

AMENDED IN SENATE MAY 1, 2025
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 21064, 21064.5, 21080, 21080.1, 21082.2, 21083, 21167.6, and 21168.9 of, and to add Sections 21060.4, 21064.1, 21064.8, ~~21080.08~~, 21067.5, 21080.085, 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 *reasons the lead agency has*

determined, based upon substantial evidence in the ~~record~~ record, that the proposed project will not have a significant effect on the environment, as specified. The bill would require a negative declaration to be prepared for a proposed project if the lead agency determines, based upon substantial evidence, in light of the whole record before the agency, that the project will not have a significant effect on the environment or when an initial study identifies potentially significant effects on the environment but revisions in the project plans would avoid the effects or mitigate the effects, as provided, and the lead agency has determined, based upon substantial evidence, in light of the whole record before the lead agency, that the project, as revised, will not have a significant effect on the environment. 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~~ lead agency based upon substantial evidence in the record, as specified, and that ~~there is~~ the lead agency has determined, based upon substantial evidence in the record, that the ~~project~~ project, as ~~revised~~ revised, will not have a significant effect on the environment, as provided. The bill would require an EIR to be prepared if the lead agency determines, based upon substantial evidence, in light of the whole record before the agency, that it is more likely than not that the project will have a significant effect on the environment.

Existing law requires the lead agency to determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record, as provided.

This bill would instead require a lead agency to determine whether a project is more likely than not to have a significant effect on the environment based on substantial evidence in light of the whole record, and would require an EIR to be prepared if the lead agency determines that it is more likely than not that a project will have a significant effect on the environment, as specified.

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 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 *adopted before January 1, 2026*, 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~~ *to, among other things*, a project that includes a distribution center, as defined, ~~or~~ oil and gas infrastructure, ~~as defined.~~ *defined, or a project located on natural and protected lands, as defined.* The bill would exempt from the requirements of CEQA, except as provided, a rezoning that ~~is consistent with implements~~ 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 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 an amendment to the infill development project categorical 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, 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 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~~ *is required to* 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, 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.

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:

1 21060.4. “Distribution center” means a warehouse distribution
2 center, as defined in Section 2100 of the Labor Code, that is 50,000
3 square feet or larger.

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

6 21064. “Negative declaration” means a written statement briefly
7 describing the *reasons the lead agency has determined, based upon*
8 *substantial evidence in the record* ~~record~~, that the proposed project
9 will not have a significant effect on the environment and does not
10 require the preparation of an environmental impact report.

11 SEC. 3. Section 21064.1 is added to the Public Resources Code,
12 to read:

13 21064.1. “May have a significant effect on the environment”
14 means that ~~there is no substantial evidence in the record~~ *the public*
15 *agency has determined, based upon substantial evidence in the*
16 *record*, that the proposed project ~~will not~~ *is more likely than not*
17 *to have a significant effect on the environment.*

18 SEC. 4. Section 21064.5 of the Public Resources Code is
19 amended to read:

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

33 SEC. 5. Section 21064.8 is added to the Public Resources Code,
34 to read:

35 21064.8. “Oil and gas infrastructure” means a facility used for
36 the production, processing, transmission, storage, or distribution
37 of petroleum or natural gas.

38 SEC. 6. Section 21067.5 is added to the Public Resources Code,
39 to read:

- 1 21067.5. “Natural and protected lands” means sites located
2 within any of the following locations:
- 3 (a) The state park system, as described in Article 1 (commencing
4 with Section 5001) of Chapter 1 of Division 5.
- 5 (b) A wilderness area, as defined in Section 5093.32.
- 6 (c) A marine protected area, as defined in Section 2852 of the
7 Fish and Game Code.
- 8 (d) The national park system, as defined in Section 100102 of
9 Title 54 of the United States Code.
- 10 (e) A national recreation area.
- 11 (f) A national monument.
- 12 (g) The national wild and scenic rivers system, as defined in
13 Section 1273 of Title 16 of the United States Code.
- 14 (h) Any ecological reserve or wildlife management area
15 acquired and managed by the Department of Fish and Wildlife
16 pursuant to Article 2 (commencing with Section 1525) or Article
17 4 (commencing with Section 1580) of Chapter 5 of Division 2 of
18 the Fish and Game Code.
- 19 (i) A hazardous waste site that is listed pursuant to Section
20 65962.5 of the Government Code or a hazardous waste site
21 designated by the Department of Toxic Substances Control
22 pursuant to Section 25356 of the Health and Safety Code, unless
23 either of the following apply:
- 24 (1) The site is an underground storage tank site that received
25 a uniform closure letter issued pursuant to subdivision (g) of
26 Section 25296.10 of the Health and Safety Code based on closure
27 criteria established by the State Water Resources Control Board
28 for the use proposed by the project. This paragraph does not alter
29 or change the conditions to remove a site from the list of hazardous
30 waste sites listed pursuant to Section 65962.5 of the Government
31 Code.
- 32 (2) The State Department of Public Health, State Water
33 Resources Control Board, Department of Toxic Substances
34 Control, or a local agency making a determination pursuant to
35 subdivision (c) of Section 25296.10 of the Health and Safety Code
36 has otherwise determined that the site is suitable for the use
37 proposed by the project.
- 38 (j) Within a regulatory floodway as determined by the Federal
39 Emergency Management Agency in any official maps published
40 by the Federal Emergency Management Agency, unless the

1 *development has received a no-rise certification in accordance*
2 *with Section 60.3(d)(3) of Title 44 of the Code of Federal*
3 *Regulations.*

4 *(k) Lands under conservation easement.*

5 *(l) On, or within a 100-foot radius of, a wetland, as defined in*
6 *the United States Fish and Wildlife Service Manual, Part 660 FW*
7 *2 (June 21, 1993).*

8 *(m) An environmentally sensitive area within the coastal zone,*
9 *as defined in Section 30107.5.*

10 *(n) Lands protected as preserve areas or reserve lands pursuant*
11 *to an adopted natural community conservation plan pursuant to*
12 *the Natural Community Conservation Planning Act (Chapter 10*
13 *(commencing with Section 2800) of Division 3 of the Fish and*
14 *Game Code) or habitat conservation plan pursuant to the federal*
15 *Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.).*

16 ~~SEC. 6.~~

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

19 21080. (a) Except as otherwise provided in this division, this
20 division shall apply to discretionary projects proposed to be carried
21 out or approved by public agencies, including, but not limited to,
22 the enactment and amendment of zoning ordinances, the issuance
23 of zoning variances, the issuance of conditional use permits, and
24 the approval of tentative subdivision maps unless the project is
25 exempt from this division.

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

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

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

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

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

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

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

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

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

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

35 (10) A project for the institution or increase of passenger or
36 commuter services on rail or highway rights-of-way already in
37 use, including modernization of existing stations and parking
38 facilities. For purposes of this paragraph, "highway" has the same
39 meaning as defined in Section 360 of the Vehicle Code.

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

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

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

12 (14) A project or portion of a project located in another state
13 that will be subject to environmental impact review pursuant to
14 the National Environmental Policy Act of 1969 (42 U.S.C. Sec.
15 4321 et seq.) or similar state laws of that state. Any emissions or
16 discharges that would have a significant effect on the environment
17 in this state are subject to this division.

18 (15) Projects undertaken by a local agency to implement a rule
19 or regulation imposed by a state agency, board, or commission
20 under a certified regulatory program pursuant to Section 21080.5.
21 Any site-specific effect of the project that was not analyzed as a
22 significant effect on the environment in the plan or other written
23 documentation required by Section 21080.5 is subject to this
24 division.

25 (16) Approval by the Department of Pesticide Regulation of a
26 pesticide emergency exemption pursuant to Section 136p of Title
27 7 of the United States Code.

28 (c) (1) If a lead agency determines that a proposed project, not
29 otherwise exempt from this division, would not have a significant
30 effect on the environment, the lead agency shall adopt a negative
31 declaration to that effect. The negative declaration shall be prepared
32 for the proposed project in either of the following circumstances:

33 ~~(1) There is~~

34 (A) *The lead agency determines, based upon* substantial
35 evidence, in light of the whole record before the lead agency, that
36 the project will not have a significant effect on the environment.

37 ~~(2)~~

38 (B) An initial study identifies potentially significant effects on
39 the environment, but: ~~(A)~~ (i) revisions in the project plans or
40 proposals made by, or agreed to by, the applicant before the

1 proposed negative declaration and initial study are released for
2 public review would avoid the effects or mitigate the effects to a
3 point where no significant effect on the environment would occur,
4 as determined by the public agency based upon substantial evidence
5 on the record; and ~~(B) there is~~ *(ii) the lead agency has determined,*
6 *based upon* substantial evidence, in light of the whole record before
7 the lead agency, that the project, as revised, will not have a
8 significant effect on the environment.

9 ~~(d)~~

10 (2) If ~~there is no~~ *the lead agency determines, based upon*
11 *substantial evidence, in light of the whole record before the lead*
12 *agency, that it is more likely than not that the project will not* have
13 a significant effect on the environment, an environmental impact
14 report shall be prepared.

15 *(d) (1) Notwithstanding subdivision (c), an environmental*
16 *impact report shall be prepared for a proposed project that*
17 *includes a distribution center or oil and gas infrastructure, or that*
18 *is located on natural and protected lands as defined pursuant to*
19 *Section 21067.5, if there is substantial evidence, in light of the*
20 *whole record before the lead agency, that the project could have*
21 *a significant effect on the environment.*

22 (2) *The review of a proposed project that includes a distribution*
23 *center or oil and gas infrastructure or that is located on natural*
24 *and protected lands as defined pursuant to Section 21067.5 shall*
25 *continue to be subject to the fair argument standard as it applied*
26 *to those projects before January 1, 2026.*

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 *subparagraph (B) of* paragraph
39 ~~(2)~~ *(1) of* subdivision (c) are infeasible or otherwise undesirable.
40 In those circumstances, the lead agency, before approving the

1 project, may delete those mitigation measures and substitute for
2 them other mitigation measures that the lead agency finds, after
3 holding a public hearing on the matter, are equivalent or more
4 effective in mitigating significant effects on the environment to a
5 less than significant level and that do not cause any potentially
6 significant effect on the environment. If those new mitigation
7 measures are made conditions of project approval or are otherwise
8 made part of the project approval, the deletion of the former
9 measures and the substitution of the new mitigation measures shall
10 not constitute an action or circumstance requiring recirculation of
11 the mitigated negative 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 ~~SEC. 7. Section 21080.08 is added to the Public Resources~~
27 ~~Code, to read:~~

28 ~~21080.08.—~~

29 *SEC. 8. Section 21080.085 is added to the Public Resources*
30 *Code, to read:*

31 *21080.085. (a) This division does not apply to a rezoning that*
32 ~~*is consistent with*~~ *implements* an approved housing element.

33 (b) (1) Subdivision (a) does not apply to a rezoning that would
34 ~~allow for the construction of a distribution center or for oil and~~
35 ~~gas infrastructure.~~ *either of the following:*

36 (A) *A rezoning that would allow for the construction of a*
37 *distribution center or for oil and gas infrastructure.*

38 (B) *A rezoning that would allow for construction to occur within*
39 *the boundaries of any natural and protected lands as defined*
40 *pursuant to Section 21067.5.*

1 (2) (A) *Subdivision (a) applies to a rezoning that includes within*
2 *its boundaries any natural and protected lands as defined pursuant*
3 *to Section 21067.5, or any portion thereof, that excludes those*
4 *natural and protected lands from the rezoning.*

5 (B) *The rezoning of any parcel or portions of a parcel that is*
6 *excluded from a rezoning under this paragraph shall be a separate*
7 *project that is subject to this division.*

8 ~~SEC. 8:~~

9 SEC. 9. Section 21080.1 of the Public Resources Code is
10 amended to read:

11 21080.1. (a) The lead agency shall be responsible for
12 determining whether an environmental impact report, a negative
13 declaration, or a mitigated negative declaration shall be required
14 for any project that is subject to this division. That determination
15 shall be final and conclusive on all persons, including responsible
16 agencies, unless challenged as provided in Section 21167.

17 (b) (1) If a proposed project would otherwise be exempt from
18 this division pursuant to a statutory exemption or a categorical
19 exemption *adopted before January 1, 2026*, but for a single
20 condition, the application of this division to the approval of the
21 proposed project shall be limited to effects upon the environment
22 that are caused solely by that single condition.

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

29 (3) An environmental impact report for a project subject to this
30 subdivision is not required to include any discussion of alternatives
31 to the project, cumulative impacts of the project, or the
32 growth-inducing impacts of the project.

33 (4) This subdivision does not apply to ~~either~~ *any* of the following
34 projects:

35 (A) *A proposed project that is not similar in kind to the projects*
36 *listed in the statutory or categorical exemption.*

37 ~~(A)~~

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

1 (C) A proposed project that is not consistent with applicable
2 zoning designation and regulations, except for a housing
3 development project, as defined in Section 65589.5 of the
4 Government Code, that is proposed on a site identified as suitable
5 or available for very low, low-, or moderate-income households
6 in the local jurisdiction's most recent adopted housing element
7 that has been certified by the Department of Housing and
8 Community Development to be in compliance with state law.

9 ~~(B)~~

10 (D) A proposed project that includes a distribution center or oil
11 and gas infrastructure.

12 (E) A proposed project located on natural and protected lands
13 as defined pursuant to Section 21067.5.

14 (5) As used in this subdivision, "condition" means a physical
15 feature of the project or an effect upon the environment caused by
16 the project.

17 ~~(e) (1) Notwithstanding any other provision of this division,
18 an environmental impact report shall be prepared for a proposed
19 project that includes a distribution center or oil and gas
20 infrastructure if there is substantial evidence, in light of the whole
21 record before the lead agency, that the project could have a
22 significant effect on the environment.~~

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

27 ~~(d)~~

28 (c) In the case of a project described in subdivision (c) of Section
29 21065, the lead agency shall, upon the request of a potential
30 applicant, provide for consultation ~~prior to~~ before the filing of the
31 application regarding the range of actions, potential alternatives,
32 mitigation measures, and any potential and significant effects on
33 the environment of the project.

34 *SEC. 10. Section 21082.2 of the Public Resources Code is*
35 *amended to read:*

36 21082.2. (a) The lead agency shall determine whether a project
37 ~~may~~ is more likely than not to have a significant effect on the
38 environment based on substantial evidence in light of the whole
39 record.

1 (b) The existence of public controversy over the environmental
2 effects of a project shall not require preparation of an
3 environmental impact report if ~~there is no substantial evidence in~~
4 ~~light of the whole record before the lead agency that the project~~
5 ~~may have a significant effect on the environment.~~ *an environmental*
6 *impact report would not otherwise be required by this division.*

7 (c) Argument, speculation, unsubstantiated opinion or narrative,
8 evidence ~~which~~ *that* is clearly inaccurate or erroneous, or evidence
9 of social or economic impacts ~~which~~ *that* do not contribute to, or
10 are not caused by, physical impacts on the environment, is not
11 substantial evidence. Substantial evidence shall include facts,
12 reasonable assumptions predicated upon facts, and expert opinion
13 supported by facts.

14 (d) ~~If there is~~ *the lead agency determines, based upon* substantial
15 evidence, in light of the whole record before the lead agency, that
16 *it is more likely than not that* a project ~~may~~ *will* have a significant
17 effect on the environment, an environmental impact report shall
18 be prepared.

19 (e) Statements in an environmental impact report and comments
20 with respect to an environmental impact report shall not be deemed
21 determinative of whether the project may have a significant effect
22 on the environment.

23 ~~SEC. 9.~~

24 *SEC. 11.* Section 21083 of the Public Resources Code is
25 amended to read:

26 21083. (a) The Office of Land Use and Climate Innovation
27 shall prepare and develop proposed guidelines for the
28 implementation of this division by public agencies. The guidelines
29 shall include objectives and criteria for the orderly evaluation of
30 projects and the preparation of environmental impact reports and
31 negative declarations in a manner 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 following
38 conditions exists:

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

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

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

4 ~~SEC. 10.~~

5 *SEC. 12.* 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 an
10 amendment to the Class 32 categorical exemption set forth in
11 Section 15332 of Title 14 of the California Code of Regulations
12 that establishes an alternative means of compliance with the
13 requirements of that categorical exemption as follows:

14 (1) A housing development project, as defined in Section
15 65589.5 of the Government Code, that is not consistent with the
16 applicable general plan designation, applicable general plan
17 policies, or applicable zoning designation and regulations shall be
18 in compliance with subdivision (a) of Section 15332 of Title 14
19 of the California Code of Regulations if the project is proposed
20 on a site identified as suitable or available for very low, low-, or
21 moderate-income households in the local jurisdiction's most recent
22 adopted housing element that has been certified by the Department
23 of Housing and Community Development to be in compliance
24 with state law.

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

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

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

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

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

6 (C) The safe harbor thresholds adopted pursuant to this
7 paragraph shall not be applicable to the review and consideration
8 of a proposed project, and shall not be considered in an action or
9 proceeding to attack, review, set aside, void, or annul a
10 determination or decision related to a proposed project on the
11 grounds of noncompliance with this division, unless the lead
12 agency has expressly elected to use the safe harbor threshold for
13 that project.

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

17 (b) An amendment to Section 15332 of Title 14 of the California
18 Code of Regulations adopted pursuant to this section shall not
19 revise the requirements for exemption set forth in that section,
20 except as provided in subdivision (a). A project that would be
21 eligible for the Class 32 categorical exemption set forth in Section
22 15332 of Title 14 of the California Code of Regulations as it read
23 on December 31, 2024, shall not be ineligible as the result of any
24 amendment adopted pursuant to this section.

25 (c) On or before July 1, 2026, the Office of Land Use and
26 Climate Innovation shall map the eligible urban infill sites within
27 every urbanized area or urban cluster in the state where,
28 notwithstanding that an area may or may not be substantially
29 surrounded by urban uses, the local jurisdiction's most recent
30 general plan or most recently adopted housing element that has
31 been certified by the Department of Housing and Community
32 Development to be in compliance with state law has a zoning
33 designation that is consistent with infill development.

34 (d) Subdivision (c) of Section 15300.2 of Title 14 of the
35 California Code of Regulations does not apply to Section 15332
36 of Title 14 of the California Code of Regulations.

37 (e) (1) If a proposed project that is in compliance with
38 subdivisions (a) and (b) of Section 15332 of Title 14 of the
39 California Code of Regulations is otherwise ineligible for that
40 categorical exemption due to one or more conditions, the

1 application of this division to the approval of the proposed project
2 shall be limited to the effects upon the environment that are caused
3 solely by those conditions that make the project ineligible for the
4 categorical exemption.

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

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

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

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

14 (g) This section does not apply to a project that includes a
15 distribution center or oil and gas infrastructure.

16 ~~SEC. 11.~~

17 *SEC. 13.* Section 21167.6 of the Public Resources Code is
18 amended to read:

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

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

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

39 (B) The court shall schedule a case management conference
40 within 30 days of the filing of the complaint or petition pursuant

1 to this division to review the scope, timing, and cost of the record
2 of proceedings. The parties may stipulate to a partial record of
3 proceedings that does not contain all the documents listed in
4 subdivision (e) if approved by the court.

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

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

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

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

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

34 (1) All project application materials.

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

39 (3) All staff reports and related documents prepared by the
40 respondent public agency and written testimony or documents

1 submitted by any person relevant to any findings or statement of
2 overriding considerations adopted by the respondent agency
3 pursuant to this division.

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

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

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

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

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

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

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

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

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

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

27 (ii) This subparagraph applies to any project that is not subject
28 to subparagraph (A).

29 (iii) For purposes of this subparagraph, internal agency
30 communications does not include electronic internal agency
31 communications, including emails, that were not presented to the
32 final decisionmaking body. The public agency may, but is not
33 required to, include any documents in the record of proceedings
34 that are not specifically set forth in this subparagraph.

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

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

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

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

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

23 ~~SEC. 12.~~

24 *SEC. 14.* Section 21168.9 of the Public Resources Code is
25 amended to read:

26 21168.9. (a) If a court finds, as a result of a trial, hearing, or
27 remand from an appellate court, that any determination, finding,
28 or decision of a public agency has been made without compliance
29 with this division, the court shall enter an order that includes one
30 or more of the following:

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

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

1 determination, finding, or decision into compliance with this
2 division.

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

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

23 (2) If the determination of a public agency that a project that is
24 eligible for a statutory exemption or categorical exemption is found
25 to violate this division, the order pursuant to subdivision (a) shall
26 be subject to the limitations set forth in subdivision (c) of Section
27 21080.1 or Section 21083.03, as applicable.

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

32 ~~SEC. 13.~~

33 *SEC. 15.* No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 a local agency or school district has the authority to levy service
36 charges, fees, or assessments sufficient to pay for the program or
37 level of service mandated by this act, within the meaning of Section
38 17556 of the Government Code.

O