

AMENDED IN SENATE MARCH 24, 2025

SENATE BILL

No. 607

Introduced by Senator Wiener

(Principal coauthor: Assembly Member Wicks)

(Coauthor: Assembly Member Ahrens)

February 20, 2025

An act to amend Sections ~~21080.1 and 21167.6~~ 21064, 21064.5, 21080, 21080.1, 21083, 21167.6, and 21168.9 of, and to add Sections 21060.4, 21064.1, 21064.8, 21080.08, ~~21083.03, and 21165.5~~ and 21083.03 to, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 607, as amended, Wiener. California Environmental Quality Act: categorical exemptions: infill projects.

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

This bill would revise the definition of negative declaration to mean a written statement briefly describing the substantial evidence in the

record that the proposed project will not have a significant effect on the environment, as specified. The bill would also revise the definition of mitigated negative declaration to mean that revisions would avoid or mitigate the effects on the environment, as determined by the public agency based upon substantial evidence in the record, as specified, and that there is substantial evidence that the project as revised will not have a significant effect on the environment, as provided.

CEQA requires the Office of Land Use and Climate Innovation to prepare and develop proposed guidelines for the implementation of CEQA by public agencies and requires the Secretary of the Natural Resources Agency to certify and adopt those proposed guidelines. CEQA requires those adopted guidelines to include a list of classes of projects that have been determined not to have a significant effect on the environment and exempts those classes of projects from CEQA, commonly known as categorical exemptions. *CEQA requires the guidelines to include criteria for public agencies to follow in determining whether or not a proposed project may have a significant effect on the environment, and requires the criteria to require a finding that a project may have a significant effect on the environment if one or more of specified conditions exist.*

~~This bill would require a lead agency to limit the scope of an environmental impact report to the condition of a categorical exemption that the lead agency determines, after a preliminary review of the project, disqualifies the project from eligibility under the categorical exemption, if the lead agency determines that the project meets all other conditions of the categorical exemption except for the one condition that disqualifies it, as specified. The bill would require that a lead agency's determination to adopt a negative declaration or mitigated negative declaration be upheld if there is a fair argument that substantial evidence supports the determination.~~ *would instead require those criteria to require that finding if the lead agency determines, based upon substantial evidence in the record, that one or more of those specified conditions exist. The bill would, for the approval of a proposed project that would otherwise be exempt from CEQA pursuant to a statutory or categorical exemption but for a single condition, as defined, limit the application of CEQA to the effects upon the environment that are caused solely by that single condition. For these projects, the bill would only require the initial study or EIR to examine those effects that the lead agency determines, based upon substantial evidence in the record, are caused solely by the single condition that makes the proposed project*

ineligible for the exemption, as provided. The bill would provide that these provisions do not apply to a project ~~to construct or that is related to that includes~~ a distribution center ~~center~~, as defined, or oil and gas ~~infrastructure~~. *infrastructure, as defined.* The bill would exempt from the requirements of CEQA, except as provided, a rezoning that is consistent with an approved housing element. Because the bill would require a lead agency to determine the applicability of this exemption, the bill would impose a state-mandated local program.

This bill would require the office, on or before July 1, 2026, to map the eligible urban infill sites within every ~~incorporated city~~ *urbanized area or urban cluster* in the state, as provided. The bill would require the office, on or before July 1, 2026, to prepare, develop, and transmit to the agency for certification and adoption ~~refinements~~ *an amendment to the infill development project categorical exemption; exemption that establishes an alternative means of compliance with the requirements of that categorical exemption*, as provided. The bill would provide that specified regulations related to the significant effect exception to the use of a categorical exemption do not apply to an infill project that meets all conditions of the infill development project categorical exemption. ~~The bill would require, if an infill project is not eligible for the infill development project categorical exemption, only the reasons for the ineligibility be subject to CEQA review.~~ *bill, for a proposed project that meets specified elements of the infill development project categorical exemption that is otherwise ineligible for the categorical exemption due to one or more conditions, as defined, would limit the application of CEQA to the effects upon the environment that are caused solely by those conditions that make the project ineligible for the categorical exemption.* The bill would provide that these provisions do not apply to a project ~~to construct or that is related to that includes~~ a distribution center or oil and gas infrastructure.

CEQA requires an action or proceeding to attack, review, set aside, void, or annul certain acts or decisions of a public agency to be commenced according to specified processes, including that at the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding, and requires the record of proceedings to include specified items and materials, including, among other things, all internal agency communications, including staff notes and memoranda related to the

project or to compliance with CEQA, but excluding communications that are of a logistical nature, as specified.

~~This bill would also exclude communications of persons tangential to or far removed from project decisionmaking from the materials to be included in the record of proceedings, except as provided: would, except for a project that includes a distribution center or oil and gas infrastructure, exclude staff notes and electronic internal agency communications, including emails, that were not presented to the final decisionmaking body, from the record of proceedings, as provided.~~

~~This bill would require, except as provided, if an action or proceeding alleging that a lead agency improperly applied to a project a statutory or categorical exemption is successful, the subsequent environmental review for the project be limited to the facts the action or proceeding relied upon that disqualified the project from the statutory or categorical exemption.~~

CEQA requires a court to enter an order that includes a mandate necessary to achieve compliance with CEQA, as specified, when 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 CEQA.

This bill would require that order to be subject to specified limitations for a determination of a public agency that a project is eligible for a statutory exemption or categorical exemption that is found to violate CEQA.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 *SECTION 1. Section 21060.4 is added to the Public Resources*
- 2 *Code, to read:*
- 3 *21060.4. "Distribution center" means a warehouse distribution*
- 4 *center, as defined in Section 2100 of the Labor Code, that is 50,000*
- 5 *square feet or larger.*

1 SEC. 2. Section 21064 of the Public Resources Code is
2 amended to read:

3 21064. “Negative declaration” means a written statement briefly
4 describing the reasons ~~that a substantial evidence in the record~~
5 *that the proposed project will not have a significant effect on the*
6 *environment and does not require the preparation of an*
7 *environmental impact report.*

8 SEC. 3. Section 21064.1 is added to the Public Resources Code,
9 to read:

10 21064.1. “May have a significant effect on the environment”
11 *means that there is no substantial evidence in the record that the*
12 *proposed project will not have a significant effect on the*
13 *environment.*

14 SEC. 4. Section 21064.5 of the Public Resources Code is
15 amended to read:

16 21064.5. “Mitigated negative declaration” means a negative
17 declaration prepared for a project when the initial study has
18 identified potentially significant effects on the environment, but
19 (1) revisions in the project plans or proposals made by, or agreed
20 to by, the applicant before the proposed negative declaration and
21 initial study are released for public review would avoid the effects
22 or mitigate the effects to a point where ~~clearly~~ no significant effect
23 on the environment would occur, *as determined by the public*
24 *agency based upon substantial evidence in the record,* and (2)
25 there is ~~no~~ substantial evidence in light of the whole record before
26 the public agency that the project, as revised, ~~may~~ *will not* have a
27 significant effect on the environment.

28 SEC. 5. Section 21064.8 is added to the Public Resources Code,
29 to read:

30 21064.8. “Oil and gas infrastructure” means a facility used
31 *for the production, processing, transmission, storage, or*
32 *distribution of petroleum or natural gas.*

33 SEC. 6. Section 21080 of the Public Resources Code is
34 amended to read:

35 21080. (a) Except as otherwise provided in this division, this
36 division shall apply to discretionary projects proposed to be carried
37 out or approved by public agencies, including, but not limited to,
38 the enactment and amendment of zoning ordinances, the issuance
39 of zoning variances, the issuance of conditional use permits, and

1 the approval of tentative subdivision maps unless the project is
2 exempt from this division.

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

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

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

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

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

18 (5) Projects that a public agency rejects or disapproves.

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

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

38 (8) The establishment, modification, structuring, restructuring,
39 or approval of rates, tolls, fares, or other charges by public agencies
40 that the public agency finds are for the purpose of: (A) meeting

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

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

12 (10) A project for the institution or increase of passenger or
13 commuter services on rail or highway rights-of-way already in
14 use, including modernization of existing stations and parking
15 facilities. For purposes of this paragraph, “highway” has the same
16 meaning as defined in Section 360 of the Vehicle Code.

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

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

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

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

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

1 (16) Approval by the Department of Pesticide Regulation of a
2 pesticide emergency exemption pursuant to Section 136p of Title
3 7 of the United States Code.

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

9 (1) There is ~~no~~ substantial evidence, in light of the whole record
10 before the lead agency, that the project ~~may~~ *will not* have a
11 significant effect on the environment.

12 (2) An initial study identifies potentially significant effects on
13 the environment, but: (A) revisions in the project plans or proposals
14 made by, or agreed to by, the applicant before the proposed
15 negative declaration and initial study are released for public review
16 would avoid the effects or mitigate the effects to a point where
17 ~~clearly~~ no significant effect on the environment would ~~occur~~;
18 *occur, as determined by the public agency based upon substantial*
19 *evidence on the record*; and (B) there is ~~no~~ substantial evidence,
20 in light of the whole record before the lead agency, that the project,
21 as revised, ~~may~~ *will not* have a significant effect on the
22 environment.

23 (d) If there is *no* substantial evidence, in light of the whole
24 record before the lead agency, that the project ~~may~~ *will not* have
25 a significant effect on the environment, an environmental impact
26 report shall be prepared.

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

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

35 (f) As a result of the public review process for a mitigated
36 negative declaration, including administrative decisions and public
37 hearings, the lead agency may conclude that certain mitigation
38 measures identified pursuant to paragraph (2) of subdivision (c)
39 are infeasible or otherwise undesirable. In those circumstances,
40 the lead agency, before approving the project, may delete those

1 mitigation measures and substitute for them other mitigation
2 measures that the lead agency finds, after holding a public hearing
3 on the matter, are equivalent or more effective in mitigating
4 significant effects on the environment to a less than significant
5 level and that do not cause any potentially significant effect on the
6 environment. If those new mitigation measures are made conditions
7 of project approval or are otherwise made part of the project
8 approval, the deletion of the former measures and the substitution
9 of the new mitigation measures shall not constitute an action or
10 circumstance requiring recirculation of the mitigated negative
11 declaration.

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

26 ~~SECTION 1.~~

27 *SEC. 7.* Section 21080.08 is added to the Public Resources
28 Code, to read:

29 21080.08. (a) This division does not apply to a rezoning that
30 is consistent with an approved housing element.

31 (b) Subdivision (a) does not apply to a rezoning that would
32 allow for the construction of a distribution center or for oil and
33 gas infrastructure.

34 ~~SEC. 2.~~

35 *SEC. 8.* Section 21080.1 of the Public Resources Code is
36 amended to read:

37 21080.1. (a) ~~(1)~~—The lead agency shall be responsible for
38 determining whether an environmental impact report, a negative
39 declaration, or a mitigated negative declaration shall be required
40 for any project that is subject to this division. That determination

1 shall be final and conclusive on all persons, including responsible
2 agencies, unless challenged as provided in Section 21167.

3 ~~(2) (A) The lead agency shall limit the scope of an
4 environmental impact report to the condition of a categorical
5 exemption that the lead agency determines, after a preliminary
6 review of the project, disqualifies the project from eligibility under
7 the categorical exemption, if the lead agency determines that the
8 project meets all other conditions of the categorical exemption
9 except for the one condition that disqualifies it.~~

10 ~~(B) This paragraph does not apply to a project that is disqualified
11 from a categorical exemption for failing to meet two or more
12 conditions of the categorical exemption.~~

13 ~~(C) This paragraph does not apply to a project to construct or
14 that is related to a distribution center or oil and gas infrastructure.~~

15 ~~(3) (A) The lead agency's determination to adopt a negative
16 declaration or mitigated negative declaration shall be upheld if
17 there is a fair argument that substantial evidence supports the
18 determination.~~

19 ~~(B) This paragraph does not apply to a project to construct or
20 that is related to a distribution center or oil and gas infrastructure.~~

21 *(b) (1) If a proposed project would otherwise be exempt from
22 this division pursuant to a statutory exemption or a categorical
23 exemption but for a single condition, the application of this division
24 to the approval of the proposed project shall be limited to effects
25 upon the environment that are caused solely by that single
26 condition.*

27 *(2) An initial study or environmental impact report prepared
28 for a project subject to this subdivision is only required to examine
29 those effects that the lead agency determines, based upon
30 substantial evidence in the record, are caused solely by the single
31 condition that makes the proposed project ineligible for the
32 statutory exemption or categorical exemption.*

33 *(3) An environmental impact report for a project subject to this
34 subdivision is not required to include any discussion of alternatives
35 to the project, cumulative impacts of the project, or the
36 growth-inducing impacts of the project.*

37 *(4) This subdivision does not apply to either of the following
38 projects:*

39 *(A) A proposed project that is ineligible for the statutory
40 exemption or categorical exemption due to two or more conditions.*

1 (B) A proposed project that includes a distribution center or oil
2 and gas infrastructure.

3 (5) As used in this subdivision, “condition” means a physical
4 feature of the project or an effect upon the environment caused by
5 the project.

6 (c) (1) Notwithstanding any other provision of this division, an
7 environmental impact report shall be prepared for a proposed
8 project that includes a distribution center or oil and gas
9 infrastructure if there is substantial evidence, in light of the whole
10 record before the lead agency, that the project could have a
11 significant effect on the environment.

12 (2) It is the intent of the Legislature that the review of proposed
13 projects that include a distribution center or oil and gas
14 infrastructure shall continue to be subject to the fair argument
15 standard as it applied to those projects before January 1, 2026.

16 (b)

17 (d) In the case of a project described in subdivision (c) of Section
18 21065, the lead agency shall, upon the request of a potential
19 applicant, provide for consultation prior to the filing of the
20 application regarding the range of actions, potential alternatives,
21 mitigation measures, and any potential and significant effects on
22 the environment of the project.

23 SEC. 9. Section 21083 of the Public Resources Code is
24 amended to read:

25 21083. (a) The Office of ~~Planning and Research~~ *Land Use*
26 *and Climate Innovation* shall prepare and develop proposed
27 guidelines for the implementation of this division by public
28 agencies. The guidelines shall include objectives and criteria for
29 the orderly evaluation of projects and the preparation of
30 environmental impact reports and negative declarations in a manner
31 consistent with this division.

32 (b) The guidelines shall specifically include criteria for public
33 agencies to follow in determining whether or not a proposed project
34 may have a “significant effect on the environment.” The criteria
35 shall require a finding that a project may have a “significant effect
36 on the environment” if *the lead agency determines, based upon*
37 *substantial evidence in the record, that one or more of the*
38 *following conditions exist:*

39 (1) A proposed project has the potential to degrade the quality
40 of the environment, curtail the range of the environment, or to

1 achieve short-term, to the disadvantage of long-term, environmental
2 goals.

3 (2) The possible effects of a project are individually limited but
4 cumulatively considerable. As used in this paragraph,
5 “cumulatively considerable” means that the incremental effects of
6 an individual project are considerable when viewed in connection
7 with the effects of past projects, the effects of other current projects,
8 and the effects of probable future projects.

9 (3) The environmental effects of a project will cause substantial
10 adverse effects on human beings, either directly or indirectly.

11 (c) The guidelines shall include procedures for determining the
12 lead agency pursuant to Section 21165.

13 (d) The guidelines shall include criteria for public agencies to
14 use in determining when a proposed project is of sufficient
15 statewide, regional, or areawide environmental significance that
16 a draft environmental impact report, a proposed negative
17 declaration, or a proposed mitigated negative declaration shall be
18 submitted to appropriate state agencies, through the State
19 Clearinghouse, for review and comment prior to completion of the
20 environmental impact report, negative declaration, or mitigated
21 negative declaration.

22 (e) The Office of ~~Planning and Research~~ *Land Use and Climate*
23 *Innovation* shall develop and prepare the proposed guidelines as
24 soon as possible and shall transmit them immediately to the
25 Secretary of the *Natural* Resources Agency. The Secretary of the
26 *Natural* Resources Agency shall certify and adopt the guidelines
27 pursuant to Chapter 3.5 (commencing with Section 11340) of Part
28 1 of Division 3 of Title 2 of the Government Code, which shall
29 become effective upon the filing thereof. However, the guidelines
30 shall not be adopted without compliance with Sections 11346.4,
31 11346.5, and 11346.8 of the Government Code.

32 (f) The Office of ~~Planning and Research~~ *Land Use and Climate*
33 *Innovation* shall, at least once every two years, review the
34 guidelines adopted pursuant to this section and shall recommend
35 proposed changes or amendments to the Secretary of the *Natural*
36 Resources Agency. The Secretary of the *Natural* Resources Agency
37 shall certify and adopt guidelines, and any amendments thereto,
38 at least once every two years, pursuant to Chapter 3.5 (commencing
39 with Section 11340) of Part 1 of Division 3 of Title 2 of the
40 Government Code, which shall become effective upon the filing

1 thereof. However, guidelines may not be adopted or amended
2 without compliance with Sections 11346.4, 11346.5, and 11346.8
3 of the Government Code.

4 ~~SEC. 3.~~

5 *SEC. 10.* Section 21083.03 is added to the Public Resources
6 Code, to read:

7 21083.03. (a) On or before July 1, 2026, the Office of Land
8 Use and Climate Innovation shall prepare, develop, and transmit
9 to the Natural Resources Agency for certification and adoption
10 ~~refinements to the infill development project categorical exemption~~
11 ~~pursuant to an amendment to the Class 32 categorical exemption~~
12 ~~set forth in Section 15332 of Title 14 of the California Code of~~
13 ~~Regulations that establish all of the following:~~ *establishes an*
14 *alternative means of compliance with the requirements of that*
15 *categorical exemption as follows:*

16 (1) ~~For purposes of compliance with subdivision (a) of Section~~
17 ~~15332 of Title 14 of the California Code of Regulations, a project~~
18 ~~is also eligible if it is consistent with the zoning designated by the~~
19 ~~local jurisdiction's most recently adopted housing element,~~
20 ~~provided that the housing element has been certified by the~~
21 ~~Department of Housing and Community Development to be in~~
22 ~~compliance with state law.~~

23 (2) ~~Notwithstanding that a project may or may not be~~
24 ~~substantially surrounded by urban uses pursuant to subdivision (b)~~
25 ~~of Section 15332 of Title 14 of the California Code of Regulations,~~
26 ~~that a project is in compliance with subdivision (b) of Section~~
27 ~~15332 of Title 14 of the California Code of Regulations if it is~~
28 ~~located within an area that the Office of Land Use and Climate~~
29 ~~Innovation has determined to be an eligible urban infill site~~
30 ~~pursuant to subdivision (b).~~

31 (3) ~~Objective and measurable thresholds for an effect upon the~~
32 ~~environment to be considered significant for purposes of~~
33 ~~subdivision (d) of Section 15332 of Title 14 of the California Code~~
34 ~~of Regulations.~~

35 (1) *A housing development project, as defined in Section 65589.5*
36 *of the Government Code, that is not consistent with the applicable*
37 *general plan designation, applicable general plan policies, or*
38 *applicable zoning designation and regulations shall be in*
39 *compliance with subdivision (a) of Section 15332 of Title 14 of*
40 *the California Code of Regulations if the project is proposed on*

1 a site identified as suitable or available for very low, low-, or
2 moderate-income households in the local jurisdiction's most recent
3 adopted housing element that has been certified by the Department
4 of Housing and Community Development to be in compliance with
5 state law.

6 (2) A project that does not occur within city limits on a project
7 site of no more than five acres substantially surrounded by urban
8 uses shall be in compliance with subdivision (b) of Section 15332
9 of Title 14 of the California Code of Regulations if the project
10 occurs in either of the following locations:

11 (A) Within an urbanized area or urban cluster on a project site
12 of no more than five acres substantially surrounded by urban uses.

13 (B) Within an area that the Office of Land Use and Climate
14 Innovation has determined to be an eligible urban infill site
15 pursuant to subdivision (c).

16 (3) (A) The amendment shall establish objective and measurable
17 safe harbor thresholds that a lead agency may elect to use when
18 making the determinations required under subdivisions (c), (d),
19 and (e) of Section 15332 of Title 14 of the California Code of
20 Regulations.

21 (B) A lead agency shall not be in violation of this division if the
22 determinations required under subdivisions (c), (d), and (e) of
23 Section 15332 of Title 14 of the California Code of Regulations
24 were made in substantial compliance with thresholds adopted
25 pursuant to this subdivision.

26 (C) The safe harbor thresholds adopted pursuant to this
27 paragraph shall not be applicable to the review and consideration
28 of a proposed project, and shall not be considered in an action or
29 proceeding to attack, review, set aside, void, or annul a
30 determination or decision related to a proposed project on the
31 grounds of noncompliance with this division, unless the lead agency
32 has expressly elected to use the safe harbor threshold for that
33 project.

34 (4) The alternative means of compliance set forth in this
35 subdivision shall not apply to a proposed project that includes a
36 distribution center or oil and gas infrastructure.

37 (b) An amendment to Section 15332 of Title 14 of the California
38 Code of Regulations adopted pursuant to this section shall not
39 revise the requirements for exemption set forth in that section,
40 except as provided in subdivision (a). A project that would be

1 *eligible for the Class 32 categorical exemption set forth in Section*
2 *15332 of Title 14 of the California Code of Regulations as it read*
3 *on December 31, 2024, shall not be ineligible as the result of any*
4 *amendment adopted pursuant to this section.*

5 (b)

6 (c) On or before July 1, 2026, the Office of Land Use and
7 Climate Innovation shall map the eligible urban infill sites within
8 every ~~incorporated city~~ *urbanized area or urban cluster* in the
9 state where, notwithstanding that an area may or may not be
10 substantially surrounded by urban uses, the local jurisdiction's
11 most recent general plan or most recently adopted housing element
12 *that has been* certified by the Department of Housing and
13 Community Development to be in compliance with state law has
14 a zoning designation that is consistent with infill development.

15 (e)

16 (d) Subdivision (c) of Section 15300.2 of Title 14 of the
17 California Code of Regulations does not apply to Section 15332
18 of Title 14 of the California Code of Regulations.

19 ~~(d) If an infill~~

20 (e) (1) ~~If a proposed project that is not eligible for the~~
21 ~~categorical exemption pursuant to in compliance with subdivisions~~
22 ~~(a) and (b) of Section 15332 of Title 14 of the California Code of~~
23 ~~Regulations, only the reasons for the ineligibility shall be subject~~
24 ~~to CEQA review. Regulations is otherwise ineligible for that~~
25 ~~categorical exemption due to one or more conditions, the~~
26 ~~application of this division to the approval of the proposed project~~
27 ~~shall be limited to the effects upon the environment that are caused~~
28 ~~solely by those conditions that make the project ineligible for the~~
29 ~~categorical exemption.~~

30 (2) For purposes of this subdivision, “condition” has the same
31 meaning as in subdivision (b) of Section 21080.1.

32 (f) For purposes of this section, the following definitions apply:

33 (1) “Urbanized area” means an urbanized area designated by
34 the United States Census Bureau, as published in the Federal
35 Register, Volume 77, Number 59, on March 27, 2012.

36 (2) “Urban cluster” means an urban cluster designated by the
37 United States Census Bureau, as published in the Federal Register,
38 Volume 77, Number 59, on March 27, 2012.

39 (e)

1 (g) This section ~~and refinements developed by the Office of~~
2 ~~Land Use and Climate Innovation~~ does not apply to a project to
3 ~~construct or that is related to~~ *that includes* a distribution center or
4 oil and gas infrastructure.

5 ~~SEC. 4. Section 21165.5 is added to the Public Resources Code,~~
6 ~~to read:~~

7 ~~21165.5.— (a) If an action or proceeding alleging that a lead~~
8 ~~agency improperly applied to a project a statutory exemption~~
9 ~~pursuant to this division, or a categorical exemption, is successful,~~
10 ~~the subsequent environmental review for the project shall be limited~~
11 ~~to the facts the action or proceeding relied upon that disqualified~~
12 ~~the project from the statutory or categorical exemption.~~

13 ~~(b) This section does not apply to a project to construct or that~~
14 ~~is related to a distribution center or oil and gas infrastructure.~~

15 ~~SEC. 5.~~

16 ~~SEC. 11. Section 21167.6 of the Public Resources Code is~~
17 ~~amended to read:~~

18 ~~21167.6. Notwithstanding any other law, in all actions or~~
19 ~~proceedings brought pursuant to Section 21167, except as provided~~
20 ~~in Section 21167.6.2 or those involving the Public Utilities~~
21 ~~Commission, all of the following shall apply:~~

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

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

38 (B) The court shall schedule a case management conference
39 within 30 days of the filing of the complaint or petition pursuant
40 to this division to review the scope, timing, and cost of the record

1 of proceedings. The parties may stipulate to a partial record of
2 proceedings that does not contain all the documents listed in
3 subdivision (e) if approved by the court.

4 (2) The plaintiff or petitioner may elect to prepare the record
5 of proceedings by providing a notice of the election to the public
6 agency, or the parties may agree to an alternative method of
7 preparation of the record of proceedings, subject to certification
8 of its accuracy by the public agency, within the 60-day time limit
9 specified in this subdivision.

10 (3) Notwithstanding paragraph (2), the public agency, within
11 five business days of the receipt of the notice specified in paragraph
12 (2), may deny the request of the plaintiff or petitioner to prepare
13 the record of proceedings, in which case the public agency or the
14 real party in interest shall bear the costs of preparation and
15 certification of the record of proceedings, and those costs shall not
16 be recoverable from the plaintiff or petitioner.

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

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

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

33 (1) All project application materials.

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

38 (3) All staff reports and related documents prepared by the
39 respondent public agency and written testimony or documents
40 submitted by any person relevant to any findings or statement of

1 overriding considerations adopted by the respondent agency
2 pursuant to this division.

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

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

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

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

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

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

28 (10) (A) (i) *Any other written materials relevant to the*
29 *respondent public agency's compliance with this division or to its*
30 *decision on the merits of the project, including the initial study,*
31 *any drafts of any environmental document or portions of the initial*
32 *study or drafts that have been released for public review, and*
33 *copies of studies or other documents relied upon in any*
34 *environmental document prepared for the project and either made*
35 *available to the public during the public review period or included*
36 *in the respondent public agency's files on the project, and all*
37 *internal agency communications, including staff notes and*
38 *memoranda related to the project or to compliance with this*
39 *division, but not including communications that are of a logistical*
40 *nature, such as meeting invitations and scheduling*

1 *communications, except that any material that is subject to*
2 *privileges contained in the Evidence Code, or exemptions contained*
3 *in the California Public Records Act (Division 10 (commencing*
4 *with Section 7920.000) of Title 1 of the Government Code), shall*
5 *not be included in the record of proceedings under this paragraph,*
6 *consistent with existing law.*

7 *(ii) This subparagraph applies to a project that includes a*
8 *distribution center or oil and gas infrastructure.*

9 ~~(10) Any~~

10 *(B) (i) Any other written materials relevant to the respondent*
11 *public agency's compliance with this division or to its decision on*
12 *the merits of the project, including the initial study, any drafts of*
13 *any environmental document, or portions thereof, of the initial*
14 *study or drafts, that have been released for public review, and*
15 *copies of studies or other documents relied upon in any*
16 *environmental document prepared for the project and either made*
17 *available to the public during the public review period or included*
18 *in the respondent public agency's files on the project, and all*
19 *internal agency communications, including staff notes and*
20 *memoranda related to the project or to compliance with this*
21 *division, but not including communications of persons tangential*
22 *to or far removed from project decisionmaking, unless those*
23 *communications are related to a project that would construct or is*
24 *related to a distribution center or oil and gas infrastructure, or that*
25 *are of a logistical nature, such as meeting invitations and*
26 *scheduling communications, except that any material that is subject*
27 *to privileges contained in the Evidence Code, or exemptions*
28 *contained in the California Public Records Act (Division 10*
29 *(commencing with Section 7920.000) of Title 1 of the Government*
30 *Code) Code), shall not be included in the record of proceedings*
31 *under this paragraph, consistent with existing law.*

32 *(ii) This subparagraph applies to any project that is not subject*
33 *to subparagraph (A).*

34 *(iii) For purposes of this subparagraph, internal agency*
35 *communications does not include electronic internal agency*
36 *communications, including emails, that were not presented to the*
37 *final decisionmaking body. The public agency may, but is not*
38 *required to, include any documents in the record of proceedings*
39 *that are not specifically set forth in this subparagraph.*

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

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

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

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

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

29 *SEC. 12. Section 21168.9 of the Public Resources Code is*
30 *amended to read:*

31 21168.9. (a) If a court finds, as a result of a trial, hearing, or
32 remand from an appellate court, that any determination, finding,
33 or decision of a public agency has been made without compliance
34 with this division, the court shall enter an order that includes one
35 or more of the following:

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

38 (2) If the court finds that a specific project activity or activities
39 will prejudice the consideration or implementation of particular
40 mitigation measures or alternatives to the project, a mandate that

1 the public agency and any real parties in interest suspend any or
2 all specific project activity or activities, pursuant to the
3 determination, finding, or decision, that could result in an adverse
4 change or alteration to the physical environment, until the public
5 agency has taken any actions that may be necessary to bring the
6 determination, finding, or decision into compliance with this
7 division.

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

11 (b) (1) Any order pursuant to subdivision (a) shall include only
12 those mandates which are necessary to achieve compliance with
13 this division and only those specific project activities in
14 noncompliance with this division. The order shall be made by the
15 issuance of a peremptory writ of mandate specifying what action
16 by the public agency is necessary to comply with this division.
17 However, the order shall be limited to that portion of a
18 determination, finding, or decision or the specific project activity
19 or activities found to be in noncompliance only if a court finds
20 that ~~(1) (A) the portion or specific project activity or activities are~~
21 ~~severable, (2) (B) severance will not prejudice complete and full~~
22 ~~compliance with this division, and (3) (C) the court has not found~~
23 ~~the remainder of the project to be in noncompliance with this~~
24 ~~division. The trial court shall retain jurisdiction over the public~~
25 ~~agency’s proceedings by way of a return to the peremptory writ~~
26 ~~until the court has determined that the public agency has complied~~
27 ~~with this division.~~

28 (2) *If the determination of a public agency that a project that*
29 *is eligible for a statutory exemption or categorical exemption is*
30 *found to violate this division, the order pursuant to subdivision*
31 *(a) shall be subject to the limitations set forth in subdivision (c)*
32 *of Section 21080.1 or Section 21083.03, as applicable.*

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

37 ~~SEC. 6.~~

38 *SEC. 13.* No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 a local agency or school district has the authority to levy service

- 1 charges, fees, or assessments sufficient to pay for the program or
- 2 level of service mandated by this act, within the meaning of Section
- 3 17556 of the Government Code.

O