CEQA

The California Environmental Quality Act

Title 14. California Code of Regulations
Chapter 3. Guidelines for Implementation of the California Environmental Quality Act

Article 5. Preliminary Review of Projects and Conduct of Initial Study

Sections 15060 to 15065

(Note: Newly revised language is underlined; deleted language is stricken through. The numbered sections have been adopted by the Secretary of Resources as part of the California Code of Regulations. The discussions after each section are provided by the Governor's Office of Planning and Research; they are not in the California Code of Regulations.)

15060. Preliminary Review

(a) A lead agency is allowed 30 days to review for completeness applications for permits or other entitlements for use. While conducting this review for completeness, the agency should be alert for environmental issues that might require preparation of an EIR or that may require additional explanation by the applicant. Accepting an application as complete does not limit the authority of the lead agency to require the applicant to submit additional information needed for environmental evaluation of the project. Requiring such additional information after the application is complete does not change the status of the application.

(b) Except as provided in Section 15111, the lead agency shall begin the formal environmental evaluation of the project after accepting an application as complete and determining that the project is subject to CEQA.

(c) Once an application is deemed complete, a lead agency must first determine whether an activity is subject to CEQA before conducting an initial study. An activity is not subject to CEQA if:

(1) The activity does not involve the exercise of discretionary powers by a public agency;

(2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; or

(3) The activity is not a project as defined in Section 15378.

(d) If the lead agency can determine that an EIR will be clearly required for a project, the agency may skip further initial review of the project and begin work directly on the EIR process described in Article 9, commencing with Section 15080. In the absence of an initial study, the lead agency shall still focus the EIR on the significant effects of the project and indicate briefly its reasons for determining that other effects would not be significant or potentially significant.

Authority: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21080(b), 21080.2 and 21160, Public Resources Code.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 65944, Government Code; Section 21080.2, Public Resources Code.

Discussion: This section describes the actions required of the Lead Agency when it receives an application for a project. This section is necessary in order to save time that could otherwise be spent if the agency ignored environmental issues for the first 30 days of reviewing the application. The section is also necessary for allowing the efficiencies that result from moving directly to the preparation of an EIR where the agency can see that one will clearly be required. This avoids the time involved in the separate step of preparing an Initial Study where the Lead Agency believes it will perform the work of identifying effects as significant or non-significant while it does simultaneous work preparing the EIR.

This section also introduces the term "preliminary review" to apply to this early review of an application for completeness and for a possible exemption from CEQA. This term is needed to provide a shorthand way to referring to these early steps and to distinguish them from the more formal Initial Study process that follows preliminary review.

See Public Resources Code Section 21151.7 which provides that EIRs are required for certain projects.

Public Resources Code Section 21080.1, subdivision (b), requires the lead agency, upon the request of the project applicant, to provide for consultation with responsible and trustee agencies before the filing of an application. The consultation is to cover the range of actions, potential alternatives, mitigation measures, and any potential and significant effects on the environment of the project.

The 1998 amendment emphasizes that preliminary review is the appropriate time to determine whether the project is indeed subject to CEQA. Subsection (c) offers basic guidance in that area. Further, accepting an application as complete does not restrict the lead agency from requiring additional information as may be necessary for the environmental evaluation of the project.

15060.5. Preapplication Consultation

(a) For a potential project involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the lead agency shall, upon the request of a potential applicant and prior to the filing of a formal application, provide for consultation with the potential applicant to consider the range of actions, potential alternatives, mitigation measures, and any potential significant effects on the environment of the potential project.

(b) The lead agency may include in the consultation one or more responsible agencies, trustee agencies, and other public agencies who in the opinion of the lead agency may have an interest in the proposed project. The lead agency may consult the Office of Permit Assistance in the Trade and Commerce Agency for help in identifying interested agencies.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080.1, Public Resources Code.

Discussion: This section incorporates the provisions of Public Resources Code Section 21080.1 enabling a project proponent to request a preapplication meeting with the lead agency to discuss their project. The lead agency is responsible for holding the meeting and may ask the California Office of Permit Assistance for help in identifying state and regional agencies that may be interested in the proposed project.

15061. Review for Exemption

(a)Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA.

(b)A project is exempt from CEQA if:

(1) The project is exempt by statute (see, e.g. Article 18, commencing with Section 15260).

(2) The project is exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.

(3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

(4) The project will be rejected or disapproved by a public agency. (See Section 15270(b)).

(c) Each public agency should include in its implementing procedures a listing of the projects often handled by the agency that the agency has determined to be exempt. This listing should be used in preliminary review.

(d) After determining that a project is exempt, the agency may prepare a Notice of Exemption as provided in Section 15062. Although the notice may be kept with the project application at this time, the notice shall not be filed with OPR or the county clerk until the project has been approved.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b), and 21152(b), Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68.

Discussion: This section outlines the review of a project to see if the project is exempt from CEQA. This review corresponds to the first steps of the process as shown on the flow chart in Appendix A. Reviewing a project for exempt status at this early time can avoid the expense of the CEQA process.

Subsection (b)(3) provides a short way for agencies to deal with discretionary activities which could arguably be subject to the CEQA process but which common sense provides should not be subject to the Act.

This section is based on the idea that CEQA applies jurisdictionally to activities which have the potential for causing environmental effects. Where an activity has no possibility of causing a significant effect, the activity will not be subject to CEQA. This approach has been noted with approval in a number of appellate court decisions including the State Supreme Court opinion in *No Oil, Inc. v. City of Los Angeles.*

Subsection (d) notes that timing and processing of the Notice of Exemption is to be compatible with the requirement in Section 15062 that the notice not be filed until after the agency has made a decision on the project. Section 15061(d) allows the Notice of Exemption to be completed during the preliminary review and to be kept with the project file during the processing of the project application. By including the notice in the file, the agency would show any people reviewing the file that CEQA had been considered, that the agency regarded the project as exempt, and that the agency would be ready to file the notice as soon as the decision was made on the project.

15062. Notice of Exemption

(a) When a public agency decides that a project is exempt from CEQA and the public agency approves or determines to carry out the project, the agency may file a Notice of Exemption. The notice shall be filed, if at all, after approval of the project. Such a notice shall include:

(1) A brief description of the project,

(2) A finding that the project is exempt from CEQA, including a citation to the State Guidelines section or statute under which it is found to be exempt, and

(3) A brief statement of reasons to support the finding.

(b) A Notice of Exemption may be filled out and may accompany the project application through the approval process. The notice shall not be filed with the county clerk or the OPR until the project has been approved.

(c) When a public agency approves an applicant's project, either the agency or the applicant may file a notice of exemption.

(1) When a state agency files this notice, the notice of exemption is filed with OPR. A form for this notice is provided in Appendix E. A list of all such notices shall be posted on a weekly basis at the Office of Planning and Research, 1400 Tenth Street, Sacramento, California. The list shall remain posted for at least 30 days.

(2) When a local agency files this notice, the notice of exemption is filed with the county clerk of each county in which the project will be located. Copies of all such notices shall be available for public inspection and such notices shall be posted within 24 hours of receipt in the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than 9 months.

(3) All public agencies are encouraged to make postings pursuant to this section available in electronic format on the Internet. Such electronic postings are in addition to the procedures required by these guidelines and the Public Resources Code.

(4) When an applicant files this notice, special rules apply.

(A) The notice filed by an applicant is filed in the same place as if it were filed by the agency granting the permit. If the permit was granted by a state agency, the notice is filed with OPR. If the permit was granted by a local agency, the notice is filed with the county clerk of the county or counties in which the project will be located.

(B) The Notice of Exemption filed by an applicant shall contain the information required in subdivision (a) together with a certified document issued by the public agency stating that the agency has found the project to be exempt. The certified document may be a certified copy of an existing document or record of the public agency.

(C) A notice filed by an applicant is subject to the same posting and time requirements as a notice filed by a public agency.

(d) The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21108 and 21152, Public Resources Code.

Discussion: This section prescribes the use and content of the Notice of Exemption. Agencies are authorized but not required to file this notice. The regulation spells out minimum contents so that people can recognize whether a particular notice applies to the project with which they are concerned. The section notes that the effect of filing the notice is to start a short statute of limitations period. If the notice is not filed, a longer period would apply. Failure to comply with all of the requirements for filing notices of exemption results in the longer, 180-day, statute of limitations applying.

Subsection (c)(3) encourages agencies to post notices on the internet. This provides the public with an additional opportunity for notice of project decisions.

This section has been amended to conform with the statutory amendments made by Chapter 571 Statutes of 1984. The Notice of Exemption formerly filed with the Secretary of Resources is now filed with OPR. The filing and posting of notices at OPR now commences the 35 day statute of limitations period.

15063. Initial Study

(a) Following preliminary review, the Lead Agency shall conduct an Initial Study to determine if the project may have a significant effect on the environment. If the Lead Agency can determine that an EIR will clearly be required for the project, an Initial Study is not required but may still be desirable.

(1) All phases of project planning, implementation, and operation must be considered in the Initial Study of the project.

(2) To meet the requirements of this section, the lead agency may use an environmental assessment or a similar analysis prepared pursuant to the National Environmental Policy Act.

(3) An initial study may rely upon expert opinion supported by facts, technical studies or other substantial evidence to document its findings. However, an initial study is neither intended nor required to include the level of detail included in an EIR.

(b) Results.

(1) If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the Lead Agency shall do one of the following:

(A) Prepare an EIR, or

(B) Use a previously prepared EIR which the Lead Agency determines would adequately analyze the project at hand, or

(C) Determine, pursuant to a program EIR, tiering, or another appropriate process, which of a project's effects were adequately examined by an earlier EIR or negative declaration. Another appropriate process may include, for example, a master EIR, a master environmental assessment, approval of housing and neighborhood commercial facilities in urban areas as described in section 15181, approval of residential projects pursuant to a specific plans described in section 15182, approval of residential projects consistent with a community plan, general plan or zoning as described in section 15183, or an environmental document prepared under a State certified regulatory program. The lead agency shall then ascertain which effects, if any, should be analyzed in a later EIR or negative declaration.

(2) The Lead Agency shall prepare a Negative Declaration if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

(c) Purposes. The purposes of an Initial Study are to:

(1) Provide the Lead Agency with information to use as the basis for deciding whether to prepare an EIR or a Negative Declaration.

(2) Enable an applicant or Lead Agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a Negative Declaration.

(3) Assist in the preparation of an EIR, if one is required, by:

(A) Focusing the EIR on the effects determined to be significant,

(B) Identifying the effects determined not to be significant,

(C) Explaining the reasons for determining that potentially significant effects would not be significant, and

(D) Identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects.

(4) Facilitate environmental assessment early in the design of a project;

(5) Provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment;

(6) Eliminate unnecessary EIRs;

(7) Determine whether a previously prepared EIR could be used with the project.

(d) Contents. An Initial Study shall contain in brief form:

(1) A description of the project including the location of the project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as an attached map, photographs, or an earlier EIR or negative declaration. A reference to another document should include, where appropriate, a citation to the page or pages where the information is found.

(4) A discussion of the ways to mitigate the significant effects identified, if any;

(5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the Initial Study.

(e) Submission of Data. If the project is to be carried out by a private person or private organization, the Lead Agency may require such person or organization to submit data and information which will enable the Lead Agency to prepare the Initial Study. Any person may submit any information in any form to assist a Lead Agency in preparing an Initial Study.

(f) Format. Sample forms for an applicant's project description and a review form for use by the lead

agency are contained in Appendices G and H. When used together, these forms would meet the requirements for an initial study, provided that the entries on the checklist are briefly explained pursuant to subsection (d)(3). These forms are only suggested, and public agencies are free to devise their own format for an initial study. A previously prepared EIR may also be used as the initial study for a later project.

(g) Consultation. As soon as a Lead Agency has determined that an Initial Study will be required for the project, the Lead Agency shall consult informally with all Responsible Agencies and all Trustee Agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a Negative Declaration should be prepared. During or immediately after preparation of an Initial Study for a private project, the Lead Agency may consult with the applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the Initial Study.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21100 and 21151, Public Resources Code; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.

Discussion: The purpose of this section is to describe the process, contents, and use of the Initial Study. This is a device not mentioned in the statute itself. The Initial Study is necessary in order to provide the factual and analytical basis for a Negative Declaration or to focus an EIR on the significant effects of a project. This section is also necessary to authorize and encourage the use of a number of efficiencies including using a Negative Declaration when the project proponent has changed his proposal in order to mitigate or avoid the significant effects identified in an Initial Study. The section also makes the point that the Initial Study can be used to determine whether a previously prepared EIR would adequately apply to the project at hand, or whether pursuant to a program EIR, tiering, or other appropriate process one or more of the project's effects were adequately examined by an earlier EIR or negative declaration. These two provisions would result, respectively, in the use of an EIR from an earlier project pursuant to section 15153 or in building upon a previous EIR or negative declaration as generally provided in section 15152, Article 11 (commencing with section 15160), or other provisions.

This section also clarifies that the individual conclusions reached by an initial study must be based on some evidence. Entries on a checklist or other form should be briefly explained to indicate the basis for determinations. These explanations are not intended to be as detailed as an EIR (*Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337).

Since a lead agency must consider all impacts of a project, consultation provides access to the expertise of other agencies in evaluating a project. In *Sundstrom v. Mendocino* (1988) 202 Cal. App. 3d 296, the court held that "some degree of interdisciplinary consultation may be necessary on an initial study as well as in preparation of an EIR." It also stated that an agency must provide the information it used to reach its conclusions and that a checklist unsupported by data and facts is not sufficient for an adequate Initial Study. In *Antioch v. Pittsburg* (1986) 187 Cal. App. 3d 1325, the court cited *City of Carmel-by-the-Sea v. Board of Supervisors of Monterey County* 183 Cal. App. 3d 229, to emphasize the importance of considering in the initial study all the activities and impacts involved in planning, implementation, and operation of a project.

15064. Determining the Significance of the Environmental Effects Caused by a Project

(a) Determining whether a project may have a significant effect plays a critical role in the CEQA process.

(1) If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR.

(2) When a final EIR identifies one or more significant effects, the Lead Agency and each Responsible Agency shall make a finding under Section 15091 for each significant effect and may need to make a statement of overriding considerations under Section 15093 for the project.

(b) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.

(c) In determining whether an effect will be adverse or beneficial, the Lead Agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency. Before requiring the preparation of an EIR, the Lead Agency must still determine whether environmental change itself might be substantial.

(d) In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.

(1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.

(2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.

(3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

(e) Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

(f) The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.

(1) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (*Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988). Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have

a significant effect (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68).

(2) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment but the lead agency determines that revisions in the project plans or proposals made by, or agreed to by, the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment then a mitigated negative declaration shall be prepared.

(3) If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (*Friends of B Street v. City of Hayward* (1980) 106 Cal.App. 3d 988).

(4) The existence of public controversy over the environmental effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.

(5) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts.

(6) Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.

(7) The provisions of sections 15162, 15163, and 15164 apply when the project being analyzed is a change to, or further approval for, a project for which an EIR or negative declaration was previously certified or adopted (e.g. a tentative subdivision, conditional use permit). Under case law, the fair argument standard does not apply to determinations of significance pursuant to sections 15162, 15163, and 15164.

(g) After application of the principles set forth above in Section 15064(f)~~(g)~~, and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

(h)(1)(A) Except as otherwise required by Section 15065, a change in the environment is not a significant effect if the change complies with a standard that meets the definition in subsection (h)~~(i)~~(3).

(B) If there is a conflict between standards, the lead agency shall determine which standard is appropriate for purposes of this subsection based upon substantial evidence in light of the whole record.

(C) Notwithstanding subsection (h)~~(i)~~(1)(A), if the lead agency determines on the basis of substantial evidence in light of the whole record that a standard is inappropriate to determine the significance of an effect for a particular project, the lead agency shall determine whether the effect may be significant as otherwise required by this section, Section 15065, and the Guidelines.

(2) In the absence of a standard that satisfies subsection (h)~~(i)~~(1)(A)~~(a)~~, the lead agency shall determine whether the effect may be significant as otherwise required by this section, Section 15065, and the Guidelines.

(3) For the purposes of this subsection a "standard" means a standard of general application that is all of the following:

(A) a quantitative, qualitative or performance requirement found in a statute, ordinance, resolution, rule, regulation, order, or other standard of general application;

(B) adopted for the purpose of environmental protection;

(C) adopted by a public agency through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency;

(D) one that governs the same environmental effect which the change in the environment is impacting; and,

(E) one that governs within the jurisdiction where the project is located.

(4) This definition includes thresholds of significance adopted by lead agencies which meet the requirements of this subsection.

(i)(1) When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. "Probable future projects" are defined in Section 15130.

(2) A lead agency may determine in an initial study that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. When a project might contribute to a significant cumulative impact, but the contribution will be rendered less than cumulatively considerable through mitigation measures set forth in a mitigated negative declaration, the initial study shall briefly indicate and explain how the contribution has been rendered less than cumulatively considerable.

(3) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program which provides specific requirements that will avoid or substantially lessen the cumulative problem (e.g. water quality control plan, air quality plan, integrated waste management plan) within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency.

(4) A lead agency may determine that the incremental impacts of a project are not cumulatively considerable when they are so small that they make only a de minimis contribution to a significant cumulative impact caused by other projects that would exist in the absence of the proposed project. Such de minimus incremental impacts, by themselves, do not trigger the obligation to prepare an EIR. A de minimus contribution means that the environmental conditions would essentially be the same whether or not the proposed project is implemented.

(5) The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083 and 21100; No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68.

Discussion: This section provides general criteria to guide agencies in determining the significance of

environmental effects of their project as required by Section 21083. This section is necessary because the determination of significance is one of the key decisions in the CEQA process. This decision leads to the preparation of either a Negative Declaration or an EIR which involves the additional requirements to investigate the significant effects, to propose mitigation measures and alternatives, to respond to public comments, and to make findings on the feasibility of changing the project to reduce or avoid the significant effects. This section incorporates statutory provisions which: define "substantial evidence;" specify that controversy alone, without substantial evidence of a significant effect, does not trigger the need for an EIR; limit CEQA's analysis to physical effects, except under some circumstances; and specify that determinations of significance are to be based on the whole record before the lead agency. This section also provides for the use of a mitigated negative declaration when warranted.

Regarding subsection (c), as to public controversy, the court in *Antioch v. Pittsburg* (1986) 187 Cal. App. 3d 1325, stated that the absence of controversy does not justify a negative declaration when there are otherwise significant impacts.

Subsection (f) is necessary for providing an interpretation of how economic and social effects can be used in determining the significance of physical changes. This interpretation is needed to resolve a number of potentially conflicting provisions in CEQA as explained in the discussion of Section 15130.

Regarding subsection (g), Public Resources Code section 21082.2 provides that the determination of significance shall be based upon substantial evidence in light of the whole record before the agency. This may include materials that are not part of the environmental document, but that are known to and have been considered by the agency. Public Resources Code section 21082.2 states that: "argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence." Substantial evidence is defined to include: "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." Public controversy alone, without substantial evidence of a significant effect, does not require preparation of an EIR.

Pursuant to Public Resources Code section 21084.1, a project which may result in a substantial adverse change in the significance of a historical resource may have a significant effect on the environment.

Subsection (i) promotes the use of standards and thresholds that have been adopted to protect the environment as the means for detemining the significance of project impacts. Where an applicable standard or threshold exists, an environmental change which complies with that standard or threshold would not be considered significant.

"Standard" has been carefully defined to ensure that any such benchmark for determining significance has been adopted for the purpose of environmental protection, governs the same environmental effect that the project is causing, and governs within the area of the project. Further, only those standards which have been adopted by a public agency after a public review process are applicable.

Subsection (i) provides guidance for determining at an early stage whether a project will make a considerable contribution to a significant cumulative effect. When the project does not make a considerable contribution to a potentially significant cumulative effect, or if any contribution is rendered less than cumulatively considerable through mitigation, no analysis is required beyond that necessary to determine that the contribution is not considerable and a negative declaration or mitigated negative declaration is required. When the contribution is determined to be considerable, an EIR must be prepared in order to further analyze the cumulative effect.

Subsection (i) also provides that where the incremental impacts of a project are so small as to be de minimus, no EIR is required. De minimus means that the environmental conditions would essentially be the same with or without the project.

Pursuant to section 15063, this initial determination of whether the project adds a considerable

contribution does not require the extent of analysis that would be required of a discussion of cumulative impacts in an EIR.

15064.5. Determining the Significance of Impacts to Archeological and Historical Resources

(a) For purposes of this section, the term "historical resources" shall include the following:

(1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources (Pub. Res. Code SS5024.1, Title 14 CCR, Section 4850 et seq.).

(2) A resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

(3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code SS5024.1, Title 14 CCR, Section 4852) including the following:

(A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

(B) Is associated with the lives of persons important in our past;

(C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or

(D) Has yielded, or may be likely to yield, information important in prehistory or history.

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.1.

(b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

(1) Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.

(2) The significance of an historical resource is materially impaired when a project:

(A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical

resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources;or

(B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(C) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.

(3) Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource.

(4) A lead agency shall identify potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource. The lead agency shall ensure that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures.

(5) When a project will affect state-owned historical resources, as described in Public Resources Code Section 5024, and the lead agency is a state agency, the lead agency shall consult with the State Historic Preservation Officer as provided in Public Resources Code Section 5024.5. Consultation should be coordinated in a timely fashion with the preparation of environmental documents.

(c) CEQA applies to effects on archaeological sites.

(1) When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in subsection (a).

(2) If a lead agency determines that the archaeological site is an historical resource, it shall refer to the provisions of Section 21084.1 of the Public Resources Code, and this section, Section 15126.4 of the Guidelines, and the limits contained in Section 21083.2 of the Public Resources Code do not apply.

(3) If an archaeological site does not meet the criteria defined in subsection (a), but does meet the definition of a unique archeological resource in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with the provisions of section 21083.2. The time and cost limitations described in Public Resources Code Section 21083.2 (c-f) do not apply to surveys and site evaluation activities intended to determine whether the project location contains unique archaeological resources.

(4) If an archaeological resource is neither a unique archaeological nor an historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

(d) When an initial study identifies the existence of, or the probable likelihood, of Native American human remains within the project, a lead agency shall work with the appropriate native americans as identified by the Native American Heritage Commission as provided in Public Resources Code SS5097.98. The applicant may develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American burials with the appropriate

Native Americans as identified by the Native American Heritage Commission. Action implementing such an agreement is exempt from:

(1) The general prohibition on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery (Health and Safety Code Section 7050.5).

(2) The requirements of CEQA and the Coastal Act.

(e) In the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the following steps should be taken:

(1) There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

(A) The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and

(B) If the coroner determines the remains to be Native American:

1. The coroner shall contact the Native American Heritage Commission within 24 hours.

2. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descended from the deceased native american.

3. The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98, or

(2) Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.

(A) The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.

(B) The descendant identified fails to make a recommendation; or

(C) The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

(f) As part of the objectives, criteria, and procedures required by Section 21082 of the Public Resources Code, a lead agency should make provisions for historical or unique archaeological resources accidentally discovered during construction. These provisions should include an immediate evaluation of the find by a qualified archaeologist. If the find is determined to be an historical or unique archaeological resource, contingency funding and a time allotment sufficient to allow for implementation of avoidance measures or appropriate mitigation should be available. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place.

Note: Authority: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.2, 21084, and 21084.1, Public Resources Code; *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 490.

Discussion: This section establishes rules for the analysis of historical resources, including

archaeological resources, in order to determine whether a project may have a substantial adverse effect on the significance of the resource. This incorporates provisions previously contained in Appendix K of the Guidelines. Subsection (a) relies upon the holding in League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland (1997) 52 Cal.App.4th 896 to describe the relative significance of resources which are listed in the California Register of Historical Resources, listed in a local register or survey or eligible for listing, or that may be considered locally significant despite not being listed or eligible for listing. Subsection (b) describes those actions which have substantial adverse effects. Subsection (c) describes the relationship between historical resources and archaeological resources, as well as limits on the cost of mitigating impacts on unique archaeological resources. Subsections (d) and (e) discuss the protocol to be followed if Native American or other human remains are discovered.

15064.7. Thresholds of Significance.

(a) Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.

(b) Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence.

Note: Authority: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21082 and 21083, Public Resources Code.

Discussion: This section encourages agencies to develop, publish, and use thresholds of significance as a means of standardizing environmental assessments. Thresholds may constitute standards for determining significance pursuant to subsection (i) of section 15064. Note that if an agency decides to adopt thresholds it must do so by ordinance, resolution, regulation or rule at the conclusion of a public review process.

15065. Mandatory Findings of Significance

A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where any of the following conditions occur:

(a) The project has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish and wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory.

(b) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

(c) The project has possible environmental effects which are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects as defined in Section 15130.

(d) The environmental effects of a project will cause substantial adverse effects on human beings, either

directly or indirectly.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21001(c) and 21083, Public Resources Code; *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608.

Discussion: This section provides additional explanation of the mandatory findings of significance required by the Legislature in Section 21083. These mandatory findings control not only the decision of whether to prepare an EIR but also the identification of effects to be analyzed in depth in the EIR, the requirement to make detailed findings on the feasibility of alternatives or mitigation measures to reduce or avoid the significant effects, and when found to be feasible, the making of changes in the project to lessen the adverse environmental impacts. This section is necessary to insure that public agencies follow the concerns of the Legislature in determining that certain effects shall be found significant and then take the actions at the different stages of the process that are required with significant effects.