 21150. Environmental impact report required before allocation of state or federal funds

State agencies, boards, and commissions, responsible for allocating state or federal funds on a project-by-project basis to local agencies for any project

which may have a significant effect on the environment, shall require from the responsible local governmental agency a detailed statement setting forth the matters specified in Section 21100 prior to the allocation of any funds other than funds solely for projects involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded.

(Added by Stats.1970, c. 1433, p. 2782, § 1. Amended by Stats.1972, c. 1154, p. 2275, § 10, eff Dec. 5, 1972.)

Historical Note

The 1972 amendment omitted "governmental" following "local"; substituted "any project" for "land acquisition or construction projects"; deleted the phrase "unless exempted by formal procedures developed under the provisions of

Section 21103" which had followed the phrase "significant effect on the environment"; and substituted the final phrase "projects involving only feasibility or planning studies ..." for "planning purposes".

Administrative Code References

Applications to the state water resources control board for funding, see 23 Cal. Adm. Code 2719.
Contents of environmental impact reports, see 14 Cal. Adm. Code 15140 et seq.
Implementation of the California Environmental Quality Act of 1970, see 14 Cal. Adm. Code 1681 et seq.
State policies regarding use of environmental impact reports, see 23 Cal. Adm. Code 2700.7.
Urban open space and recreation program, see 14 Cal. Adm. Code 4933.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Environmental decision making under CEQA. (1977) 24 U.C.L.A. Law Rev. 838.

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Library References

Health and Environment ⇐25.10.
C.J.S. Health and Environment §§ 64 to 90, 115 to 124.

Notes of Decisions

In general 1
Necessity of report 2

1. In general

Federal defendants in suit to restrain construction of freeway project would be preliminarily enjoined from any further action on project until Federal Aid Highway Act (23 U.S.C.A. § 128) provisions requiring public hearings and National Environmental Policy Act (42 U.S.C.A. § 4331 et seq.) provisions requiring filing of environmental impact statements were complied with and state defendants would be similarly enjoined until environmental impact statement was filed, in view of likeli-

hood of success on merits on basis of tentative findings that compliance with applicable statutes was at all times practicable and should have been undertaken and that no "design approval" of project had been given. *Sierra Club v. Volpe* (D.C.1972) 351 F.Supp. 1002.

2. Necessity of report

Transfer of park property did not alone and of itself require environmental impact report, nor, under administrative guidelines, was it required by proposed future allocation of funds for improvement of existing facilities. *Simons v. City of Los Angeles* (1976) 133 Cal. Rptr. 721, 63 C.A.3d 455.

§ 21151. Local agencies; preparation and completion of impact report; submission as part of general plan report; significant effect

All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they

intend to carry out or approve which may have a significant effect on the environment. When a report is required by Section 65402 of the Government Code, the environmental impact report may be submitted as a part of that report.

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

(Added by Stats.1970, c. 1433, p. 2783, § 1. Amended by Stats.1972, c. 971, p. 1754, § 1; Stats.1972, c. 1154, p. 2276, § 11, eff. Dec. 5, 1972; Stats.1981, c. 264, p. 1352, § 2.)

Historical Note

The 1972 amendments by c. 1154 rewrote the section, which previously read:

"The legislative bodies of all cities and counties which have an officially adopted conservation element of a general plan shall make a finding that any project they intend to carry out, which may have a significant effect on the environment, is in accord with the conservation element of the general plan. All other local governmental agencies shall make an environmental impact report on any project they

intend to carry out which may have a significant effect on the environment and shall submit it to the appropriate local planning agency as part of the report required by Section 65402 of the Government Code."

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1981 amendment added the second paragraph.

Cross References

Timberland preserve zones, exemption from provisions of this section, see Government Code § 51119.

Administrative Code References

Project evaluations by state water resources control board, see 23 Cal.Adm. Code 2720.

Law Review Commentaries

Application of California Environmental Quality Act to municipal annexations of land. (1976) 64 C.L.Rev. 532.

Application of environmental impact report requirement of the California Environmental Quality Act of 1970 to rate hearings of electric utilities (1974) 8 U.S.F.L.Rev. 752.

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Compliance by LAFCO with requirements of CEQA before approving annexation proposals of cities (1976) 16 Santa Clara L.Rev. 403.

Developer-prepared EIR's. (1975) 10 U.S.F. L.Rev. 272.

Environmental impact statements, zoning and low-cost housing. (1973) 46 So.Cal.L.Rev. 754.

Environmental protection: Attorney general's perspective. Evelle J. Younger (1974) 5 Pacific L.J. 19.

Expanding scope of environmental law. Kevin P. Kane (1973) 48 Los Angeles Bar Bull. 81.

Friends of the Mammoth. (1973) 9 C.W.L. Rev. 536.

Indian archaeological sites and the Environmental Quality Act. (1975) 6 Golden Gate L.Rev. 1.

Land development and the environment: Subdivision Map Act. (1974) 5 Pacific L.J. 55.

When does a private construction project require an environmental impact report. Kevin P. Kane (1976) 52 Los Angeles Bar J. 142.

Library References

Health and Environment ⇨25.10(2).

C.J.S. Health and Environment §§ 70 et seq., 119 et seq.

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1. Validity

California Environmental Quality Act, in requiring the local agency formation commission of San Diego county to file an environmental impact report preliminary to the exercise of its discretion to approve or disapprove a proposed deannexation of territory currently part of the city of San Diego, does not unconstitutionally infringe upon the First Amendment (U.S.C.A. Const. Amend. 1) rights of the deannexation proponents, nor is the fee to be charged them in connection with the preparation of an environmental impact report an unconstitutional burden on their First Amendment rights or an unreasonable impediment on their right to petition for redress of grievances. *People ex rel. Younger v. Local Agency Formation Commission of San Diego County* (1978) 146 Cal.Rptr. 400, 81 C.A.3d 464.

2. In general

Board of county supervisors' statement that approval of tentative maps for subdivision required that the final maps comply with specific plan for the entire future development of the area in question and that the board recognized that development should not be considered and evaluated in a vacuum was insufficient to show required consideration, for environmental impact report purposes, of the overall impact of the project. *People v. Kern County* (1976) 133 Cal.Rptr. 389, 62 C.A.3d 761.

When an environmental impact report is required and prepared, project may nonetheless be approved if there are overriding economic concerns. *Shawn v. Golden Gate Bridge* (1976) 131 Cal.Rptr. 867, 60 C.A.3d 699.

Approval by local agency formation commission of city annexation of agricultural land proposed to be used for residential, commercial and recreational purposes was project "which may have a significant effect on the environment," within meaning of this section, where, when approval was granted, planning was completed, preliminary, conferences with city agencies had progressed "sufficiently," development was anticipated in near future, and annexation would result in urban growth. *Bozung v. Local Agency Formation Commission of Ventura County* (1975) 118 Cal.Rptr. 249, 529 P.2d 1017, 13 C.3d 263.

3. Construction with other laws

Since neither dictionary definition nor Environmental Quality Act itself provides court with a tool to use in interpreting word "project" as used in this section, supreme court turned to the National Environmental Policy Act on which the California Act appeared to be patterned. *Friends of Mammoth v. Board of Sup'rs of Mono County* (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

4. Report—In general

Word "significant," within requirement of this section for an environmental impact report only for project whose environmental effect can be described as "significant" is not a term of precision but encompasses a range of meaning. *No Oil, Inc. v. City of Los Angeles* (1974) 118 Cal.Rptr. 34, 529 P.2d 66, 13 C.3d 68.

With respect to oil drilling project, test used by city which limited use of an environmental impact report to projects which may have an "important" or "momentous" effect of "semi-permanent" duration was erroneous. *No Oil, Inc. v. City of Los Angeles* (1974) 118 Cal.Rptr. 34, 529 P.2d 66, 13 C.3d 68.

Phrase "they intend to carry out" as used in this section means only that before an environmental impact report becomes required the government must have some minimal link with the activity either by direct proprietary interest or by permitting, regulating, or funding private activity. *Friends of Mammoth v. Board of Sup'rs of Mono County* (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

5. — Purpose of report

A major function of environmental impact report is to ensure that all reasonable alternatives are thoroughly assessed by the responsible official or board. *Inyo County v. City of Los Angeles* (1977) 139 Cal.Rptr. 396, 71 C.A.3d 185, motion denied 144 Cal.Rptr. 71, 78 C.A.3d 82.

6. — Sufficiency of report

If some reasonable, albeit less exacting, analysis of onshore impact of outercontinental

emissions could be performed, for purposes of environmental impact report on proposed modification of oil refinery, responsible county was required to do so and report results, assuming sophisticated technical analysis was not feasible; and if less exacting analysis yielded facts indicating cumulative impact of outer-continental shelf emissions was not significant, environmental impact report was required to at least briefly state and explain such conclusion. *Citizens To Preserve The Ojai v. Ventura County By and Through Bd. of Sup'rs (USA Petrochem Co.)* (App. 2 Dist.1985) 222 Cal. Rptr. 247, 176 C.A.3d 421.

Environmental impact report covering transportation corridor consisting of numerous potential transportation routes which would link interstate highway with freeway adequately confronted environmental concerns and issues presented by the project as it was presently envisioned. *Atherton v. Board of Supervisors of Orange County* (App. 4 Dist.1983) 194 Cal. Rptr. 203, 146 C.A.3d 346.

Environmental impact report prepared in conjunction with planned vacation of public street for purpose of permitting building of shopping center was adequate in its treatment of alternatives and in its response to comments relating to potential traffic congestion, energy consumption levels and impact of shopping mall on areas outside city. *City of Rancho Palos Verdes v. City Council of Rolling Hills Estates* (1976) 129 Cal.Rptr. 173, 59 C.A.3d 869.

Study report, on proposed large real estate development, which was not intended to be an environmental impact statement and which did not discuss various subdivisions of the state Environmental Quality Act failed to literally or substantially comply therewith. *Environmental Law Fund, Inc. v. Town of Corte Madera* (1975) 122 Cal.Rptr. 282, 49 C.A.3d 105.

Where final environmental impact report consisted of developer's draft together with written reports of county interim committee, county planning department, and air pollution control district, there was compliance with statutory requirement that the environmental impact report be prepared by the public agency. *Hixon v. Los Angeles County* (1974) 113 Cal.Rptr. 433, 38 C.A.3d 370.

7. Necessity of report—In general

Facts that proposed ordinance amendment prescribed steps to be taken in case of malfunction of private sewage system, General Plan cited history of environmental degradation through failures and overconcentration of septic tank systems, and memorandums in administrative record stated that alternative sewage disposal systems were notorious for failure and that authorization of alternative systems would result in increased possibility of failure, with possible public health consequences, pro-

vided substantial evidence that ordinance amendment authorizing installation of alternative sewage disposal systems might have significant effect on environment and thus, county Board of Supervisors was required to prepare Environmental Impact Report before adopting ordinance. *Heninger v. Board of Sup'rs of Santa Clara County* (App. 1 Dist.1986) 224 Cal. Rptr. 509.

City was required to prepare environmental impact report prior to implementation of ordinance requiring residential hotel owners to provide relocation assistance to residents before converting hotel to any other use; ordinance reasonably portended possible future environmental impact flowing from cumulative effect of probable replacement construction projects. *Terminal Plaza Corp. v. City & County of San Francisco* (App. 1 Dist.1986) 223 Cal.Rptr. 379, 177 C.A.3d 892.

Where construction of multiple-unit condominium building was authorized without requirement of environmental impact report because of grandfather provisions of Environmental Quality Act, governmental action permitting sale of condominium units and hence occupancy by owners had no effect upon environment, in absence of showing to the contrary an EIR was not required as condition to approval of tentative subdivision map. *Pacific Palisades Property Owners Ass'n v. City of Los Angeles* (1974) 117 Cal.Rptr. 138, 42 C.A.3d 781.

No environmental impact report would be required with respect to phase of the street improvement project, involving removal of trees, which had already been completed; but at time of preparation of report on second phase of project, cumulative effect of both phases could be considered in compliance with 14 Cal. Adm. Code 15165 permitting preparation of a single report for multiple and phased projects. *Hixon v. Los Angeles County* (1974) 113 Cal.Rptr. 433, 38 C.A.3d 370.

Where city was engaged in project of extracting subsurface water in a county distant from the city and the county was the area in which the ecological damage, if any, would occur, city was obliged to file environmental impact statement with the planning agencies of the county or counties where the project was to be constructed and where significant ecological impact might occur. *Inyo County v. Yorty* (1973) 108 Cal.Rptr. 377, 32 C.A.3d 795.

County board of supervisors to which application was made for conditional use permit for purpose of constructing proposed multistory condominiums and stores and restaurant on a five and one-half acre parcel of land in predominantly mountainous and open range country were required to consider whether the proposed construction might have a significant effect on environment and, if so, to prepare an environmental impact report prior to its deci-

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sion to grant the permit. *Friends of Mammoth v. Board of Sup'rs of Mono County* (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

8. — Negative declarations, necessity of report

Admissions by mining company that vehicular traffic would increase and noise levels would be slightly elevated, that there would be change in amount of dust in vicinity and mine would alter contours and character of area did not constitute substantial evidence of significant environmental effects, and were not at all inconsistent with finding by the board of supervisors of county that conditions attached to negative declaration mitigated any potentially significant environmental impact associated with project and, thus, no environmental impact report was mandated. *Perley v. Calaveras County* (1982) 187 Cal.Rptr. 53, 137 C.A.3d 424.

If after an initial study a public agency determines that a proposed project which could possibly have significant effect on environment will, in fact, not have a significant effect, agency may so declare in negative declaration and no environmental impact report is required. *Pacific Water Conditioning Ass'n v. City Council of Riverside* (1977) 140 Cal.Rptr. 812, 73 C.A.3d 546.

Existence of factual controversy, uncertainty, conflicting assertions, arguments, or public controversy, could not of themselves nullify local agency's adoption of negative declaration and require preparation of environmental impact report where there was no substantial evidence in record that project as designed and approved would fall within requirements of the Environmental Quality Act. *Running Fence Corp. v. Superior Court of California, Sonoma County* (1975) 124 Cal.Rptr. 339, 51 C.A.3d 400.

Negative declaration with respect to necessity of environmental impact report on project for removal of 32 trees which were pushing up sidewalks, curbs, gutters and driveways was not insufficient on theory that it failed to contemplate the cumulative effect of all other similar projects wherever undertaken, since a planned removal of trees done over a long period of time as part of routine and ordinary highway maintenance could not be equated with successive tree cutting done within a compressed time, as time can have the effect of reducing the impact of alterations of the environment. *Hixon v. Los Angeles County* (1974) 113 Cal.Rptr. 433, 38 C.A.3d 370.

9. — Evidence, necessity of report

There was no real evidence that odors and flies would cause substantial adverse effects in area of proposed 900-cow dairy, rather, substantial evidence supported county's determination that evidence presented was insufficient to show that a fair argument could be made

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that project might have significant environmental impact so as to require preparation of an environmental impact report under this section. *Newberry Springs Water Ass'n v. San Bernardino County* (App. 4 Dist.1984) 198 Cal. Rptr. 100, 150 C.A.3d 740.

Substantial evidence supported determination of county board of supervisors to adopt negative declaration rather than requiring environmental impact report prior to approving project for reconstruction of intersection, and there was no substantial evidence from which it could have been fairly argued that project might have had significant environmental impact not already considered in environmental impact report prepared in conjunction with developer's application for development of residential and resort lodge complex. *Merz v. Monterey County Bd. of Sup'rs* (App. 1 Dist. 1983) 195 Cal.Rptr. 370, 147 C.A.3d 933.

If there is substantial evidence that proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of environmental impact report and adopt a negative declaration; therefore, if trial court perceives substantial evidence that project might have such an impact, but agency failed to secure preparation of required environmental impact report, agency's action is to be set aside because the agency abused its discretion by failing to proceed in the manner required by law. *Friends of "B" St. v. City of Hayward* (1980) 165 Cal.Rptr. 514, 106 C.A.3d 988.

In absence of any evidence showing that impact on environment of proposed project would not be mitigated as required in permit issued by board of supervisors, or any evidence to show that effects remaining after such mitigation would have substantial adverse impact on environment, conclusion of board of supervisors that project as permitted would have no substantial adverse impact on environment and thus that environmental impact report was not required was unassailable, and superior court exceeded its jurisdiction in issuing writ of mandate requiring environmental impact report. *Running Fence Corp. v. Superior Court of California, Sonoma County* (1975) 124 Cal.Rptr. 339, 51 C.A.3d 400.

10. — Exemptions, necessity of report

Environmental impact report was not required prior to construction of firearms training simulator building on grounds of Los Angeles police training facility located in city park, since such facility was exempt from requirements of California environmental quality act as minor structure accessory to existing institutional facilities. *Simons v. City of Los Angeles* (1977) 140 Cal.Rptr. 484, 72 C.A.3d 924.

Regional transportation plan adopted by county and cities area planning coordination

council was not exempt from requirement that environmental impact report be prepared on ground that it was mere legislative proposal which was intended for incorporation into California transportation plan which, in turn, was to be adopted by state transportation board following appropriate legislative declaration of state wide transportation goals, objectives and policies. *Edna Valley Ass'n v. San Luis Obispo County and Cities Area Planning Coordinating Council* (1977) 136 Cal.Rptr. 665, 67 C.A.3d 444.

11. Injunctions

Court has authority to consider adequacy of environmental impact report which has been filed with and accepted by planning commission, and with respect thereto the court can properly use instrument of injunction to deal with a need for effective equitable action. *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 104 Cal.Rptr. 197, 27 C.A.3d 695, supplemented on other grounds 104 Cal.Rptr. 714, 28 C.A.3d 512.

12. Projects—In general

Proposal to deannex 25 square miles of territory currently part of the city of San Diego was a "project" subject to the California Environmental Quality Act and environmental impact report requirements. *People ex rel. Younger v. Local Agency Formation Commission of San Diego County* (1978) 146 Cal.Rptr. 400, 81 C.A.3d 464.

Ordinances and resolutions adopted by a local agency are "projects" within the meaning of the California Environmental Quality Act (this section and § 21065) and an adequate environmental impact report must be prepared for each project; lot splits of less than five acres and reversions to acreage are not excluded from CEQA requirements. 60 Ops.Atty.Gen. 335, 9-30-77.

While CEQA applies to the whole of a project including those parts of a project occurring beyond the boundaries of the state, each responsible agency must consider the whole of a project, including those parts occurring beyond the boundaries of the state, when each such agency is determining to carry out the project. 58 Ops.Atty.Gen. 614, 9-26-75.

13. — Description of project

Where environmental impact report submitted by city and its department of water and power initially defined project which report was intended to cover as a proposed increase in long-term subsurface extraction rate of water for use in specified valley, and defined project so as to exclude subsurface extraction for export to city via water department's twin aqueduct system, but recommended project ultimately endorsed by final environmental impact report and approved by city's board of

water and power commissioners went beyond such initial project description and dealt with large-scale phases of city aqueduct management program, such fluctuations in descriptions of proposed project frustrated Environmental Quality Act's public information aims, and formulation of environmental impact report was not in manner required by law. *Inyo County v. City of Los Angeles* (1977) 139 Cal.Rptr. 396, 71 C.A.3d 185, motion denied 144 Cal.Rptr. 71, 78 C.A.3d 82.

14. Local agencies

The city's department of transportation, as a local "lead agency" within meaning of § 21067, had primary responsibility to prepare environmental impact report in conjunction with application for amended airport permit and state department of transportation, as a "responsible agency" within § 21069, was not required to do so. *Bakman v. State, Dept. of Transp.* (1979) 160 Cal.Rptr. 583, 99 C.A.3d 665.

Local agency formation commission was governmental agency to which provisions of Environmental Quality Act concerning preparation of environmental impact reports were applicable. *Bozung v. Local Agency Formation Commission of Ventura County* (1975) 118 Cal.Rptr. 249, 529 P.2d 1017, 13 C.3d 263.

15. Private activities

Environmental impact report is required when a project with significant environmental impact is to be carried out by a nongovernmental person subject to approval by a public agency. *Carmel Valley View, Ltd. v. Board of Sup'rs, in and for Monterey County* (1976) 130 Cal.Rptr. 249, 58 C.A.3d 817.

Environmental impact report is required in approval by a local agency of a private project only when project would ordinarily have a significant effect upon the environment. *Pacific Palisades Property Owners Ass'n v. City of Los Angeles* (1974) 117 Cal.Rptr. 138, 42 C.A.3d 781.

Analysis of Environmental Quality Act of 1970 including this section shows legislative intent to include private activities for which a permit, lease or other entitlement is necessary. *Friends of Mammoth v. Board of Sup'rs of Mono County* (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

16. Zoning

The enactment and amendment of zoning ordinances must be preceded, pursuant to § 21080, subd. (a) and this section, by preparation of an environmental impact report if the proposed ordinance may have a significant effect on the environment, and this conclusion applies to zoning ordinances which may have been adopted during the moratorium period of December 5, 1972, to April 5, 1973. 56 Ops. Atty.Gen. 404, 9-26-73.

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17. Findings

In proceeding brought by the state for writ of mandate to compel local agency formation commission of San Diego county to set aside its negative declaration and to prepare an environmental impact report before proceeding further with consideration of deannexation proceeding, substantial evidence supported trial court's finding and conclusion that the proposed deannexation could have the potential, either directly or indirectly, for significant impact on the physical and human environment in the area. *People ex rel. Younger v. Local Agency Formation Commission of San Diego County* (1978) 146 Cal.Rptr. 400, 81 C.A.3d 464.

Approval of proposed subdevelopment without an adequate environmental impact report or without a negative declaration that an EIR was not required was improper; although approval of the parcel map implied that board of county supervisors found that an EIR was not required, such an implied finding is not sufficient. *People v. Kern County* (1976) 133 Cal. Rptr. 389, 62 C.A.3d 761.

Whether with respect to a proposed land division, which involved possible construction of two dwellings on adjoining lots of over 2½ acres each in a rural area, a negative declaration should be filed or an environmental impact report prepared had to be determined in compliance with Environmental Quality Act and state guideline, and either lead agency or county board of supervisors must make findings, either in form of a negative declaration or an environmental impact report, to permit reviewing court to bridge an analytic gap between evidence and ultimate decision approving the proposed division. *Myers v. Board of Sup'rs of Santa Clara County* (1976) 129 Cal. Rptr. 902, 58 C.A.3d 413.

18. Review—In general

Negative declaration by local agency that certain project will not have significant effect

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upon environment will be reversed only if agency decision is not supported by substantial evidence. *Shawn v. Golden Gate Bridge* (1976) 131 Cal.Rptr. 867, 60 C.A.3d 699.

A negative declaration with respect to effect of project on environment will be sustained unless as a matter of law it appears that the project as a whole will have a substantial adverse effect upon the environment. *Myers v. Board of Sup'rs of Santa Clara County* (1976) 129 Cal.Rptr. 902, 58 C.A.3d 413.

Neither California Environmental Quality Act nor state guidelines promulgated thereunder authorize a city council to delegate to another body its review and consideration function with regard to environmental impact reports required to be submitted in connection with intended projects which may have significant effect on the environment; delegation is inconsistent with purposes of environmental impact report itself since it cannot serve its informational function unless it is reviewed and considered by governmental body which takes action having effect upon environment. *Kleist v. City of Glendale* (1976) 128 Cal.Rptr. 781, 56 C.A.3d 770.

Court does not have duty of passing on validity of conclusions expressed in environmental impact report filed with and accepted by planning commission, but only on sufficiency of report as an informative document. *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 104 Cal.Rptr. 197, 27 C.A.3d 695, supplemented on other grounds 104 Cal. Rptr. 714, 28 C.A.3d 512.

19. — Scope of review

In reviewing an environmental impact report regarding application for water service connection or pipeline extension permit, the Marin municipal water district must consider effects of such projects upon all aspects of the environment. 58 Ops.Atty.Gen. 438, 6-20-75.

§ 21151.5. Time limits for preparation of environmental impact reports and negative declarations

Each local agency shall establish, by ordinance or resolution, time limits, not to exceed one year for completing and certifying environmental impact reports, and 105 days for completing negative declarations, for projects described in subdivision (c) of Section 21065. Such time limits shall apply only to those circumstances in which such local agency is the lead agency for a project. Such ordinances or resolutions may establish different time limits for different types or classes of projects, but all such limits shall be measured from the date on which an application requesting approval of such project is received and accepted as complete by the local agency. The ordinances or resolutions required by this section may provide for a reasonable extension of such time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.

(Added by Stats.1976, c. 1312, § 18. Amended by Stats.1977, c. 1200, p. 4002, § 13; Stats.1978, c. 1113, p. 3404, § 8.5, eff. Sept. 26, 1978.)

Historical Note

The 1977 amendment substituted "Each local agency" for "Local agencies" and inserted "and certifying" and "105 days for" in the first sentence; inserted the second sentence; inserted "and accepted as complete" in the third sen-

tence; and substituted "compelling circumstances" for "unforeseen circumstances" in the last sentence.

The 1978 amendment inserted "or resolutions" at the beginning of the last sentence.

Law Review Commentaries

Project approval under the California Environmental Quality Act. Barbara Sahm (1979) 19 Santa Clara L.Rev. 579.

Library References

Health and Environment ⇨25.10.
C.J.S. Health and Environment §§ 64 to 90,
115 to 124.

§ 21151.6. Contracts with private entities or persons to permit agencies to meet time limits; powers; fees; construction; duration of section

(a) At the time that an application is received and accepted as complete by a local agency requiring a discretionary approval subject to this division, the agency shall determine whether or not it is able to meet the time limits specified in this chapter for assessing environmental impacts. If the local agency determines that it will be unable to meet those time limits with its existing staff resources, the agency shall, upon request of an applicant, contract with or employ qualified private entities or persons on a temporary basis to perform the services necessary to permit the agency to meet the time limits. In choosing the entity or person to perform the necessary services, the agency shall take into consideration the views of the applicant. The entity or person is solely responsible to the local agency. However, a local agency need not enter into a contract or employ persons if it determines that no entities or persons are available or qualified to perform the services.

(b) Entities or persons contracted with or employed by a local agency may, pursuant to an agreement with the local agency, perform functions necessary to meet the requirements of this division and shall not perform those functions reserved by this division or local ordinance to the decisionmaking body.

(c) A local agency may charge and may require the applicant to pay a fee in the amount necessary to defray costs directly attributable to employing or contracting with entities or persons performing services pursuant to this section.

(d) This section shall not be construed to affect any provision of this division which may require independent judgment of the lead agency.

(e) This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1990, deletes or extends that date.

(Added by Stats.1983, c. 967, § 3.)

Repeal

Section 21151.6 is repealed by its own terms on Jan. 1, 1990.

Library References

Health and Environment ⇐25.10.
C.J.S. Health and Environment §§ 64 to 90,
115 to 124.

§ 21152. Local agency; approval or determination to carry out project; notice; contents; public inspection; posting

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

(b) Whenever a local agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172, and it approves or determines to carry out the project, it, or the person specified in subdivision (b) or (c) of Section 21065, may file notice of the determination with the county clerk of the county, or counties, in which the project will be located. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the local agency responsible for making the determination that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the local agency.

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

(Added by Stats.1972, c. 1154, p. 2276, § 12, eff. Dec. 5, 1972. Amended by Stats.1974, c. 56, p. 124, § 2, eff. March 4, 1974; Stats.1984, c. 250, § 7; Stats.1984, c. 1357, § 2; Stats.1985, c. 338, § 3.)

Historical Note

The 1974 amendment added subs. (b) and (c).

The 1984 amendment by c. 1357 deleted "the provisions of" preceding "this division" throughout the section; inserted "within five working days of the action" in the first sentence of subd. (a); and made nonsubstantive changes throughout the section.

Amendment of this section by § 8 of Stats. 1984, c. 250, failed to become operative under the provisions of § 9 of that Act.

Amendment of this section by § 1 of Stats. 1984, c. 1357, failed to become operative under the provisions of § 5 of that Act.

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1985 amendment added the third sentence in subd. (a).

Former § 21152, added by Stats.1972, c. 971, p. 1754, § 2, which specified contents of environmental impact report, was repealed by

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§ 21152

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Stats.1972, c. 1154, p. 2276, § 11.5, eff. Dec. 5, 1972.

Cross References

State agency, board or commission, approval or determination to carry out projects, see § 21108.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Library References

Health and Environment ⇨25.10.
C.J.S. Health and Environment §§ 64 to 90,
115 to 124.

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- In general 1
- Filing of notice 3
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- Review 6
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(App. 3 Dist.1985) 211 Cal.Rptr. 884, 165 C.A.3d 823.

4. Posting of notice

Compliance by county clerk with statutory duty of posting notices of determination of environmental actions taken by public agency under this section is mandatory in order for special statute of limitations provided in § 21167 to commence running. Citizens of Lake Murray Ass'n v. San Diego City Council (1982) 181 Cal.Rptr. 123, 129 C.A.3d 436.

5. Sufficiency of notice

Notice filed by county board of supervisors concerning amendment to district rules relaxing oxides of nitrogen emission standards for certain facilities in county was not in substantial compliance with notice requirements for project determined to be exempt from Environmental Quality Act (§ 21000 et seq.) where project description was only required item of information contained in notice, project was described as changes in certain rules and notice failed to state that project was determined to be exempt and failed to provide guidelines citation under which such finding was made or statement of reasons to support finding of exemption. International Longshoremen's and Warehousemen's Union Local 35, v. Board of Sup'rs (1981) 171 Cal.Rptr. 875, 116 C.A.3d 265.

6. Review

Failure of plaintiffs to appeal environmental hearing officer's issuance of negative declaration, stating that 900-cow dairy would have no significant environmental effect, to environmental resources board did not deprive trial court of jurisdiction to consider propriety of action of board of supervisors approving negative declaration, as county code, which provides that the ERB shall hear appeals from the EHO and that appeals must be brought within 14 days, curtails rights provided by state law, which specifically allows 30 days from filing of notice of determination by board of supervi-

1. In general

Where by its terms Eastside 1 Service Area project covered area in Eastside 2 Service Area being condemned for pipeline, and where negative declaration as to need for environmental impact report and notice of determination covered entire project from turnout No. 5 on the California aqueduct to point D in Eastside 2 Service Area and entire area in Eastside 1 Service Area, water district was not required to file environmental impact report or negative declaration covering Eastside 2 Service Area. Tsun Hai Lee v. Lost Hills Water Dist. (1978) 144 Cal.Rptr. 510, 78 C.A.3d 630.

2. Personal notice

Lack of personal notice to property owners affected by project of declaration that project would have no significant adverse impact or effect on environment would not make statute of limitations pertaining to protest to that declaration inapplicable. Tsun Hai Lee v. Lost Hills Water Dist. (1978) 144 Cal.Rptr. 510, 78 C.A.3d 630.

3. Filing of notice

County fairgrounds was a state agency or local agency for purposes of the California Environmental Quality Act (§ 21000 et seq.) and therefore, 180-day limitation provided in § 21152 applied to suit against county fairgrounds and state racing association seeking cancellation of their contract for racing at fairgrounds, as filing of notice of exemption was required to be made with county clerk, and notice was not posted. Lewis v. Seventeenth Dist. Agr. Ass'n (Central State Racing Ass'n)

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sors in which to institute any action or proceeding challenging negative declaration. *Newberry Springs Water Ass'n v. San Bernardi-*

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no County (App. 4 Dist.1984) 198 Cal.Rptr. 100, 150 C.A.3d 740.

§ 21153. Local lead agency; consultations prior to completion of impact report

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

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

(Added by Stats.1972, c. 1154, p. 2276, § 13, eff. Dec. 5, 1972. Amended by Stats.1977, c. 1200, p. 4002, § 14; Stats.1984, c. 637, § 3; Stats.1984, c. 1514, § 10.5.)

Historical Note

The 1977 amendment substituted "local lead agency" and "each responsible agency and any public agency" for "local agency" and "any public agency".

The 1984 amendment by c. 1514 added the second through the fifth sentences in the first paragraph; and added the second paragraph.

Amendment of this section by § 4 of Stats. 1984, c. 637, failed to become operative under the provisions of § 6 of that Act.

Amendment of this section by § 10 of Stats. 1984, c. 1514, failed to become operative under the provisions of § 16 of that Act.

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

Former § 21153, added by Stats.1972, c. 971, p. 1754, § 3, and which required local governmental agency to determine boundaries of the area affected by a project, was repealed by Stats.1972, c. 1154, p. 2276, § 12.5, eff. Dec. 5, 1972.

Cross References

Inclusion in report of comments obtained under this section, see § 21061. Similar provisions for state agencies, see § 21104.

Library References

Health and Environment ⇐25.10.
C.J.S. Health and Environment §§ 64 to 90,
115 to 124.

Notes of Decisions

1. In general

County satisfied its responsibility to solicit comments from individuals and from state and other agencies on its environmental impact report on effect of amendment to county's general plan so as to change zoning designation of property lying within floodplain from exclusive agricultural designation to one of planned development by not acting until after it received certificate from state clearinghouse to effect that state review was complete, though response had not been received from state reclamation board. *Cleary v. Stanislaus County* (1981) 173 Cal.Rptr. 390, 118 C.A.3d 348.

Public agency responsible for preparation and certification of final environmental impact report should seek out those other public agencies which exercise authority over natural resources of whatever nature and provide those agencies with ample opportunity to voice objection to any proposed project; appropriate policy should be one of inclusion, not exclusion, of other public agencies. *Whitman v.*

Board of Sup'rs of Ventura County (1979) 151 Cal.Rptr. 866, 88 C.A.3d 397.

Under this section requiring local agency prior to completing environmental impact report to consult with and obtain comments from any public agency which has jurisdiction with respect to project and with any person who has special expertise with respect to environmental impact involved and guidelines for Environmental Quality Act requiring final report to contain comments received and the response to environmental points and specify why suggestions were not accepted, county was required in final environmental impact report regarding proposed subdivision to respond with specificity as to disposition of environmental issues raised to draft report and set forth reasons why such objections were rejected and why it considered development of project to be of overriding importance and its failure to do so rendered the final report fatally defective. *People v. Kern County* (1974) 115 Cal.Rptr. 67, 39 C.A.3d 830.

§ 21154. Issuance of project order by state; effect on impact report of local agency

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

(Added by Stats.1972, c. 1154, p. 2276, § 14, eff. Dec. 5, 1972.)

Library References

Health and Environment ⇨25.10(6).
C.J.S. Health and Environment §§ 77, 122.

§ 21155. Economic practices manual; development and contents

The Secretary of the Resources Agency shall develop an economic practices manual which may be used by local agencies in assessing the economic efficiency and fiscal impact of alternative land use proposals by local agencies and as an aid in evaluating private land use proposals.

The manual shall present economic and fiscal criteria for local agencies to use in developing comprehensive and multidisciplined programs and procedures for evaluating alternative land use policies and private land use proposals. The manual shall include a step-by-step program which local agencies may follow, including, but not limited to, sources of data, methods of summarizing and using the data, formulas for evaluating the economic efficiency and fiscal impact of land use decisions, a guideline on how to prepare a simple statement of results, and a means for equating economic factors with social and environmental factors.

The Secretary of the Resources Agency may obtain private counseling in the preparation of the manual. On or before January 1, 1975, the Secretary of

the Resources Agency shall submit a proposed manual to the Legislature for its review. It is the intent of the Legislature hereby to permit the Legislature to review the manual and to comment thereon prior to its final adoption by the Secretary of the Resources Agency and its distribution to local agencies. (Added by Stats.1973, c. 895, p. 1671, § 1.)

Library References

Health and Environment ⇄25.10(8). Zoning and Planning ⇄353. C.J.S. Health and Environment §§ 78, 122.	C.J.S. Zoning and Land Planning §§ 10, 178, 179, 183.
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Chapter 5

SUBMISSION OF INFORMATION

Section

- 21160. Application for lease, permit, license, etc.; data and information; purpose; trade secrets.
- 21161. Completion of impact report; notice; validity of project.
- 21162. Notice of completion of impact report.

Chapter 5 was added by Stats.1972, c. 1154, p. 2276, § 15, eff. Dec. 5, 1972.

§ 21160. Application for lease, permit, license, etc.; data and information; purpose; trade secrets

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

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

(Added by Stats.1972, c. 1154, p. 2276, § 15, eff. Dec. 5, 1972.)

Administrative Code References

- Activities not requiring an initial study, see 20 Cal.Adm. Code 2304.
- Applications for waste discharge, water reclamation requirements, or other entitlements for use, see 23 Cal.Adm. Code 2717 et seq.
- Contents of environmental impact reports, see 14 Cal.Adm. Code 15140 et seq.
- Implementation of the California Environmental Quality Act of 1970, see 14 Cal.Adm. Code 1681 et seq.
- Initial study, see 20 Cal.Adm. Code 2305.
- State policies regarding use of environmental impact reports, see 23 Cal.Adm. Code 2700.7.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26. Developer-prepared EIR's. (1975) 10 U.S.F. L.Rev. 272.

Library References

Health and Environment ⇐25.5, 25.10, 25.10(5). C.J.S. Health and Environment §§ 61 to 90, 94, 104, 110, 115 to 126, 128, 129, 132, 133, 135, 137 to 140, 142, 144 to 153.

Notes of Decisions**1. In general**

Department of transportation's grant of amended airport permit was a "project" within meaning of § 21065 for which it could require city to prepare an environmental impact report. *Bakman v. State, Dept. of Transp.* (1979) 160 Cal.Rptr. 583, 99 C.A.3d 665.

Where pipeline was part of applicant's overall plan for project and could have been dis-

cussed in environmental impact report in at least general terms, EIR prepared in connection with application for conditional use permit for drilling single exploratory oil and gas well should have addressed itself to environmental consequences associated with proposed pipeline, which would be built if well proved successful. *Whitman v. Board of Sup'rs of Ventura County* (1979) 151 Cal.Rptr. 866, 88 C.A.3d 397.

§ 21161. Completion of impact report; notice; validity of project

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

(Added by Stats.1972, c. 1154, p. 2276, § 15, eff. Dec. 5, 1972. Amended by Stats.1984, c. 571, § 2.)

Historical Note

The 1984 amendment substituted "Office of Resources Agency" and made a nonsubstantive change in the first sentence.

Administrative Code References

Review of environmental documents of lead agencies, see 20 Cal.Adm. Code 2309.

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Library References

Health and Environment ⇐25.10. C.J.S. Health and Environment §§ 64 to 90, 115 to 124.

§ 21162. Notice of completion of impact report

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

(Added by Stats.1983, c. 1025, § 1.)

Chapter 6
LIMITATIONS

Section

- 21165. Lead agency; preparation of impact report.
- 21166. Subsequent or supplemental impact report; conditions.
- 21166.1. Effect of preparation of impact report by lead agency.
- 21167. Commencement of actions or proceedings; time.
- 21167.1. Preferential hearing over other civil actions.
- 21167.2. Failure to commence action or proceeding within time limits; presumption that impact report complies with division.
- 21167.3. Assumption that impact report or negative declaration complies with division; conditional approval or disapproval.
- 21167.4. Mandate proceeding noncompliance with division; necessity of request for hearing; dismissal.
- 21167.5. Proof of service; filing with initial pleading.
- 21167.6. Record of proceedings; clerk's transcript on appeal; filing briefs on appeal; date of appeal for hearing.
- 21167.7. Copy of pleadings to attorney general; granting of relief.
- 21167.8. Settlement meeting; presettlement and settlement statements; further settlement conference; failure to participate.
- 21168. Review of determination; finding or decision of public agency; law governing; scope.
- 21168.3. Preference over other civil actions.
- 21168.5. Abuse of discretion.
- 21168.6. Mandate to public utilities commission; supreme court jurisdiction.
- 21168.7. Declaration of existing law.
- 21168.9. Public agency action not in compliance with article; court's powers and duties; date of application.
- 21169. Validation; issuance of lease, permit, etc., or project undertaken, etc.
- 21170. Judicial proceedings in progress; effect.
- 21171. Moratorium provision; lease, permit, license, etc., and certain projects.
- 21172. Disasters; maintenance, repair, etc., property or facilities damaged; exemption.
- 21172.5. Evaluation of projects and status of impact reports during moratorium period.
- 21173. Severability.
- 21174. Construction of division; enforcement of other provisions; coastal act.
- 21175. Local agency formation commission; confirmation, validation and legality of project approvals; time.
- 21176. Judicial proceedings pending or determined; time; effect on operation of § 21175.
- 21177. Presentation of grounds for noncompliance; objections to approval of project.

Chapter 6 was added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972.

§ 21165. Lead agency; preparation of impact report

When a project is to be carried out or approved by two or more public agencies, the determination of whether the project may have a significant effect on the environment shall be made by the lead agency; and such agency shall prepare, or cause to be prepared by contract, the environmental impact report for the project, if such a report is required by this division. In the

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event that a dispute arises as to which is the lead agency, any public agency, or in the case of a project described in subdivision (c) of Section 21065 the applicant for such project, may submit the question to the Office of Planning and Research, and the Office of Planning and Research shall designate, within 21 days of receiving such request, the lead agency, giving due consideration to the capacity of such agency to adequately fulfill the requirements of this division.

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972. Amended by Stats.1977, c. 1200, p. 4002, § 15.)

Historical Note

The 1977 amendment inserted "or in the case of a project described in subdivision (c) of Section 21065 the applicant for such project" and "within 21 days of receiving such request" in the second sentence.

Cross References

Guidelines for determining the lead agency, see § 21083.

Administrative Code References

Determination of lead agency, see 14 Cal.Adm. Code 15065.
 Regulations for designation of lead agency and for preparation of environmental documents, see 14 Cal.Adm. Code 16000 et seq.
 Review of environmental documents of lead agencies, see 20 Cal.Adm. Code 2309.
 Urban open space and recreation program, see 14 Cal.Adm. Code 4930 et seq.

Law Review Commentaries

Compliance by LAFCO with requirements of CEQA before approving annexation proposals of cities (1976) 16 Santa Clara L.Rev. 403.
 Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.
 Indian archaeological sites and the Environmental Quality Act. (1975) 6 Golden Gate L.Rev. 1.

Library References

Health and Environment ⇐25.5, 25.10. C.J.S. Health and Environment §§ 61 to 90, 94, 104, 110, 115 to 126, 128, 129, 132, 133, 135, 137 to 140, 142, 144 to 153.

Notes of Decisions

In general 1
Public utilities commission 2

1. In general

Where two or more public agents equally qualify as the lead agency for the purpose of preparing an environmental impact report, agency which is to act first on project in question shall be the lead agency. Citizens Task Force On Sohio v. Board of Harbor Commissioners of Port of Long Beach (1979) 153 Cal. Rptr. 584, 591 P.2d 1236, 23 C.3d 812.

Local agency formation commission, not city, was "lead agency" charged with obligation to prepare environmental impact report on projected environmental effects of commission's approval or disapproval of city's proposed annexation of agricultural land with view toward land's development for residential, commercial and recreational uses.

Bozung v. Local Agency Formation Commission of Ventura County (1975) 118 Cal.Rptr. 249, 529 P.2d 1017, 13 C.3d 263.

In reviewing an environmental impact report regarding application for water service connection or pipeline extension permit, the Marin municipal water district must consider effects of such projects upon all aspects of the environment. 58 Ops.Atty.Gen. 438, 6-20-75.

2. Public utilities commission

The public utilities commission would be the lead agency in the following circumstances involving utilities: (1) when an operating water utility needs to increase its plant to provide adequate service; (2) when an electric generation plant is to be constructed; (3) when a transmission line is to be constructed. In re Environmental Impact Reports (1973) 75 Cal.P. U.C. 133.

§ 21166. Subsequent or supplemental impact report; conditions

When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972. Amended by Stats.1977, c. 1200, p. 4003, § 16.)

Historical Note

The 1977 amendment added subd. (c) and rewrote the introductory paragraph which had read;

"When an environmental impact report has been prepared for a project pursuant to this

division, no subsequent environmental impact report shall be required unless either of the following occurs:"

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Library References

Health and Environment ⇐25.10(6).
C.J.S. Health and Environment §§ 77, 122.

Notes of Decisions

- In general 1**
- Change in circumstances 2**
- New information 3**
- Significant change in circumstances 2**
- Substantial or significant change in circumstances 2**

1. In general

Since a finding of significance under the Environmental Quality Act (§ 21000 et seq.) is required if range of a single rare or endangered plant is restricted by a proposed development, information regarding existence of additional, previously unidentified, rare plant species merely affected magnitude of the impact of the proposed development, and a subsequent or supplemental environmental impact report would have to examine affected plant populations as part of its evaluation of the environmental impact. *Mira Monte Homeowners Ass'n v. San Buenaventura County By and Through Its Bd. of Sup'rs* (Webb) (App.2 Dist.1985) 212 Cal.Rptr. 127, 165 C.A.3d 357.

Environmental impact report was not deficient in failing to consider environmental effects if assumptions of proposed project proved erroneous, since state Environmental Quality Act (§ 21000 et seq.) required only that proposed project be evaluated and future occurrence or nonoccurrence of the "assumptions" was relevant only in determining whether subsequent or supplemental EIR should be prepared. *Village Laguna of Laguna Beach, Inc. v. Board of Sup'rs of Orange County* (1982) 185 Cal.Rptr. 41, 134 C.A.3d 1022.

Where effect of trial court's judgment was to require city to go back to point where draft environmental impact report was approved, and to give notice to public of proposed revisions to environmental impact report, certification of draft environmental impact report was vacated and, therefore, environmental impact report process was not completed; thus, requirement of submission of subsequent or supplemental environmental impact report would be premature. *Stevens v. City of Glendale* (1981) 178 Cal.Rptr. 367, 125 C.A.3d 986.

An environmental impact report would not have been required prior to issuance by city of a permit to bank to demolish a building for a parking lot, even if issuance of permit was not purely ministerial, where building was within project boundaries of city's redevelopment plan for which an environmental impact report was prepared and, aside from fact that no objections were made to the initial plan, revitalization of commercial area and stimulation of private investment were among objectives of that plan and, if bank's plans to replace building with a parking lot could be said to be private activity in furtherance of that plan, no subsequent environmental impact report was required. *Environmental Law Fund, Inc. v. City of Watsonville* (1981) 177 Cal.Rptr. 542, 124 C.A.3d 711.

2. Substantial or significant change in circumstances

Discovery that street in proposed development would pave over part of protected wetlands was a significant change in circumstances within meaning of the Environmental Quality Act (§ 21000 et seq.) requiring further environmental evaluation by way of a subsequent or supplemental report prior to any project approval, and county board's imposition of additional conditions and its administrative findings regarding mitigation did not cure the county's failure to proceed as required by law, even if board would have reached identical findings and determinations had it been in compliance. *Mira Monte Homeowners Ass'n v. San Buenaventura County By and Through Its Bd. of Sup'rs* (Webb) (App. 2 Dist.1985) 212 Cal.Rptr. 127, 165 C.A.3d 357.

Adequate reference to record was not made by municipality located on boundary of municipal airport in neighboring municipality to demonstrate that changes in master plan for development of airport required major revisions of environmental impact report for development of airport, where changes in master plan were made after environmental impact report had been approved by neighboring municipality. *City of Lomita v. City of Torrance* (App. 2 Dist.1983) 196 Cal.Rptr. 538, 148 C.A.3d 1062.

Substantial evidence supported trial court's determination that environmental impact report covered any significant changes made in county's general plan which were made at same meeting wherein county board adopted final environmental impact report, except board's action in deleting provisions relating to refusal to permit heavy industrial development in particular area and in amending general policy with respect to seismic safety. *Twain Harte Homeowners Ass'n, Inc. v. Tuolumne County* (1982) 188 Cal.Rptr. 233, 138 C.A.3d 664.

Validation of development project, to the extent authorized by prior zone changes, did not exempt issuance of subsequent conditional use permit from requirements of Environmental Quality Act if the permit authorized substantial changes in the project from that which was authorized by the zone changes or if it substantially changed the circumstances under which the project was to be undertaken from those existing under the zone changes. *Concerned Citizens of Palm Desert, Inc. v. Riverside County Bd. of Sup'rs* (1974) 113 Cal.Rptr. 338, 38 C.A.3d 272.

3. New information

Board of supervisors' certification of supplemental environmental impact statement which contained finding of potentially significant adverse environmental effects was not a final decision which the board had no jurisdiction to reconsider and board was not without jurisdiction to reopen the review process if new evidence or information came to its attention revealing that environmental impacts were not adequately discussed in previously certified EIR. *Environmental Council of Sacramento v. Board of Sup'rs of Sacramento County* (1982) 185 Cal.Rptr. 363, 135 C.A.3d 428.

The "revised final" environmental impact report for construction of tomato paste processing plant should have been circulated for public and agency comment since it contained significant new information. *Sutter Sensible Planning, Inc. v. Sutter County Bd. of Sup'rs* (1981) 176 Cal.Rptr. 342, 122 C.A.3d 813.

§ 21166.1. Effect of preparation of impact report by lead agency

The decision of a lead agency to prepare an environmental impact report with respect to environmental impacts within a geographic area or for a group of projects shall not be a basis for determining that an environmental document prepared for an individual project within that area or group is inadequate.

(Added by Stats.1984, c. 1514, § 11.)

Library References

Health and Environment ⇄25.10(4).
C.J.S. Health and Environment §§ 74, 119 et
seq.

§ 21167. Commencement of actions or proceedings; time

Any 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 which 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 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 after commencement of the project.

(b) Any 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 after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

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

(d) Any action or proceeding alleging that a public agency has improperly determined that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172 shall be commenced within 35 days after 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 such notice has not been filed, such action or proceeding shall be commenced within 180 days 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 after commencement of the project.

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

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972. Amended by Stats.1974, c. 56, p. 125, § 3, eff. March 4, 1974; Stats.1977, c. 1200, p. 4003, § 17.)

Historical Note

The 1974 amendment substituted "subdivision (a) of Section 21108 or subdivision (a) of Section 21152" for "Section 21108 or 21152" in subs. (b) and (c), and added subs. (d) and (e).

The 1977 amendment inserted "by the lead agency" at the end of subd. (c).

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Library References

Health and Environment §25.15(5).
C.J.S. Health and Environment §§ 82, 101, 111, 112, 123, 146.

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1. In general

Action to set aside amendments to district rules relaxing oxides of nitrogen emission standards for certain facilities in county was not barred by 30-day statute of limitations governing actions alleging that any other act or omission of public agency does not comply with Environmental Quality Act (§ 21000) since action came squarely within subd. (d) of this section governing actions alleging that public agency improperly determined that project is not subject to Environmental Quality Act (§ 21000 et seq.). *International Longshoremen's and Warehousemen's Union Local 35, v. Board of Sup'rs* (1981) 171 Cal.Rptr. 875, 116 C.A.3d 265.

Where notice of determination that project would have no significant effect on environment was filed in office of county clerk on December 12, 1974, and where cross complaint asking that water district be restrained from proceeding with service area project on ground that determination was invalid was not filed until March 18, 1977, 30-day period of limitations had clearly run. *Tsun Hai Lee v. Lost Hills Water Dist.* (1978) 144 Cal.Rptr. 510, 78 C.A.3d 630.

Where department of housing and community development received written legal advice from attorney general to the effect that permits issued under Mobilehome Parks Act were subject to requirements of the Environmental Quality Act, but then issued permit without environmental inquiry, and where applicant, who had waited four months to ascertain whether state would require city authorities to make environmental inquiries, then incurred \$40,000 of expenses in constructing the park on property zoned light industrial, the state

was estopped by the doctrine of laches from rescinding the permit and preventing further construction of the mobile home park. *People v. Department of Housing and Community Development* (1975) 119 Cal.Rptr. 266, 45 C.A.3d 185.

2. Construction with other laws

Cause of action alleging that county failed to prepare environmental impact report, which was allegedly required by § 21100 et seq. prior to implementation of solid waste disposal plant, was governed by statute of limitations found in § 21165 et seq., which statute of limitations, being specifically applicable, took precedence over general provisions of C.C.P. § 860 relating to actions challenging validity of certain acts of public agency. *Walters v. Plumas County* (1976) 132 Cal.Rptr. 174, 61 C.A.3d 460.

3. Commencement of limitations period

Compliance by county clerk with statutory duty of posting notices of determination of environmental actions taken by public agency under California Environmental Quality Act (§ 21152) is mandatory in order for special statute of limitations provided in this section to commence running. *Citizens of Lake Murray Ass'n v. San Diego City Council* (1982) 181 Cal.Rptr. 123, 129 C.A.3d 436.

For purposes of determining when 180-day period within which petition to challenge determination of local agency formation commission would begin to run under the Environmental Quality Act, the cause of action arose when the determination in question was made and not when the decision was actually implemented by the county board. *Simi Val. Recreation and Park Dist. v. Local Agency Formation Commission of Ventura County* (1975) 124 Cal.Rptr. 635, 51 C.A.3d 648.

4. Petition

Water district was not guilty of laches in petitioning to compel county to set aside its approval of environmental impact report where petition was brought within statute of limitations and neither county nor mining company for which report was prepared were injured by delay. *Santiago County Water Dist.*

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v. Orange County (1981) 173 Cal.Rptr. 602, 118 C.A.3d 818.

Petition brought to challenge determination of local agency formation commission in approving detachment of certain land from recreation and park district more than 180 days from the time the action was taken was barred by this section. Simi Val. Recreation and Park Dist. v. Local Agency Formation Commission of Ventura County (1975) 124 Cal.Rptr. 635, 51 C.A.3d 648.

Interested parties may file petitions for rehearing of the public utilities commission's decision on a project based on the final environmental impact report and must do so in order to seek judicial review of the final environmental impact report adopted by the public utilities commission. Petitions of Peninsula Commute and Transit Committee, et al. (1973) 75 Cal.P. U.C. 243.

5. Filing of actions

School district's action challenging adequacy of analysis in environmental impact report on city's approval of subdivision concerning subdivision's impact on student enrollment was timely filed under this section even though action was not filed until one year after city filed its first notice of determination concerning its approval of rezoning where action was filed within 30 days of city's second notice of determination concerning approval of subdivision map where school district challenged EIR as it related to subdivision map and not as it related to rezoning. El Dorado Union High School Dist. v. City of Placerville (1983) 192 Cal.Rptr. 480, 144 C.A.3d 123.

Limitation provisions with respect to filing of actions under the Environmental Quality Act (§ 21000 et seq.) were not applicable to action which was filed with respect to a public agency project prior to the effective date of the limitation provisions. Inyo County v. Yorty (1973) 108 Cal.Rptr. 377, 32 C.A.3d 795.

6. Negative declarations

Negative declaration filed in coastal zone commission demolition proceeding did not invoke this section's 30-day statute of limitations on action to review public agency's determination of significant effect on environment. Topanga Beach Renters Ass'n v. Department of General Services (1976) 129 Cal.Rptr. 739, 58 C.A.3d 188.

7. Notice of determination

Failure of plaintiffs to appeal environmental hearing officer's issuance of negative declaration, stating that 900-cow dairy would have no significant environmental effect, to environmental resources board did not deprive trial court of jurisdiction to consider propriety of action of board of supervisors approving negative declaration, as county code, which pro-

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vides that the ERB shall hear appeals from the EHO and that appeals must be brought within 14 days, curtails rights provided by state law, which specifically allows 30 days from filing of notice of determination by board of supervisors in which to institute any action or proceeding challenging negative declaration. Newberry Springs Water Ass'n v. San Bernardino County (App. 4 Dist.1984) 198 Cal.Rptr. 100, 150 C.A.3d 740.

Association which represented more than 500 private employers was barred by 30-day statute of limitations (under this section) from asserting that industrial welfare commission, which issued orders regulating wages, hours, and conditions of employment in particular industries, failed to prepare environmental impact report or conduct initial investigation prior to filing negative declaration and that commission failed to comply with requirement of § 21108 in filing its notice of determination only one day prior to promulgation of the orders. California Mfrs. Ass'n v. Industrial Welfare Commission (1980) 167 Cal.Rptr. 203, 109 C.A.3d 95.

8. Administrative remedies

Factually unsupported allegation that individual challenging environmental review process under Environment Quality Act with respect to city's redevelopment project was acting as concerned member of public, without more, did not qualify individual as member of affected public and, therefore, individual was not excepted from compliance with doctrine of exhaustion of administrative remedies. Kane v. Redevelopment Agency of City of Hidden Hills (App. 2 Dist.1986) 224 Cal.Rptr. 922.

Fact that opponent of proposed land use did not appeal environmental review board decision did not preclude it from appealing to the courts from final decision of the county board of supervisors on the theory that it had not exhausted its administrative remedies. San Bernardino Valley Audubon Soc., Inc. v. San Bernardino County (App. 4 Dist.1984) 202 Cal. Rptr. 423, 155 C.A.3d 738.

9. Personal notice

Lack of personal notice to property owners affected by project of declaration that project would have no significant adverse impact or effect on environment would not make statute of limitations pertaining to protest to that declaration inapplicable. Tsun Hai Lee v. Lost Hills Water Dist. (1978) 144 Cal.Rptr. 510, 78 C.A.3d 630.

10. Parties

Allegations that individual was within class of persons beneficially interested in municipal redevelopment agency's faithful performance of its legal duty and was citizen and resident of county in which city was located were suffi-

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cient to satisfy liberal standing requirements for private individuals acting in public interest to institute proceedings to enforce provisions of Environmental Quality Act. *Kane v. Redevelopment Agency of City of Hidden Hills* (App. 2 Dist.1986) 224 Cal.Rptr. 922.

Where the port of Long Beach was the first to act on project in question, it became the lead agency and hence was required to defend adequacy of entire environmental impact report under this section and the public utilities

commission which had helped prepare the report, thereby became a "responsible" agency and could not properly be made a party to action seeking to compel board of harbor commissioners of port to comply with California Environmental Quality Act as its joinder would deprive the superior court of subject matter jurisdiction. *Citizens Task Force On Sohio v. Board of Harbor Commissioners of Port of Long Beach* (1979) 153 Cal.Rptr. 584, 591 P.2d 1236, 23 C.3d 812.

§ 21167.1. Preferential hearing over other civil actions

In all actions brought pursuant to Section 21167, including the hearing of any such action on appeal from the decision of a lower court, all courts wherein such actions are or may hereafter be pending, shall give such actions preference over all other civil actions therein, in the matter of setting the same for hearing or trial, and in hearing the same, to the end that all such actions shall be quickly heard and determined.

(Added by Stats.1976, c. 1312, § 19.)

Library References

Health and Environment ⇨25.15(5).
C.J.S. Health and Environment §§ 82, 101,
111, 112, 123, 146.

§ 21167.2. Failure to commence action or proceeding within time limits; presumption that impact report complies with division

If no action or proceeding alleging that an environmental impact report does not comply with the provisions of this division is commenced during the period prescribed in subdivision (c) of Section 21167, the environmental impact report shall be conclusively presumed to comply with the provisions of this division for purposes of its use by responsible agencies, unless the provisions of Section 21166 are applicable.

(Added by Stats.1977, c. 1200, p. 4004, § 18.)

Library References

Health and Environment ⇨25.15(5).
C.J.S. Health and Environment §§ 82, 101,
111, 112, 123, 146.

§ 21167.3. Assumption that impact report or negative declaration complies with division; conditional approval or disapproval

(a) If an action or proceeding alleging that an environmental impact report or a negative declaration does not comply with the provisions of this division is commenced during the period described in subdivision (b) or (c) of Section 21167, and if an injunction or stay is issued prohibiting the project from being carried out or approved pending final determination of the issue of such compliance, responsible agencies shall assume that the environmental impact report or the negative declaration for the project does comply with the provisions of this division and shall issue a conditional approval or disapproval

al of such project according to the timetable for agency action in Article 5 (commencing with Section 65950) of Chapter 4.5 of Division 1 of Title 7 of the Government Code. A conditional approval shall constitute permission to proceed with a project when and only when such action or proceeding results in a final determination that the environmental impact report or negative declaration does comply with the provisions of this division.

(b) In the event that an action or proceeding is commenced as described in subdivision (a) but no injunction or similar relief is sought and granted, responsible agencies shall assume that the environmental impact report or negative declaration for the project does comply with the provisions of this division and shall approve or disapprove the project according to the timetable for agency action in Article 5 (commencing with Section 65950) of Chapter 4.5 of Division 1 of Title 7 of the Government Code. Such approval shall constitute permission to proceed with the project at the applicant's risk pending final determination of such action or proceeding.

(Added by Stats.1977, c. 1200, p. 4004, § 19. Amended by Stats.1979, c. 81, p. 192, § 6, eff. May 24, 1979; Stats.1980, c. 131, p. 304, § 2, eff. May 28, 1980.)

Historical Note

The 1979 amendment inserted "and if an injunction is issued prohibiting the project from being carried out or approved pending final determination of the issue of such compliance" in the first sentence of subd. (a); designated the original section as subd. (a); and added subd. (b).

The 1980 amendment inserted references to negative declarations following "environmen-

tal impact report" throughout the section; inserted a reference to subd. (b) of § 21167 and inserted "or stay" following "injunction" in the first sentence of subd. (a); and inserted "or similar relief" following "injunction" in the first sentence of subd. (b).

Notes of Decisions

1. In general

Developer's grading, filling, clearing, drainage and other work on subdivision project did not moot appeal taken in action challenging tentative map filed for the project. *Kriebel v. City of San Diego, City Council* (1980) 169 Cal.Rptr. 342, 112 C.A.3d 693.

Where environmental and homeowner organizations had brought suit against local agency formation commission and city to test validity of completed annexation by city pursuant to C.C.P. § 860 et seq., but organization failed to complete publication as prescribed by C.C.P. § 860 et seq., whereupon summons was

quashed and complaint dismissed without prejudice, and organizations made no further attempt to pursue their action under C.C.P. § 860 et seq., appeal of judgment denying a writ of mandate in action brought by organizations to require formation commission to annul its certification of an environmental impact report and prepare a more comprehensive EIR on the annexation proposal was moot, in that reversal of judgment would not accomplish the practical effect of causing the annexation to be annulled. *Environmental Coalition of Orange County, Inc. v. Local Agency Formation Commission of Orange County* (1980) 167 Cal.Rptr. 735, 110 C.A.3d 164.

§ 21167.4. Mandate proceeding noncompliance with division; necessity of request for hearing; dismissal

In a writ of mandate proceeding alleging noncompliance with this division, the petitioner shall request a hearing within 90 days of filing the petition or otherwise be subject to dismissal on the court's own motion or on the motion of any party interested therein.

(Added by Stats.1980, c. 131, p. 304, § 3, eff. May 28, 1980.)

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Library References

Health and Environment ⇨25.15(5). C.J.S. Mandamus § 328 et seq.
Mandamus ⇨173.
C.J.S. Health and Environment §§ 82, 101,
111, 112, 123, 146.

Notes of Decisions

1. In general

Requirement that petitioner request hearing within 90 days of filing petition for writ of mandate alleging noncompliance with Environmental Quality Act (§ 21000 et seq.) does

not require hearing to be calendared within 90-day time frame but only that request for hearing be filed within 90 days. *Mitchell v. Orange County* (App. 4 Dist.1985) 211 Cal.Rptr. 563, 165 C.A.3d 1185.

§ 21167.5. Proof of service; filing with initial pleading

Proof of prior service by mail upon the public agency carrying out or approving the project of a written notice of the commencement of any action or proceeding described in Section 21167 identifying the project shall be filed concurrently with the initial pleading in such action or proceeding.

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972.)

Library References

Health and Environment ⇨25.15(3.3).
C.J.S. Health and Environment §§ 83, 101,
104, 112, 123, 147.

Notes of Decisions

1. In general

Where there was substantial compliance with provision of this section which requires that proof of prior service by mail upon public agency of notice of commencement of action be filed with initial pleading, in that petitioners obtained court order allowing filing without such proof and personally served petition on

county board of supervisors the same day that it was filed, and since provision of this section sets forth merely notification requirement, petitioners sufficiently complied with provision in their suit seeking mandamus or prohibition against grant of conditional use permit for oil well. *Whitman v. Board of Sup'rs of Ventura County* (1979) 151 Cal.Rptr. 866, 88 C.A.3d 397.

§ 21167.6. Record of proceedings; clerk's transcript on appeal; filing briefs on appeal; date of appeal for hearing

Notwithstanding any other provision of law, in all actions brought pursuant to Section 21167, except those involving the Public Utilities Commission:

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

(b) The public agency shall prepare and certify the record of proceedings not later than 60 days after the request specified in subdivision (a) is served upon the public agency. The parties shall pay any costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court. The 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 stipulation of all parties who have been properly served in the action 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 the time limit specified in subdivision (b). There is no limit on the number of extensions which 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) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days after the notice designating the papers or records to be included in the clerk's transcript is filed with the superior court, provided that the party or parties pay any costs or fees for preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing contained in this subdivision shall preclude election to proceed pursuant to Rule 5.1 of the California Rules of Court.

(e) 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 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.

(f) At the completion of the filing of briefs, the appellant shall notify the court of 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.

(Added by Stats.1984, c. 1438, § 2; Stats.1984, c. 1514, § 12.)

§ 21167.7. Copy of pleadings to attorney general; granting of relief

Every person who brings an action pursuant to Section 21167 shall comply with the requirements of Section 389.6 of the Code of Civil Procedure. Every such person shall also furnish pursuant to Section 389.6 of the Code of Civil Procedure a copy of any amended or supplemental pleading filed by such person in such action to the Attorney General. No relief, temporary or permanent, shall be granted until a copy of the pleading has been furnished to the Attorney General in accordance with such requirements.

(Added by Stats.1976, c. 753, § 1.)

Library References

Health and Environment ⇐25.15(3.3).
C.J.S. Health and Environment §§ 83, 101,
104, 112, 123, 147.

Notes of Decisions

1. In general

Plaintiff, by serving the Attorney General 34 days after the filing of his private action to enforce the California Environmental Quality Act and only four days prior to the hearing on

his petition, failed to establish the necessity and financial burden of private enforcement of the Act, so that plaintiff was precluded from recovering his attorney fees; if the Attorney General had been properly notified of plain-

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tiff's action and had decided to intervene, plaintiff may not have been required to pursue his action to the extent he ultimately did.

Schwartz v. City of Rosemead (App. 2 Dist. 1984) 202 Cal.Rptr. 400, 155 C.A.3d 547.

§ 21167.8. Settlement meeting; presettlement and settlement statements; further settlement conference; failure to participate

(a) Not later than 20 days after service upon a public agency of a petition or complaint brought pursuant to Section 21167, the public agency shall file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. The meeting shall be scheduled and held not later than 45 days after the date of service of the petition or complaint upon the public agency. The notice of the settlement meeting shall be served by mail upon the counsel for each party. If the public agency does not know the identity of counsel for any party, the notice shall be served by mail upon the party for whom counsel is not known.

(b) The petitioner or plaintiff shall serve by mail on all parties a presettlement statement not less than five days in advance of the meeting. The statement shall include, but not be limited to, both of the following:

(1) A concise description of the case, including a brief procedural history, and all the facts material to consideration of the issues presented by the litigation.

(2) The anticipated issues to be raised in the litigation. Counsel shall confer with their clients in advance regarding settlement and shall be prepared to negotiate a settlement whenever reasonably possible.

(c) At the time and place specified in the notice filed with the court, the parties shall meet and attempt in good faith to settle the litigation and the dispute which forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.

(d) The settlement meeting may be continued from time to time without postponing or otherwise delaying other applicable time limits in the litigation. The settlement meeting is intended to be conducted concurrently with any judicial proceedings.

(e) After the settlement procedure is completed, the parties shall jointly prepare, sign, and file with the court a settlement statement including, but not limited to, all of the following:

(1) The legal and factual contentions raised by each party.

(2) The contentions that were settled or otherwise agreed upon and the nature of that agreement.

(3) The efforts made by each party to settle the unresolved issues.

(4) The list of participants in the settlement proceedings.

(f) If the litigation is not settled, the court, in its discretion, may, or at the request of any party shall, schedule a further settlement conference before a judge of the superior court. If the petition or complaint is later heard on its merits, the judge hearing the matter shall not be the same judge conducting

the settlement conference, except in counties with only one judge of the superior court.

(g) Failure of any party who was notified pursuant to subdivision (a) to participate in the process described in this section, without good cause, may result in an imposition of sanctions by the court. The failure of the petitioner or plaintiff to participate in the process described in this section, without good cause, shall result in dismissal with prejudice of the action.

(Added by Stats.1984, c. 1514, § 13.)

Historical Note

Another § 21167.8, added by Stats.1984, c. 1438, § 3, relating to similar subject matter, was repealed by Stats.1985, c. 106, § 114, which read:

"Section 21167.8 of the Public Resources Code, as added by Chapter 1438 of the Statutes

of 1984, is repealed. The repeal made by this section shall not affect the existence or validity of Section 21167.8 of the Public Resources Code, as added by Chapter 1514 of the Statutes of 1984."

Library References

Health and Environment ⇨25.15(3.3).
C.J.S. Health and Environment §§ 83, 101,
104, 112, 123, 147.

§ 21168. Review of determination; finding or decision of public agency; law governing; scope

Any action or proceeding to attack, review, set aside, void or annul a determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency, on the grounds of noncompliance with the provisions of this division shall be in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure.

In any such action, the court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record.

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972. Amended by Stats.1976, c. 1312, § 19.1.)

Historical Note

The 1976 amendment added to the first paragraph "finding" following "determination".

Cross References

Preclusion of presentation of relevant information to public agency as prejudicial abuse of discretion and no presumption that error is prejudicial under this section, see § 21005.

Law Review Commentaries

Judicial development of the California Environmental Quality Act. Daniel P. Selmi (1984)
18 U.C.D.Law Rev. 197.

Library References

Health and Environment ⇨25.15(5.1).
C.J.S. Health and Environment §§ 82, 104,
105, 112, 123, 147, 152.

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1. Validity

Requirement that substantial evidence test be applied to judicial review of administrative decisions of adequacy of an environmental impact report did not violate equal protection clause, since fact that such review did not involve a fundamental vested right meant that legislative specification that independent judgment must not be applied was conclusive. *Residents Ad Hoc Stadium Committee v. Board of Trustees of California State University and Colleges* (1979) 152 Cal.Rptr. 585, 89 C.A.3d 274.

2. In general

Judicial review of a local agency's decision under the Environmental Quality Act (§ 21000 et seq.) and its accompanying guidelines, where the agency is required by law to hold hearings and take evidence, is governed by this section. *Rural Land Owners Ass'n v. Lodi City Council* (1983) 192 Cal.Rptr. 325, 143 C.A.3d 1013.

Under Ventura County administrative supplement to state resources agency guidelines for implementation of the California Environmental Quality Act (Pub.Res.C. § 21000 et seq.), evidence need not be taken at hearing on appeal from administrative decision made during environmental review process; thus administrative mandamus is not only available remedy and attack on determination of director of Ventura County resource management agency requiring that environmental impact statement be prepared could be brought and considered in action for declaratory relief. *Lightweight Processing Co. v. Ventura County* (1982) 184 Cal.Rptr. 479, 133 C.A.3d 1042.

Section 21168.5 and this section governing judicial review of agency action under Environmental Quality Act apply to all proceedings under Act, including those pending when judicial review sections became effective. *No Oil, Inc. v. City of Los Angeles* (1974) 118 Cal.Rptr. 34, 529 P.2d 66, 13 C.3d 68.

In passing on questions arising out of the Environmental Quality Act (§ 21000 et seq.), it is duty of court to consider legal sufficiency of

steps taken by local agency in determining whether or not any proposed action may have subsequent effects on environment, but it is not duty of court to determine validity of conclusions reached. *Plan For Arcadia, Inc. v. Arcadia City Council* (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

3. Burden of proof

Developer, appealing judgment of superior court declaring that, in granting developers' request for rezoning of certain property, city failed to comply with California Environmental Quality Act (§ 21000 et seq.), failed to carry its burden of establishing that tape recordings of city council meetings showed required consideration and review by city council of environmental impact report made in connection with request for rezoning, where court's attention was not directed to any particular portion of recordings containing evidence of such consideration. *Kleist v. City of Glendale* (1976) 128 Cal.Rptr. 781, 56 C.A.3d 770.

4. Evidence—In general

With respect to attack on adequacy of environmental impact report and findings required by this code, court is to determine only whether the decision of the lead agency is supported by substantial evidence. *San Bernardino Valley Audubon Soc., Inc. v. San Bernardino County* (App. 4 Dist.1984) 202 Cal.Rptr. 423, 155 C.A.3d 738.

In a lawsuit charging noncompliance with California Environmental Quality Act, judicial inquiry is limited to the question of abuse of discretion, which is established if the agency has not proceeded as required by law or if its determination, finding or decision is not supported by substantial evidence. *Environmental Council of Sacramento v. Board of Sup'rs of Sacramento County* (1982) 185 Cal.Rptr. 363, 135 C.A.3d 428.

Where trial court, in its review of administrative proceedings approving proposed condominium, was governed by substantial evidence test rather than independent judgment test, court of appeal's appellate review was also governed by substantial evidence test. *Markley v. City Council of City of Los Angeles* (1982) 182 Cal.Rptr. 659, 131 C.A.3d 656.

Independent appellate review of evidence, in proceeding to exempt cement manufacturer's proposed replacement facilities from Environmental Quality Act (§ 21000 et seq.), was inappropriate where applicable administrative agencies specifically charged with responsibility to make environmental decisions had failed to find significant impact on the environment after providing opponents, on more than one occasion, with adequate opportunities in which to present their arguments. *Dehne v. Santa*

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Clara County (1981) 171 Cal.Rptr. 753, 115 C.A.3d 827.

Trial court does not exercise its independent judgment in reviewing actions of administrative agency under this section but, rather, trial court's role is to determine whether decision and findings of agency are supported by substantial evidence. *Whitman v. Board of Sup'rs of Ventura County* (1979) 151 Cal.Rptr. 866, 88 C.A.3d 397.

Where city airports commission adopted final environmental impact report for expansion of airport and approved the expansion program, and board of supervisors adopted final EIR for substantially the same reasons given by the commission, the trial court was not required to exercise its independent judgment on the evidence. *San Francisco Ecology Center v. City and County of San Francisco* (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584.

5. — Record, evidence

In carrying out obligation to review administrative record in action seeking to compel city to vacate its decision to issue, based solely on negative declaration rather than environmental impact report, conditional use permit to company allowing them to drill exploratory corehole, neither trial court nor Court of Appeal was permitted to focus upon the evidence favoring administrative decision in disregard of other relevant evidence in the record which might militate against that decision. *Brentwood Ass'n for No Drilling, Inc. v. City of Los Angeles* (1982) 184 Cal.Rptr. 664, 134 C.A.3d 491.

Whether there is any substantial evidence in light of entire record to support agency's decision as to necessity of environmental impact report is test to be applied by reviewing court. *Pacific Water Conditioning Ass'n v. City Council of City of Riverside* (1977) 140 Cal.Rptr. 812, 73 C.A.3d 546.

In reviewing city council's approval of plans of city planning commission for construction of firearms training simulator building on grounds of city park, superior court erred in applying independent judgment standard and in reweighing evidence and making its own independent findings; such standard of review was applicable only in cases where agency's decision substantially affects fundamental vested right, and where such right is not substantially affected, trial court's inquiry is limited to determination of whether or not agency's findings are supported by substantial evidence in light of whole record. *Simons v. City of Los Angeles* (1977) 140 Cal.Rptr. 484, 72 C.A.3d 924.

6. Findings

Although county board of supervisors' decision to certify environmental impact report as adequate could be deemed adoption of at least

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some of county planning staff's proposed findings, its decision to uphold applicant's appeal of seven conditions for approval of application for conditional use permit to drill exploratory oil and gas well, over express recommendation of planning commission, constituted a rejection of those proposed findings and thus it was incumbent upon board to revise those findings so that findings supported its decision on appeal. *Whitman v. Board of Sup'rs of Ventura County* (1979) 151 Cal.Rptr. 866, 88 C.A.3d 397.

On petition for writ of mandate seeking to compel city to issue building permit, court was required to give careful scrutiny to city's decision to refuse to issue permit although zoning laws allowed the intended use and conditions for issuance of the permit had been met, and court was required to make findings of fact and conclusions of law and determine whether substantial evidence supported city's findings. *Gabric v. City of Rancho Palos Verdes* (1977) 140 Cal.Rptr. 619, 73 C.A.3d 183.

7. Attorney fees

Plaintiffs, who unsuccessfully filed suit seeking to invalidate environmental impact report as a post hoc rationalization of project, to enjoin solicitation of building funds for project, and to determine that scope of judicial review, as provided in this section, was unconstitutional as it denied them equal protection under laws, were not entitled to recover attorney fees, since right to attorney fees under C.C.P. § 1021.5 was limited to successful litigant, and plaintiffs had failed to bring themselves within purview of any of various theories used to rationalize an award of attorney fees in situations where they are not specifically authorized by statute or by contract. *Residents Ad Hoc Stadium Committee v. Board of Trustees of California State University and Colleges* (1979) 152 Cal.Rptr. 585, 89 C.A.3d 274.

Petitioners were not entitled to attorney fees, in connection with their proceeding seeking mandamus and/or prohibition against county board of supervisors for unlawfully and wrongfully granting conditional use permit to drill exploratory oil and gas well, on theory that actions of board were arbitrary and capricious since, given complicated nature of California Environmental Quality Act and its guidelines, it could not be said that board failed to even attempt compliance with the law. *Whitman v. Board of Sup'rs of Ventura County* (1979) 151 Cal.Rptr. 866, 88 C.A.3d 397.

8. Abuse of discretion

Abuse of discretion under the Environmental Quality Act (Pub.Res.C. § 21000 et seq.) is established if a county board did not proceed as required by law in certifying an environmental impact report or in granting approval of a tentative tract map, if the board's determination was not supported by its findings, or if its

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findings were not supported by substantial evidence. *Mira Monte Homeowners Ass'n v. San Buenaventura County By and Through Its Bd. of Sup'rs (Webb)* (App. 2 Dist. 1985) 212 Cal. Rptr. 127, 165 C.A.3d 357.

9. Zoning

Ordinance rezoning landowners' property for agricultural use with one-acre minimum building site could not be attacked or county's decision set aside for failure to prepare environmental impact report since any action or proceedings to attack or set aside county's decision on such ground had to be done through administrative mandamus. *Pan Pac. Properties, Inc. v. Santa Cruz County* (1978) 146 Cal. Rptr. 428, 81 C.A.3d 244.

Trial court, in proceedings on property owner's petition for writ of mandate to set aside city council's approval of developer's request for zone change, was not required to infer, from fact that city council's approval of rezoning was made subject to conditions recommended by planning commission, that council gave proper review and consideration to environmental impact report compiled in connec-

tion with request for zone change, where imposition of conditions on rezoning could as likely have been result of city council's blind acceptance of actions of planning commission as it could have been result of review and consideration of environmental impact report. *Kleist v. City of Glendale* (1976) 128 Cal. Rptr. 781, 56 C.A.3d 770.

10. Scope of review

Scope of review in determining whether certain zoning action is consistent with general plan is whether substantial evidence supports the city council's action. *Guardians of Turlock's Integrity v. Turlock City Council* (App. 5 Dist. 1983) 197 Cal. Rptr. 303, 149 C.A.3d 584.

While the California Environmental Quality Act (§ 21000 et seq.) prescribes the scope of judicial review, it does not make mandamus the exclusive procedure by which the validity of a governmental action may be challenged for alleged violation of its provisions. *Hills For Everyone v. Local Agency Formation Commission of Orange County* (1980) 164 Cal. Rptr. 420, 105 C.A.3d 461.

§ 21168.3. Preference over other civil actions

In all actions brought pursuant to Section 21167, including the hearing of any such action on appeal from the decision of a lower court, all courts wherein such actions are or may hereafter be pending, shall give such actions preference over all other civil actions therein, in the matter of setting the same for hearing or trial, and in hearing the same, to the end that all such actions shall be quickly heard and determined.

(Added by Stats. 1976, c. 593, § 1.)

Library References

Health and Environment ⇨ 25.15(5).
C.J.S. Health and Environment §§ 82, 101,
111, 112, 123, 146.

§ 21168.5. Abuse of discretion

In any action or proceeding, other than an action or proceeding under Section 21168, to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.

(Added by Stats. 1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972. Amended by Stats. 1976, c. 1312, § 19.2.)

Historical Note

The 1976 amendment added in the first sentence "finding" following "determination".

Cross References

Preclusion of presentation of relevant information to public agency as prejudicial abuse of discretion and no presumption that error is prejudicial under this section, see § 21005.

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Environmental protection: Attorney general's perspective. Evelle J. Younger (1974) 5 Pacific L.J. 19.

Judicial development of the California Environmental Quality Act. Daniel P. Selmi (1984) 18 U.C.D.Law Rev. 197.

Library References

Health and Environment ⇐25.15(6).
C.J.S. Health and Environment §§ 85 et seq.,
102, 112, 124, 148.

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1. In general

University of California's failure to include "project planning guides" for capital improvement projects throughout review process otherwise in substantial compliance with California Environmental Quality Act did not constitute abuse of discretion. *Mount Sutro Defense Committee v. Regents of University of California* (1978) 143 Cal.Rptr. 365, 77 C.A.3d 20.

City council's use of an erroneous legal standard for determination of necessity of environmental impact report constituted a failure to proceed in manner required by law and constituted an abuse of discretion. *No Oil, Inc. v. City of Los Angeles* (1974) 118 Cal.Rptr. 34, 529 P.2d 66, 13 C.3d 68.

2. Construction with other laws

Judicial inquiry into general plan adopted by board of supervisors extends to whether general plan substantially complies with requirements of Gov.C. § 65000 et seq. and, since such determination is matter of law, court of appeal need not give deference to trial court's findings. *Twain Harte Homeowners Ass'n, Inc. v. Tuolumne County* (1982) 188 Cal.Rptr. 233, 138 C.A.3d 664.

3. Report

Where environmental impact report submitted by city and its department of water and

power initially defined project which report was intended to cover as a proposed increase in long-term subsurface extraction rate of water for use in specified valley, and defined project so as to exclude subsurface extraction for export to city via water department's twin aqueduct system, but recommended project ultimately endorsed by final environmental impact report and approved by city's board of water and power commissioners went beyond such initial project description and dealt with large-scale phases of city aqueduct management program, such fluctuations in descriptions of proposed project frustrated Environmental Quality Act's public information aims, and formulation of environmental impact report was not in manner required by law. *Inyo County v. City of Los Angeles* (1977) 139 Cal.Rptr. 396, 71 C.A.3d 185, motion denied 144 Cal.Rptr. 71, 78 C.A.3d 82.

Though environmental impact report raised issues as to archaeological significance of proposed site of residential development, and though the true impact of the project on the archaeological potential of the area could not be fully determined without recommended tests, at estimated cost of \$1,900.60, and the tests were not conducted, the environmental impact report was not thereby rendered inadequate as a matter of law, and assuming existence of sound reason and its proper articulation in the report, county board could have properly decided as it did to approve the project subject to setting aside three lots for a limited period for exploration by third parties concerning the archaeological factor. *Society for California Archaeology v. Butte County* (1977) 135 Cal.Rptr. 679, 65 C.A.3d 832.

4. Negative declarations

City council abused its discretion in adopting negative declaration concerning issuance of conditional use permit to company allowing them to drill single exploratory corehole rather than requiring preparation of environmental impact report since administrative record con-

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tained substantial evidence of the project's effects on traffic and noise, project's having a potential for adverse seismic consequences, and that the proposed corehole posed a danger to an underground reservoir. *Brentwood Ass'n for No Drilling, Inc. v. City of Los Angeles* (1982) 184 Cal.Rptr. 664, 134 C.A.3d 491.

5. Prejudice

California Department of Forestry's failure to consider impact of cumulative effects of past logging activities, combined with proposed harvest, on ecology of grove of proposed timber harvest, or its consideration of such effects under erroneous conception of cumulative impact, when it authorized logging of 75-acre grove of old-growth redwoods, some of which were over a thousand years old, was prejudicial abuse of discretion. *Environmental Protection Information Center, Inc. v. Johnson* (App. 1 Dist.1985) 216 Cal.Rptr. 502, 170 C.A.3d 604.

Prejudicial abuse of discretion by a public agency in failing to comply with California Environmental Quality Act is established if the public agency has not proceeded in a manner required by law. *People v. Kern County* (1976) 133 Cal.Rptr. 389, 62 C.A.3d 761.

6. Modification of project

Redevelopment agency did not abuse its discretion by adopting narrower project than initially envisioned in original environmental impact report, even though narrower project involved demolition of historic landmark, and retention or demolition of landmark hotel was focal point for original environmental impact report. *Dusek v. Anaheim Redevelopment Agency* (App. 4 Dist.1985) 219 Cal.Rptr. 346, 173 C.A.3d 1029.

7. Mandamus

On petition for writ of mandate seeking to compel city to issue building permit, court was required to give careful scrutiny to city's decision to refuse to issue permit although zoning laws allowed the intended use and conditions for issuance of the permit had been met, and court was required to make findings of fact and conclusions of law and determine whether substantial evidence supported city's findings. *Gabric v. City of Rancho Palos Verdes* (1977) 140 Cal.Rptr. 619, 73 C.A.3d 183.

Under the California Environmental Quality Act (§ 21000 et seq.), mandamus will issue to set aside a permit which is issued for discretionary project without a determination whether the proposal has a significant environmental impact. *People v. Department of Housing and Community Development* (1975) 119 Cal.Rptr. 266, 45 C.A.3d 185.

Where action seeking writ of mandate sought to set aside and annul county's approval of final environmental impact report regarding

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proposed mountain subdivision on the ground of noncompliance with the Environmental Quality Act, court's inquiry was limited to whether there was prejudicial abuse of discretion on part of county. *People v. Kern County* (1974) 115 Cal.Rptr. 67, 39 C.A.3d 830.

8. Review—In general

Independent appellate review of evidence, in proceeding to exempt cement manufacturer's proposed replacement facilities from Environmental Quality Act (§ 21000 et seq.), was inappropriate where applicable administrative agencies specifically charged with responsibility to make environmental decisions had failed to find significant impact on the environment after providing opponents, on more than one occasion, with adequate opportunities in which to present their arguments. *Dehne v. Santa Clara County* (1981) 171 Cal.Rptr. 753, 115 C.A.3d 827.

City's noncompliance with § 21092 allowing notice of proposed negative declaration in environmental review process by "direct mailing" constituted a failure to proceed in manner required by law and could be reversed by reviewing court as a prejudicial abuse of discretion. *Plaggmier v. City of San Jose* (1980) 161 Cal.Rptr. 886, 101 C.A.3d 842.

City confused legislative authority with administrative duty and thus abused discretion because it did not proceed in manner required by law when it denied appeal while intending to deny a building permit but erroneously based decision on its authority to ordain laws rather than adjudicate an order and environmental impact statement or to find that such statement was properly determined unnecessary. *Gabric v. City of Rancho Palos Verdes* (1977) 140 Cal.Rptr. 619, 73 C.A.3d 183.

Following issuance and filing of an environmental impact report, judicial review may be invoked to determine whether or not agency has abused its discretion. *Wildlife Alive v. Chickering* (1976) 132 Cal.Rptr. 377, 553 P.2d 537, 18 C.3d 190.

9. — Scope of review

Trial court, in evaluating petitioner's claim that city, in approving developer's project, did not comply with this code, followed correct standard, namely, that judicial inquiry is limited to question of abuse of discretion, which is established if agency has not proceeded as required by law or its decision is not supported by substantial evidence. *City of Poway v. City of San Diego* (App. 4 Dist.1984) 202 Cal.Rptr. 366, 155 C.A.3d 1037.

In a lawsuit charging noncompliance with California Environmental Quality Act, judicial inquiry is limited to the question of abuse of discretion, which is established if the agency has not proceeded as required by law or if its determination, finding or decision is not sup-

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ported by substantial evidence. *Environmental Council of Sacramento v. Board of Sup'rs of Sacramento County* (1982) 185 Cal.Rptr. 363, 135 C.A.3d 428.

Court of appeal does not pass upon correctness of environmental impact reports and environmental conclusions, but only upon sufficiency as informative documents; judicial intervention is appropriate only where there has been an abuse of discretion, which will be established if the county has not proceeded in a manner required by law or where the county's decision is not supported by substantial evidence. *Environmental Planning and Information Council of Western El Dorado County, Inc. v. El Dorado County* (1982) 182 Cal.Rptr. 317, 131 C.A.3d 350.

In lawsuit charging noncompliance with California Environmental Quality Act, judicial inquiry is limited to question of abuse of discretion, which is established if agency has not proceeded as required by law or if its decision is not supported by substantial evidence; court does not pass upon correctness of environmental impact report's environmental conclusions, but only upon its sufficiency as an informative document. *Inyo County v. City of Los Angeles* (1977) 139 Cal.Rptr. 396, 71 C.A.3d 185, motion denied 144 Cal.Rptr. 71, 78 C.A.3d 82.

Judicial review of decision of governmental agency to follow conclusions in environmental impact report is limited to determining whether there has been an abuse of discretion. *Bresnahan v. City of Pasadena* (1975) 121 Cal.Rptr. 750, 48 C.A.3d 297.

10. — Substantial evidence, review

Judicial review of agency's initial impact decision, as to whether environmental impact report is required, is limited to determining whether there was an abuse of discretion, and such abuse is established where the agency has not proceeded in the manner required by law or has reached a decision not supported by

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substantial evidence. *Hixon v. Los Angeles County* (1974) 113 Cal.Rptr. 433, 38 C.A.3d 370.

Where environmental impact report was questioned in the sense that it was one portion of a whole proceeding in which, by law, required the holding of a hearing and the taking of evidence, decision of trial court upholding adequacy of environmental impact report would be sustained if supported by substantial evidence. *Greenebaum v. City of Los Angeles* (App. 2 Dist.1984) 200 Cal.Rptr. 237, 153 C.A.3d 391.

If there is substantial evidence that proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of environmental impact report and adopt a negative declaration; therefore, if trial court perceives substantial evidence that project might have such an impact, but agency failed to secure preparation of required environmental impact report, agency's action abused its discretion by failing to proceed to be set aside because the agency in the manner required by law. *Friends of "B" St. v. City of Hayward* (1980) 165 Cal.Rptr. 514, 106 C.A.3d 988.

Whether there is any substantial evidence in light of entire record to support agency's decision as to necessity of environmental impact report is test to be applied by reviewing court. *Pacific Water Conditioning Ass'n v. City Council of City of Riverside* (1977) 140 Cal.Rptr. 812, 73 C.A.3d 546.

Court properly used substantial evidence test in reaching determination that city's conclusion that street-widening project would have no significant impact on environment was supported, and court was not required to independently review the evidence. *Plan For Arcadia, Inc. v. Arcadia City Council* (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

§ 21168.6. Mandate to public utilities commission; supreme court jurisdiction

In any action or proceeding under Sections 21168 or 21168.5 against the Public Utilities Commission the writ of mandate shall lie only from the Supreme Court to such commission.

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972.)

Library References

Health and Environment ⇨25.15(12).
Mandamus ⇨64.

C.J.S. Health and Environment §§ 90, 101,
104, 105, 113, 123, 153.

C.J.S. Mandamus § 119 et seq.

§ 21168.7. Declaration of existing law

Sections 21168 and 21168.5 are declaratory of existing law with respect to the judicial review of determinations or decisions of public agencies made pursuant to this division.

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972.)

§ 21168.9. Public agency action not in compliance with article; court's powers and duties; date of application

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

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

(2) A mandate that the public agency and any real parties in interest suspend all activity, pursuant to the determination, finding, or decision, that could result in any change or alteration to the physical environment, until the public agency has taken such actions as may be necessary to bring the determination, finding, or decision into compliance with this division.

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

(b) Any order pursuant to subdivision (a) shall 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. 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) Nothing in this section authorizes a court to direct any public agency to exercise its discretion in any particular way.

(d) This section applies to any matter pending before any court on or after January 1, 1985, in which that court has not, on or before that date, entered its order determining whether the public agency has acted in accordance with this division.

(Added by Stats.1984, c. 1213, § 1.)

Library References

Health and Environment ⇨25.15(12).
C.J.S. Health and Environment §§ 90, 101,
104, 105, 113, 123, 153.

§ 21169. Validation; issuance of lease, permit, etc., or project undertaken, etc.

Any project defined in subdivision (c) of Section 21065 undertaken, carried out or approved on or before the effective date of this section and the issuance by any public agency of any lease, permit, license, certificate or

other entitlement for use executed or issued on or before the effective date of this section notwithstanding a failure to comply with this division, if otherwise legal and valid, is hereby confirmed, validated and declared legally effective. Any project undertaken by a person which was supported in whole or in part through contracts with one or more public agencies on or before the effective date of this section, notwithstanding a failure to comply with this division, if otherwise legal and valid, is hereby confirmed, validated and declared legally effective.

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972.)

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Environmental protection: Attorney general's perspective. Evelle J. Younger (1974) 5 Pacific L.J. 19.

Library References

Health and Environment ⇐25.5(1) to (3).

C.J.S. Health and Environment §§ 61 et seq., 91 et seq., 106 et seq., 115 et seq., 125 et seq., 129 et seq., 133 et seq.

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§ 21170 did not violate equal protection standards as it applied to proposed development excluded from operation of legislation by virtue of pending judicial proceedings. Russian Hill Improvement Ass'n v. Board of Permit Appeals (1974) 118 Cal.Rptr. 490, 44 C.A.3d 158, appeal dismissed 95 S.Ct. 2646, 422 U.S. 1030, 45 L.Ed.2d 687.

2. In general

This section and § 21170 pertaining to private development projects, which were undertaken by authority of permit or license from governmental body and which did not comply with requirements of Environmental Quality Act (§ 21000 et seq.), validate those projects which were not under legal attack prior to December 5, 1972, and those under attack at such time for which, if not validated, substantial detriment would result but such statutes do not validate those projects under attack at such time for which no substantial detriment would result from invalidation. Cooper v. Los Angeles County (1975) 122 Cal.Rptr. 464, 49 C.A.3d 34, appeal after remand 138 Cal.Rptr. 229, 69 C.A.3d 529.

In that city council's November 1 approval of tentative tract map for condominium project before consideration and approval of environmental impact report, a city and state requirement, was invalid, approval of project could not be validated under this section validating permits issued before December 5 if otherwise legal and valid. Aries Development Co. v. California Coastal Zone Conservation Commission (1975) 122 Cal.Rptr. 315, 48 C.A.3d 534.

Where trial court, after hearing, continued in effect its order restraining any act toward development of 80-unit motel complex on

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Classification made by this section and § 21170 validating those private development projects undertaken by authority of permit or license from governmental body without compliance with requirements of Environmental Quality Act (§ 21000 et seq.) which were not under legal attack prior to December 5, 1972, and those under attack for which, if not validated substantial detriment would result, and not validating those projects under attack for which no substantial detriment would result from invalidation, was constitutional. Cooper v. Los Angeles County (1975) 122 Cal.Rptr. 464, 49 C.A.3d 34, appeal after remand 138 Cal.Rptr. 229, 69 C.A.3d 529.

Urgency legislation designed to validate any project which had been approved and for which a permit had been issued prior to court decision holding that Environmental Quality Act's reporting requirement applied to private activities requiring government permits or other entitlements for use but which legislation by its terms excluded cases involving judicial proceedings initiated prior to effective date of

property well in advance of effective date of emergency legislation (§ 21170) providing that validation provision does not apply to project which has been determined in any judicial proceeding to be illegal because of noncompliance, trial court order determined that the Environmental Quality Act (§ 21000 et seq.) applied to project so that emergency legislation which validated certain governmental actions otherwise subject to Act did not apply and it was error to subsequently dissolve restraining order on ground that project was exempt. *Burger v. Mendocino County* (1975) 119 Cal. Rptr. 568, 45 C.A.3d 322.

Under provision of this section validating projects which were undertaken or approved before provision's effective date of December 5, 1972, and which did not comply with the Act, Act applies to all projects which public agency retains discretion to approve or disapprove after expiration of moratorium provisions. *People v. Kern County* (1974) 115 Cal. Rptr. 67, 39 C.A.3d 830.

3. Purpose

Purpose of "grandfather clause" provided by urgency amendment to this section was to grant relief from hardship engendered by requiring environmental impact reports on projects already approved by the appropriate governmental bodies upon which other parties have acted to their detriment. *Bresnahan v. City of Pasadena* (1975) 121 Cal. Rptr. 750, 48 C.A.3d 297.

4. Private projects

Shopping center and parking lot projects were private projects within § 21065 and thus anything done prior to December 5, 1972, the effective date of Act's amendment pertaining to private projects, with respect to public agency approval or the issuance of any entitlement for use had been confirmed, validated and declared legally effective under express terms of Act, notwithstanding a failure to comply with Act. *Plan For Arcadia, Inc. v. Arcadia City Council* (1974) 117 Cal. Rptr. 96, 42 C.A.3d 712.

Conditional use permit was not validated by the 1972 urgency amendment of this section validating private projects undertaken and approved before effective date of amendment, on ground that although mandate proceeding was filed before effective date of validating statute a demurrer was sustained and amended petition was not final until after effective date of urgency amendment; fact that demurrer was sustained, with leave to amend, did not mean that there was no valid petition on file before effective date of the statute either alleging a cause of action or raising an issue of violation of the Environmental Quality Act (§ 21000 et seq.). *Concerned Citizens of Palm Desert, Inc. v. Riverside County Bd. of Sup'rs* (1974) 113 Cal. Rptr. 338, 38 C.A.3d 272.

5. Entitlement for use

Tentative tract approval which was conditional upon rezoning of property to permit construction of mountain subdivision and thus was not the final discretionary act of county did not constitute an issuance of an "entitlement for use" within meaning of provision of this section validating the issuance by any public agency of any entitlement for use issued before provision's effective date. *People v. Kern County* (1974) 115 Cal. Rptr. 67, 39 C.A.3d 830.

6. Permits

Where building permit was issued and suit to set aside permit for lack of environmental impact report was filed before effective date of this section validating project without report, if, prior to commencement of judicial proceedings and in good faith and in reliance upon issuance of public agency of permit, substantial construction has been performed and substantial liabilities for construction have been incurred, expenditure by builder of approximately \$400,000 for demolition of existing apartment building and excavation, both necessary to construction of condominium satisfied requirements of the statute. *Pacific Palisades Property Owners Ass'n v. City of Los Angeles* (1974) 117 Cal. Rptr. 138, 42 C.A.3d 781.

Construction of condominium itself was not so separate from demolition of predecessor structure and excavation as to require a separate permit supported by environmental impact report, where there was no change in nature of project for construction of condominium structure from time that demolition of predecessor building was undertaken and excavation for new building commenced. *Pacific Palisades Property Owners Ass'n v. City of Los Angeles* (1974) 117 Cal. Rptr. 138, 42 C.A.3d 781.

Where granting of conditional use permit and variance as well as approval of tentative tract map occurred long before effective date of 1972 urgency amendment of this section governing validity of projects, which were undertaken before effective date of amendment of this section and which do not comply with Act, such actions were shielded from attack for noncompliance for failure to prepare and consider environmental impact report. *Concerned Citizens of Palm Desert, Inc. v. Riverside County Bd. of Sup'rs* (1974) 113 Cal. Rptr. 338, 38 C.A.3d 272.

7. Reliance

In balancing \$5,000 loss incurred by developer in reliance on zoning ordinance in connection with planned construction of recreational complex against potential risk of harm to Malibu ecosystem, reliance was not established to be quantitatively substantial, and project which was under legal attack prior to December,

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1972, would not be validated without compliance with the Environmental Quality Act, § 21000 et seq., through filing of an environmental impact report. *Cooper v. Los Angeles County* (1977) 138 Cal.Rptr. 229, 69 C.A.3d 529.

8. Grandfather rights

Grandfather clause provided by urgency amendment to this section for project started before December 5, 1972 precluded petitioners from raising questions about alternate locations for building to be constructed on land leased by city and with respect to which city, in April 1971, authorized lessee to demolish buildings and construct new building. *Bresnahan v. City of Pasadena* (1975) 121 Cal.Rptr. 750, 48 C.A.3d 297.

9. Petition

Fact that general demurrer, with leave to amend, to petition attacking validity of approval of private land development projects was sustained prior to effective date of 1972 urgency amendment of this section and that amended petition was not filed until after effective date of amendment did not validate zone change on ground that no valid petition was in effect on date of amendment either alleging a valid cause of action or raising a valid issue under the EOA, since initial petition raised issue of violation of Act within meaning of amendment and subsequent petition related back to original petitions as recovery was sought in both pleadings on the same general set of facts. *Concerned Citizens of Palm Desert, Inc. v. Riverside County Bd. of Sup'rs* (1974) 113 Cal.Rptr. 328, 38 C.A.3d 257.

10. Zoning

Where county retained jurisdiction to grant or deny application to amend zoning ordi-

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nance to permit construction of mountain subdivision and zone change was not approved until after effective date of provision of this section validating projects which were undertaken or approved before provision's effective date and which did not comply with Act, environmental impact report was required for proposed project. *People v. Kern County* (1974) 115 Cal.Rptr. 67, 39 C.A.3d 830.

11. Review

Whenever a challenge is presented against a project planned and approved prior to California Environmental Quality Act's effective date, agency involved is vulnerable to charges of institutional bias, particularly so if its ultimate decision is in favor of proceeding with a project previously conceived or planned, but court of appeal cannot apply act retroactively and condemn effort to comply with act's commands, and possibility that an agency which has published its prior approval of project will continue to favor it despite act cannot be a bar to compliance. *Residents Ad Hoc Stadium Committee v. Board of Trustees of California State University and Colleges* (1979) 152 Cal. Rptr. 585, 89 C.A.3d 274.

12. Remand

Where, under the law of the case in action to determine whether project under legal attack prior to December 5, 1972, should be validated despite noncompliance with the Environmental Quality Act, § 21000 et seq., trial court on remand was required to apply the "quantitatively substantial" test to the liability incurred or construction performed, but applied both that test and the percentage comparison test and denied validation under either test, no error resulted. *Cooper v. Los Angeles County* (1977) 138 Cal.Rptr. 229, 69 C.A.3d 529.

§ 21170. Judicial proceedings in progress; effect

(a) Section 21169 shall not operate to confirm, validate or give legal effect to any project the legality of which was being contested in a judicial proceeding in which proceeding the pleadings, prior to the effective date of this section, alleged facts constituting a cause of action for, or raised the issue of, a violation of this division and which was pending and undetermined on the effective date of this section; provided, however, that Section 21169 shall operate to confirm, validate or give legal effect to any project to which this subdivision applies if, prior to the commencement of judicial proceedings and in good faith and in reliance upon the issuance by a public agency of any lease, permit, license, certificate or other entitlement for use, substantial construction has been performed and substantial liabilities for construction and necessary materials have been incurred.

(b) Section 21169 shall not operate to confirm, validate or give legal effect to any project which had been determined in any judicial proceeding, on or

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before the effective date of this section to be illegal, void or ineffective because of noncompliance with this division.

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972.)

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Library References

Health and Environment §§ 25.5(1) to (3), 25.15(1).
C.J.S. Health and Environment §§ 61 et seq., 82 et seq., 91 et seq., 101, 102, 104, 105, 106

et seq., 111 to 113, 115 et seq., 123, 124, 125 et seq., 129 et seq., 133 et seq., 146 et seq.

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this section did not violate equal protection standards as it applied to proposed development excluded from operation of legislation by virtue of pending judicial proceedings. Russian Hill Improvement Ass'n v. Board of Permit Appeals, (1974) 118 Cal.Rptr. 490, 44 C.A.3d 158, appeal dismissed 95 S.Ct. 2646, 422 U.S. 1030, 45 L.Ed.2d 687.

1. Validity

Classification made by this section and § 21169 validating those private development projects undertaken by authority of permit or license from governmental body without compliance with requirements of Environmental Quality Act (§ 21000 et seq.) which were not under legal attack prior to December 5, 1972, and those under attack for which, if not validated substantial detriment would result, and not validating those projects under attack for which no substantial detriment would result from invalidation, was constitutional. Cooper v. Los Angeles County (1975) 122 Cal.Rptr. 464, 49 C.A.3d 34, appeal after remand 138 Cal. Rptr. 229, 69 C.A.3d 529.

Urgency legislation designed to validate any project which had been approved and for which permit had been issued prior to court decision holding that Environmental Quality Act's (§ 21000 et seq.) reporting requirement applied to private activities requiring government permits or other entitlements for use but which legislation by its terms excluded cases involving judicial proceedings initiated prior to effective date of this section did not violate equal protection standards. Environmental Law Fund, Inc. v. Town of Corte Madera (1975) 122 Cal.Rptr. 282, 49 C.A.3d 105.

Urgency legislation designed to validate any project which had been approved and for which a permit had been issued prior to court decision holding that Environmental Quality Act's reporting requirement applied to private activities requiring governmental permits or other entitlements for use but which legislation by its terms excluded cases involving judicial proceedings initiated prior to effective date of

2. In general

This section and § 21169 pertaining to private development projects, which were undertaken by authority of permit or license from governmental body and which did not comply with requirements of Environmental Quality Act, validate those projects which were not under legal attack prior to December 5, 1972, and those under attack at such time for which, if not validated, substantial detriment would result but such statutes do not validate those projects under attack at such time for which no substantial detriment would result from invalidation. Cooper v. Los Angeles County (1975) 122 Cal.Rptr. 464, 49 C.A.3d 34, appeal after remand 138 Cal.Rptr. 229, 69 C.A.3d 529.

Where trial court, after hearing, continued in effect its order restraining any act toward development of 80-unit motel complex on property well in advance of effective date of emergency legislation under this section providing that validation provision does not apply to project which has been determined in any judicial proceeding to be illegal because of noncompliance, trial court order determined that the Environmental Quality Act (§ 21000 et seq.) applied to project so that emergency legislation which validated certain governmental actions otherwise subject to Act did not apply and it was error to subsequently dissolve restraining order on ground that project was exempt. Burger v. Mendocino County (1975) 119 Cal.Rptr. 568, 45 C.A.3d 322.

3. Entitlement for use

Approval of tentative tract map and site development plan constituted "other entitlement for use" within this section providing, notwithstanding pendency of judicial proceeding, that

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project is validated if, prior to commencement of judicial proceedings and in good faith and in reliance on permit, certificate or "other entitlement for use", substantial construction has been performed and substantial liabilities for construction and materials have been incurred. *Friends of Lake Arrowhead v. San Bernardino County Bd. of Sup'rs* (1974) 113 Cal.Rptr. 539, 38 C.A.3d 497.

4. Reliance

In balancing \$5,000 loss incurred by developer in reliance on zoning ordinance in connection with planned construction of recreational complex against potential risk of harm to Malibu ecosystem, reliance was not established to be quantitatively substantial, and project which was under legal attack prior to December, 1972, would not be validated without compliance with the Environmental Quality Act, § 21000 et seq., through filing of an environmental impact report. *Cooper v. Los Angeles County* (1977) 138 Cal.Rptr. 229, 69 C.A.3d 529.

Zone changes, which were made without complying with Environmental Quality Act (§ 21000 et seq.) and pursuant to which developer expended some \$220,000, exclusive of land acquisition costs, were validated by qualifying provision that the 1972 urgency amendment of this section validating projects undertaken and approved before effective date of amendment operates to validate any project if, prior to the commencement of judicial proceedings raising issues under Act, substantial liabilities have been incurred in reliance on any certificate or entitlement for use. *Concerned Citizens of Palm Desert, Inc. v. Riverside County Bd. of Sup'rs* (1974) 113 Cal.Rptr. 338, 38 C.A.3d 272.

5. Substantial construction

Phrase "substantial liabilities for construction and necessary material have been incurred," as used in statutes validating certain private development projects which were undertaken by authority of permit or license from governmental body and which did not comply with requirements of Environmental Quality Act, was unified clause, which should be read as collective singular, and did not require, for validation of project, both incurring of substantial liabilities for construction and incurring of substantial liabilities for necessary materials. *Cooper v. Los Angeles County* (1975) 122 Cal.Rptr. 464, 49 C.A.3d 34, appeal after remand 138 Cal.Rptr. 229, 69 C.A.3d 529.

Evidence failed to establish expenditure of "substantial" sums within provision of urgency amendment of this section concerning validation of project for which substantial construction had been performed and substantial liabilities for construction and necessary mate-

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rials had been incurred. *Environmental Law Fund, Inc. v. Town of Corte Madera* (1975) 122 Cal.Rptr. 282, 49 C.A.3d 105.

Expenditure of some \$6,500 did not constitute "substantial" construction or incurring of liability for construction or materials of an 80-unit motel complex, so that this section directing validation if before commencement of legal proceedings and in reliance on permit substantial construction has been performed or substantial liabilities have been incurred did not validate issuance of building permit three days prior to institution of mandate proceeding to require the filing of environmental impact report. *Burger v. Mendocino County* (1975) 119 Cal.Rptr. 568, 45 C.A.3d 322.

Where building permit was issued and suit to set aside permit for lack of environmental impact report was filed before effective date of validating project without report, if, prior to commencement of judicial proceedings and in good faith and in reliance upon issuance of public agency of permit, substantial construction has been performed and substantial liabilities for construction have been incurred, expenditure by builder of approximately \$400,000 for demolition of existing apartment building and excavation, both necessary to construction of condominium satisfied requirements of the statute. *Pacific Palisades Property Owners Ass'n v. City of Los Angeles* (1974) 117 Cal.Rptr. 138, 42 C.A.3d 781.

6. Review

Where trial court was proceeding under erroneous interpretation that statutes validating certain private development projects which did not comply with requirements of Environmental Quality Act required, for validation of such projects, that construction substantial in relation to size of overall project had occurred, and that substantial liabilities for construction and for necessary materials had been incurred, and neither magnitude of construction that was accomplished in particular project in issue nor liability incurred was set out, reversal was required. *Cooper v. Los Angeles County* (1975) 122 Cal.Rptr. 464, 49 C.A.3d 34, appeal after remand 138 Cal.Rptr. 229, 69 C.A.3d 529.

7. Remand

Where, under the law of the case in action to determine whether project under legal attack prior to December 5, 1972, should be validated despite noncompliance with the Environmental Quality Act, § 21000 et seq., trial court on remand was required to apply the "quantitatively substantial" test to the liability incurred or construction performed, but applied both that test and the percentage comparison test and denied validation under either test, no error resulted. *Cooper v. Los Angeles County* (1977) 138 Cal.Rptr. 229, 69 C.A.3d 529.

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§ 21171. Moratorium provision; lease, permit, license, etc., and certain projects

This division, except for Section 21169, shall not apply to the issuance of any lease, permit, license, certificate or other entitlement for use for any project defined in subdivision (c) of Section 21065 or to any project undertaken by a person which is supported in whole or in part through contracts with one or more public agencies until the 121st day after the effective date of this section. This section shall not apply to any project to which Section 21170 is applicable or to any successor project which is the same as, or substantially identical to, such a project.

This section shall not prohibit or prevent a public agency, prior to the 121st day after the effective date of this section, from considering environmental factors in connection with the approval or disapproval of a project and from imposing reasonable fees in connection therewith.

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972.)

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.Rev. 559.

Friends of Mammoth: Vox Populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 137.

Library References

Health and Environment ⇐25.10(2), (4), 36.
C.J.S. Health and Environment §§ 37, 70 et seq., 74, 119 et seq.

Notes of Decisions

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1. In general

Complaint could not be made, under Environmental Quality Act (§ 21000 et seq.), of private projects with respect to anything occurring during 120-day moratorium for private projects under express provision of this section. *Plan for Arcadia, Inc. v. Arcadia City Council* (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

The reference in this section to projects defined in subd. (c) of § 21065 would include private projects and certain public projects in the 121 day moratorium period. *Op.Leg.Counsel*, 1972 S.J. 7928.

2. Permits

Since central permit bureau of the City and County of San Francisco exercised no discretion when it issued building permit, so that board of permit appeals was required to grant a hearing and was empowered to exercise full discretion in the matter, approval of permit did not come until appeal from issuance of permit was denied by the board of permit appeals, so that the project in question was required to comply with requirements of the California

Environmental Quality Act (§ 21000 et seq.) as the board's action did not come until after end of moratorium on application of the Act to private building projects for which permits are required. *Save our Skyline v. Board of Permit Appeals* (1976) 131 Cal.Rptr. 570, 60 C.A.3d 512.

3. Report

City which on March 13, 1973, within 120 days before moratorium had elapsed, approved preliminary plans submitted by lessee of city land for construction of building on lease site, did not legally need an environmental impact report with respect to construction of building by lessee. *Bresnahan v. City of Pasadena* (1975) 121 Cal.Rptr. 750, 48 C.A.3d 297.

Under this section providing 120-day moratorium period within which state planning and research of local agencies were to prepare guidelines for evaluation of private projects and for preparation of EIR, if project is approved during moratorium period, an EIR is not required, provided validity of project was not being contested by judicial proceeding commenced before effective date of the section. *Friends of Lake Arrowhead v. San Bernardino County Bd. of Sup'rs* (1974) 113 Cal. Rptr. 539, 38 C.A.3d 497.

A city or county may, under this section, enact its own ordinance requiring the prepara-

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tion of impact reports or studies during the 121 day moratorium with respect to projects exempt during that time from environmental im-

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impact report requirements. Op.Leg.Counsel, 1972 A.J. 8227.

§ 21172. Disasters; maintenance, repair, etc., property or facilities damaged; exemption

This division shall not apply to any project undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1, Title 2 of the Government Code.

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972.)

Law Review Commentaries

Application of emergency exemptions under CEQA. (1984) 15 Pacific L.J. 1089.

Friends of Mammoth: Vox populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 137.

Library References

Health and Environment ⇨25.10(2).
C.J.S. Health and Environment §§ 70 et seq.,
119 et seq.

§ 21172.5. Evaluation of projects and status of impact reports during moratorium period

Until the 121st day after the effective date of this section, any objectives, criteria and procedures adopted by public agencies in compliance with this division shall govern the evaluation of projects defined in subdivisions (a) and (b) of Section 21065 and the preparation of environmental impact reports on such projects when required by this division.

Any environmental impact report which has been completed or on which substantial work has been performed on or before the 121st day after the effective date of this section, if otherwise legally sufficient, shall, when completed, be deemed to be in compliance with this division and no further environmental impact report shall be required except as provided in Section 21166.

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972.)

Law Review Commentaries

Friends of Mammoth: Vox populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 137.

Library References

Health and Environment ⇨25.10(2), (6).
C.J.S. Health and Environment §§ 70 et seq.,
77, 119 et seq., 122.

Notes of Decisions

1. In general

This section providing that any environmental impact report which has been completed or on which substantial work has been performed on or before 121st day after effective date of this section, when completed will be deemed to be in compliance with Division 13 and no

further environmental report shall be required, except as otherwise provided, applies to EIR prepared on private projects in compliance with local requirements as well as to those prepared for public projects. *Friends of Lake Arrowhead v. San Bernardino County Bd. of Sup'rs* (1974) 113 Cal.Rptr. 539, 38 C.A.3d 497.

§ 21173. Severability

If any provision of this division or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this division which can be given effect without the invalid provision or application thereof, and to this end the provisions of this division are severable.

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972.)

Library References

Statutes ⇐64(2).
C.J.S. Statutes § 96 et seq.

§ 21174. Construction of division; enforcement of other provisions; coastal act

No provision of this division is a limitation or restriction on the power or authority of any public agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer, including, but not limited to, the powers and authority granted to the California Coastal Commission or any regional coastal commission pursuant to Division 20 (commencing with Section 30000). To the extent of any inconsistency or conflict between the provisions of the California Coastal Act of 1976, Division 20 (commencing with Section 30000), and the provisions of this division, the provisions of Division 20 (commencing with Section 30000) shall control.

(Added by Stats.1972, c. 1154, p. 2277, § 16, eff. Dec. 5, 1972. Amended by Stats.1977, c. 1200, p. 4004, § 19.1; Stats.1980, c. 676, p. 1998, § 278.)

Historical Note

The 1977 amendment substituted "California Coastal Commission" and "any regional coastal commission pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code" for "California Coastal Zone Conservation Commission" and "any regional coastal zone conservation commission pursuant to Division 18 (commencing with Section 27000) of the Public Resources Code" in the first sentence; and rewrote the second sentence, which formerly read:

"To the extent of any inconsistency or conflict between the provisions of the California Coastal Zone Conservation Act of 1972, Division 18 (commencing with Section 27000) of the Public Resources Code, and the provisions of this division, the provisions of Division 18 (commencing with Section 27000) of the Public Resources Code shall control."

The 1980 amendment deleted "of the Public Resources Code" following "(commencing with Section 30000)" throughout the section.

Library References

Health and Environment ⇐25.10.
Statutes ⇐223.1.

C.J.S. Health and Environment §§ 64 to 90,
115 to 124.
C.J.S. Statutes § 365.

Notes of Decisions

1. In general

Fact that an environmental impact report has been filed does not in and of itself mandate that the conclusions in that report be followed; the decision lies with the governmental agency. *Bresnahan v. City of Pasadena* (1975) 121 Cal.Rptr. 750, 48 C.A.3d 297.

An environmental impact report may be required notwithstanding that restricted material or restricted herbicide has previously been environmentally assessed and regulated for use by federal and state agencies. 59 Ops.Atty. Gen. 300, 5-4-76.

§ 21175. Local agency formation commission; confirmation, validation and legality of project approvals; time

In the event that a local agency formation commission, acting pursuant to the provisions of Chapter 6.6 (commencing with Section 54773)¹ of Part 1 of Division 2 of Title 5 of, or pursuant to Division 1 (commencing with Section 56000)² of Title 6 of, the Government Code, has approved a project without complying with this division, such approval is hereby confirmed, validated, and declared legally effective notwithstanding the failure to comply with this division; provided, that such approval shall have occurred prior to February 7, 1975.

(Added by Stats.1975, c. 222, § 2, eff. July 5, 1975.)

¹ Repealed. See, now, Part 1 of Division 3 of Title 5 of the Government Code (commencing with Section 56000).

² Repealed.

Law Review Commentaries

Compliance by LAFCO with requirements of CEQA before approving annexation proposals of cities. (1976) 16 Santa Clara L.Rev. 403.

Library References

Health and Environment ⇐25.10(5).
C.J.S. Health and Environment §§ 75, 76,
122.

§ 21176. Judicial proceedings pending or determined; time; effect on operation of § 21175

(a) Section 21175 shall not operate to confirm, validate, or give legal effect to any project, the legality of which was being contested in a judicial proceeding in which proceeding the pleadings, prior to February 7, 1975, alleged facts constituting a cause of action for, or raised the issue of, a violation of this division, and which was pending and undetermined on February 7, 1975.

(b) Section 21175 shall not operate to confirm, validate, or give legal effect to any project which had been determined in any judicial proceeding, on or before the effective date of this section, to be illegal, void, or ineffective because of noncompliance with this division.

(Added by Stats.1975, c. 222, § 3, eff. July 5, 1975.)

§ 21177. Presentation of grounds for noncompliance; objections to approval of project

(a) No action may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person.

(b) No person shall maintain an action or proceeding unless that person objected to the approval of the project orally or in writing.

(c) This section does not preclude any organization formed after the approval of a project from maintaining an action pursuant to Section 21167 if a member of that organization has complied with subdivision (b).

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

(e) This section does not apply when there was no public hearing or other opportunity for members of the public to raise objections prior to the approval of the project or when the public agency failed to give the notice required by law.

(Added by Stats.1984, c. 1514, § 14.)

Historical Note

Section 14.5 of Stats.1984, c. 1514, provided:
"It is the intent of the Legislature in adding Section 21177 to the Public Resources Code in Section 14 of this act to codify the exhaustion

of administrative remedies doctrine. It is not the intent to limit or modify any exception to the doctrine of administrative remedies contained in case law."

Division 13.5

**CALIFORNIA ENVIRONMENTAL
PROTECTION PROGRAM**

Section

21190. Existence of program; legislative declaration; use of funds.

21191. Environmental license plate fund; continued existence; expenditures; appropriations for program.

21192. Use of funds; sources.

21193. Administration of program; duties of secretary of resources agency.

Division 13.5 was added by Stats.1979, c. 1105, p. 3979, § 3.

§ 21190. Existence of program; legislative declaration; use of funds

There is in this state the California Environmental Protection Program, which shall be concerned with the preservation and protection of California's environment. In this connection, the Legislature hereby finds and declares that, since the inception of the program pursuant to the Marks-Badham Environmental Protection and Research Act, the Department of Motor Vehicles has, in the course of issuing environmental license plates, consistently informed potential purchasers of those plates, by means of a detailed brochure, of the manner in which the program functions, the particular purposes for which revenues from the issuance of those plates can lawfully be expended, and examples of particular projects and programs that have been financed

EFFECTIVE DATES OF LAWS

The following Table shows the date of adjournment or recess dates and the effective date of non-emergency acts covering legislative sessions since 1933.

<u>Year</u>	<u>Session</u>	<u>Adjournment or Recess Date</u>	<u>Effective Date</u>
1933	Regular	July 26, 1933	August 21, 1933
1934	Extra	Sept. 15, 1934	Dec. 15, 1934
1935	Regular	June 16, 1935	Sept. 15, 1935
1936	Extra	May 26, 1936	Aug. 25, 1936
1937	Regular	May 28, 1937	Aug. 27, 1937
1938	Extra	March 12, 1938	June 11, 1938
1939	Regular	June 20, 1939	Sept. 19, 1939
1940	1st Extra	Dec. 5, 1940	March 6, 1941
1940	2nd Extra	May 24, 1940	Emergency only
1940	3rd Extra	Sept. 13, 1940	Emergency only
1940	4th Extra	Dec. 5, 1940	March 6, 1941
1940	5th Extra	Dec. 5, 1940	Emergency only
1941	Regular	June 14, 1941	Sept. 13, 1941
1941	1st Extra	Jan. 22, 1942	Emergency only
1942	2nd Extra	Jan. 18, 1942	Emergency only
1943	Regular	May 5, 1943	Aug. 4, 1943
1943	1st Extra	Jan. 30, 1943	May 1, 1943
1943	2nd Extra	March 25, 1943	June 24, 1943
1944	3rd Extra	Jan. 31, 1944	May 1, 1944
1944	4th Extra	June 13, 1944	Sept. 12, 1944
1945	Regular	June 16, 1945	Sept. 15, 1945
1946	1st Extra	Feb. 19, 1946	May 21, 1946
1946	2nd Extra	July 25, 1946	Oct. 24, 1946
1947	Regular	June 20, 1947	Sept. 19, 1947
1947	1st Extra	June 24, 1947	Sept. 23, 1947
1948	Regular	March 27, 1948	June 26, 1948
1949	Regular	July 2, 1949	Oct. 1, 1949
1949	1st Extra	Dec. 21, 1949	March 22, 1950
1950	Regular	April 4, 1950	July 4, 1950
1950	1st Extra	April 15, 1950	July 15, 1950
1950	2nd Extra	March 6, 1950	June 5, 1950
1950	3rd Extra	Sept. 26, 1950	Dec. 26, 1950
1951	Regular	June 23, 1951	Sept. 22, 1951
1952	Regular	April 1, 1952	July 1, 1952
1952	1st Extra	April 2, 1952	July 2, 1952
1952	2nd Extra	Aug. 13, 1952	Nov. 12, 1952
1953	Regular	June 10, 1953	Sept. 9, 1953
1954	Regular	March 30, 1954	June 29, 1954
1954	1st Extra	April 1, 1954	July 1, 1954
1955	Regular	June 8, 1955	Sept. 7, 1955
1956	Regular	April 3, 1956	July 3, 1956
1956	1st Extra	April 5, 1956	July 5, 1956
1957	Regular	June 12, 1957	Sept. 11, 1957
1958	Regular	March 30, 1958	June 29, 1958
1958	1st Extra	April 23, 1958	July 23, 1958
1958	2nd Extra	April 24, 1958	July 24, 1958
1959	Regular	June 19, 1959	Sept. 18, 1959
1960	Regular	March 26, 1960	June 25, 1960

EFFECTIVE DATES OF LAWS

<u>Year</u>	<u>Session</u>	<u>Adjournment or Recess Date</u>	<u>Effective Date</u>
1960	1st Extra	April 7, 1960	July 7, 1960
1960	2nd Extra	March 10, 1960	None
1961	Regular	June 16, 1961	Sept. 15, 1961
1962	Regular	April 3, 1962	July 3, 1962
1962	1st Extra	April 13, 1962	July 13, 1962
1962	2nd Extra	April 13, 1962	July 13, 1962
1962	3rd Extra	June 28, 1962	Sept. 27, 1962
1963	Regular	June 21, 1963	Sept. 20, 1963
1963	1st Extra	Aug. 1, 1963	Oct. 31, 1963
1964	Regular	March 26, 1964	June 25, 1964
1964	1st Extra	May 23, 1964	Aug. 22, 1964
1964	2nd Extra	May 23, 1964	Aug. 22, 1964
1965	Regular	June 18, 1965	Sept. 17, 1965
1965	1st Extra	July 6, 1965	Oct. 5, 1965
1965	2nd Extra	Nov. 4, 1965	Feb. 3, 1966
1966	Regular	April 4, 1966	July 4, 1966
1966	1st Extra	July 7, 1966	Oct. 6, 1966
1966	2nd Extra	July 8, 1966	Oct. 7, 1966
1967	Regular	Sept. 8, 1967	Nov. 8, 1967
1967	1st Extra	Sept. 7, 1967	Dec. 7, 1967
1967	2nd Extra	Dec. 8, 1967	March 8, 1968
1968	Regular	Sept. 13, 1968	Nov. 13, 1968
1968	1st Extra	Sept. 20, 1968	Dec. 20, 1968
1969	Regular	Sept. 10, 1969	Nov. 10, 1969
1970	Regular	Sept. 23, 1970	Nov. 23, 1970
1971	Regular	Jan. 3, 1972	March 4, 1972
1972	Regular	Jan. 5, 1973	March 7, 1973
1973	Regular	Dec. 7, 1973	Jan. 1, 1974
1973	1st Extra	Dec. 4, 1973	*
1974	Regular	Nov. 30, 1974	Jan. 1, 1975
1974	2nd Extra	Oct. 2, 1974	Jan. 1, 1975
1975	Regular	Sept. 12, 1975	Jan. 1, 1976
1975	1st Extra	June 27, 1975	Sept. 26, 1975
1975	2nd Extra	Sept. 12, 1975	Dec. 12, 1975
1975	3rd Extra	May 29, 1975	Aug. 28, 1975
1976	Regular	Nov. 30, 1976	Jan. 1, 1977
1977	Regular	Sept. 15, 1977	Jan. 1, 1978
1978	Regular	Nov. 30, 1978	Jan. 1, 1979
1978	1st Extra	April 24, 1978	April 20, 1978†
1979	Regular	Sept. 14, 1979	Jan. 1, 1980
1980	Regular	Nov. 30, 1980	Jan. 1, 1981
1981	Regular	Sept. 15, 1981	Jan. 1, 1982
1981-82	1st Extra	Feb. 25, 1982	May 27, 1982
1982	Regular	Nov. 30, 1982	Jan. 1, 1983
1983-84	1st Extra	July 19, 1983	Oct. 18, 1983
1983	Regular	Sept. 19, 1983	Jan. 1, 1984
1983-84	2nd Extra	Feb. 17, 1984	May 18, 1984
1984	Regular	Nov. 30, 1984	Jan. 1, 1985
1985	Regular	Sept. 13, 1985	Jan. 1, 1986

* No legislation was enacted which affected any code or law.

† Urgency only.