



City of Sunnyvale

Memorandum

To: Planning Commission
From: Ryan Kuchenig, Project Planner
Date: October 17, 2013
Re: **Comments on the DEIR for the East Weddell Residential projects.**

Staff has included this Planning Commission hearing on October 21, 2013, as an additional method for the public to comment on the Draft EIR. CEQA does not require a public hearing to gather oral comments. However, CEQA has a requirement for a public review period (in this case minimum 45 days) of a DEIR.

The purposes of the review of an EIR include:

- (a) Sharing expertise,
- (b) Disclosing agency analysis,
- (c) Checking for accuracy,
- (d) Detecting omissions,
- (e) Discovering public concerns, and
- (f) Soliciting counter proposals.

Attached for your information is a section from the CEQA Guidelines on Review and Evaluation of EIRs and Negative Declarations. Staff notes, in particular:

15204. Focus of Review

- (a) In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.

Comments on the desirability (or lack of desirability) of the project should be reserved for the public hearing to consider the Final EIR and the related applications for the two residential development proposals. Speakers who have

previously submitted written comments do not need to restate their comments at the public hearing.

The Planning Commission is not conducting a public hearing for the purposes of making a recommendation or decision. The hearing is a convenient forum to receive public comments. Therefore, the Commission should accept the testimony and not pose questions or engage in dialogue with the speakers unless needed to clarify a point. Neither staff nor the City's EIR consultant will respond to the comments on the DEIR at the Planning Commission meeting. Minutes of the Planning Commission hearing will be included as formal comments on the DEIR. All written comments and those oral comments received during the Planning Commission hearing will be included with appropriate responses in the Final EIR.

The Planning Commission may comment on the adequacy of the DEIR after the public hearing. If your comment has already been raised, it is not necessary to repeat it, as the same comment will receive only one response.

To assist in your understanding of what is required of an EIR, attached is Article 10 of the CEQA Guidelines (Considerations in Preparing EIRs and Negative Declarations). Also, keep in mind that the CEQA process is the "first" step and that project analysis and review is the second step. The Planning Commission will review the Final EIR and the related project applications (rezoning and special development permit) at a future hearing.

Enclosures:

- Article 10: CEQA Guidelines - Considerations in Preparing EIRs and Negative Declarations
- Article 13: CEQA Guidelines - Review and Evaluation of EIRs and Negative Declarations

Enclosure - Article 10

- (b) Comments and recommendations received on the draft EIR either verbatim or in summary.
- (c) A list of persons, organizations, and public agencies commenting on the draft EIR.
- (d) The responses of the Lead Agency to significant environmental points raised in the review and consultation process.
- (e) Any other information added by the Lead Agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21100, Public Resources Code.

Article 10. Considerations in Preparing EIRs and Negative Declarations

SECTIONS 15140 TO 15155

15140. WRITING

EIRs shall be written in plain language and may use appropriate graphics so that decision makers and the public can rapidly understand the documents.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003 and 21100, Public Resources Code.

15141. PAGE LIMITS

The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21100, Public Resources Code.

15142. INTERDISCIPLINARY APPROACH

An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or required to undertake this evaluation.

Note: Authority cited: Section 21083, Public Resources Code; Reference Sections 21000, 21001, and 21100, Public Resources Code.

15143. EMPHASIS

The EIR shall focus on the significant effects on the environment. The significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence. Effects dismissed in an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR unless the Lead Agency subsequently receives information inconsistent with the finding in the Initial Study. A copy of the Initial Study may be attached to the EIR to provide the basis for limiting the impacts discussed.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

15144. FORECASTING

Drafting an EIR or preparing a Negative Declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

15145. SPECULATION

If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code; *Topanga Beach Renters Association v. Department of General Services*, (1976) 58 Cal. App. 3d 712.

15146. DEGREE OF SPECIFICITY

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

- (a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.
- (b) An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code. Formerly Section 15147.

15147. TECHNICAL DETAIL

The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

15148. CITATION

Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. These documents should be cited but not included in the EIR. The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

15149. USE OF REGISTERED PROFESSIONALS IN PREPARING EIRS

- (a) A number of statutes provide that certain professional services can be provided to the public only by individuals who have been registered by a registration board established under California law. Such statutory restrictions apply to a number of professions including but not limited to engineering, land surveying, forestry, geology, and geophysics.
- (b) In its intended usage, an EIR is not a technical document that can be prepared only by a registered professional. The EIR serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project, and ways to minimize adverse effects and to increase beneficial effects. As a result of information in the EIR, the Lead Agency should establish requirements or conditions on project design, construction, or operation in order to protect or enhance the environment. State statutes may provide that only registered professionals can prepare technical studies which will be used in or which will control the detailed design, construction, or operation of the proposed project and which will be prepared in support of an EIR.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

15150. INCORPORATION BY REFERENCE

- (a) An EIR or Negative Declaration may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language shall be considered to be set forth in full as part of the text of the EIR or Negative Declaration.
- (b) Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR or Negative Declaration shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated document shall be made available to the public in an office of the Lead Agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the Lead Agency does not have an office in the county.
- (c) Where an EIR or Negative Declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described.
- (d) Where an agency incorporates information from an EIR that has previously been reviewed through the state review system, the state identification number of the incorporated document should be included in the summary or designation described in subdivision (c).
- (e) Examples of materials that may be incorporated by reference include but are not limited to:
 - (1) A description of the environmental setting from another EIR.
 - (2) A description of the air pollution problems prepared by an air pollution control agency concerning a process involved in the project.
 - (3) A description of the city or county general plan that applies to the location of the project.
- (f) Incorporation by reference is most appropriate for including long, descriptive, or technical materials that provide general background but do not contribute directly to the analysis of the problem at hand.

Note: Authority cited: Section 21083, Public Resources Code; Reference Sections 21003, 21061, and 21100, Public Resources Code.

15151. STANDARDS FOR ADEQUACY OF AN EIR

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21061 and 21100, Public Resources Code; *San Francisco Ecology Center v. City and County of San Francisco*, (1975) 48 Cal. App. 3d 584.

15152. TIERING

- (a) "Tiering" refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and concentrating the later EIR or negative declaration solely on the issues specific to the later project.
- (b) Agencies are encouraged to tier the environmental analyses which they prepare for separate but related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the later EIR or negative declaration on the actual issues ripe for decision at each level of environmental review. Tiering is appropriate when the sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site-specific EIR or negative declaration. Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.
- (c) Where a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof (e.g., an area plan or community plan), the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.
- (d) Where an EIR has been prepared and certified for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for a later project pursuant to or consistent with the program, plan, policy, or ordinance should limit the EIR or negative declaration on the later project to effects which:
 - (1) Were not examined as significant effects on the environment in the prior EIR; or
 - (2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.
- (e) Tiering under this section shall be limited to situations where the project is consistent with the general plan and zoning of the city or county in which the project is located, except that a project requiring a rezoning to achieve or maintain conformity with a general plan may be subject to tiering.

- (f) A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR. A negative declaration shall be required when the provisions of Section 15070 are met.
- (1) Where a lead agency determines that a cumulative effect has been adequately addressed in the prior EIR, that effect is not treated as significant for purposes of the later EIR or negative declaration, and need not be discussed in detail.
 - (2) When assessing whether there is a new significant cumulative effect, the lead agency shall consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and probable future projects. At this point, the question is not whether there is a significant cumulative impact, but whether the effects of the project are cumulatively considerable. For a discussion on how to assess whether project impacts are cumulatively considerable, see Section 15064(f).
 - (3) Significant environmental effects have been “adequately addressed” if the lead agency determines that:
 - (A) they have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report; or
 - (B) they have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.
 - (g) When tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR or negative declaration should state that the lead agency is using the tiering concept and that it is being tiered with the earlier EIR.
 - (h) There are various types of EIRs that may be used in a tiering situation. These include, but are not limited to, the following:
 - (1) General plan EIR (Section 15166).
 - (2) Staged EIR (Section 15167).
 - (3) Program EIR (Section 15168).
 - (4) Master EIR (Section 15175).
 - (5) Multiple-family residential development / residential and commercial or retail mixed-use development (Section 15179.5).
 - (6) Redevelopment project (Section 15180).
 - (7) Projects consistent with community plan, general plan, or zoning (Section 15183).

Note: Authority: Section 21083, Public Resources Code. Reference: Sections 21003, 21061, 21093, 21094, 21100, and 21151, Public Resources Code; *Stanislaus Natural Heritage Project, Sierra Club v. County of Stanislaus* (1996) 48 Cal.App.4th 182; *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App. 4th 729; and *Sierra Club v. County of Sonoma* (1992) 6 Cal.App. 4th 1307.

15153. USE OF AN EIR FROM AN EARLIER PROJECT

- (a) The Lead Agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the Lead Agency may use

an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same.

- (b) When a Lead Agency proposes to use an EIR from an earlier project as the EIR for a separate, later project, the Lead Agency shall use the following procedures:
- (1) The Lead Agency shall review the proposed project with an Initial Study, using incorporation by reference if necessary, to determine whether the EIR would adequately describe:
 - (A) The general environmental setting of the project,
 - (B) The significant environmental impacts of the project, and
 - (C) Alternatives and mitigation measures related to each significant effect.
 - (2) If the Lead Agency believes that the EIR would meet the requirements of subdivision (1), it shall provide public review as provided in Section 15087 stating that it plans to use the previously prepared EIR as the draft EIR for this project. The notice shall include as a minimum:
 - (A) An identification of the project with a brief description;
 - (B) A statement that the agency plans to use a certain EIR prepared for a previous project as the EIR for this project;
 - (C) A listing of places where copies of the EIR may be examined; and
 - (D) A statement that the key issues involving the EIR are whether the EIR should be used for this project and whether there are any additional, reasonable alternatives or mitigation measures that should be considered as ways of avoiding or reducing the significant effects of the project.
 - (3) The Lead Agency shall prepare responses to comments received during the review period.
 - (4) Before approving the project, the decision maker in the Lead Agency shall:
 - (A) Consider the information in the EIR including comments received during the review period and responses to those comments,
 - (B) Decide either on its own or on a staff recommendation whether the EIR is adequate for the project at hand, and
 - (C) Make or require certification to be made as described in Section 15090.
 - (D) Make findings as provided in Sections 15091 and 15093 as necessary.
 - (5) After making a decision on the project, the Lead Agency shall file a Notice of Determination.
- (c) An EIR prepared for an earlier project may also be used as part of an Initial Study to document a finding that a later project will not have a significant effect. In this situation a Negative Declaration will be prepared.
- (d) An EIR prepared for an earlier project shall not be used as the EIR for a later project if any of the conditions described in Section 15162 would require preparation of a subsequent or supplemental EIR.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21100, 21151, and 21165, Public Resources Code.

15154. PROJECTS NEAR AIRPORTS

- (a) When a lead agency prepares an EIR for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted for a

project within two nautical miles of a public airport or public use airport, the agency shall utilize the Airport Land Use Planning Handbook published by Caltrans' Division of Aeronautics to assist in the preparation of the EIR relative to potential airport-related safety hazards and noise problems.

- (b) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project described in subdivision (a) unless the lead agency considers whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21096, Public Resources Code.

15155. CITY OR COUNTY CONSULTATION WITH WATER AGENCIES.

- (a) The following definitions are applicable to this section.
- (1) A "water-demand project" means:
- (A) A residential development of more than 500 dwelling units.
 - (B) A shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.
 - (C) A commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.
 - (D) A hotel or motel, or both, having more than 500 rooms.
 - (E) An industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.
 - (F) A mixed-use project that includes one or more of the projects specified in subdivisions (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(D), (a)(1)(E), and (a)(1)(G) of this section.
 - (G) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.
 - (H) For public water systems with fewer than 5,000 service connections, a project that meets the following criteria:
 - 1. A proposed residential, business, commercial, hotel or motel, or industrial development that would account for an increase of 10 percent or more in the number of a public water system's existing service connections; or
 - 2. A mixed-use project that would demand an amount of water equivalent to, or greater than, the amount of water required by residential development that would represent an increase of 10 percent or more in the number of the public water system's existing service connections.
- (2) "Public water system" means a system for the provision of piped water to the public for human consumption that has 3000 or more service connections. A public water system includes all of the following:
- (A) Any collection, treatment, storage, and distribution facility under control of the operator of the system which is used primarily in connection with the system.
 - (B) Any collection or pretreatment storage facility not under the control of the operator that is used primarily in connection with the system.
 - (C) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

- (3) “Water acquisition plans” means any plans for acquiring additional water supplies prepared by the public water system or a city or county lead agency pursuant to subdivision (a) of section 10911 of the Water Code.
 - (4) “Water assessment” means the water supply assessment that must be prepared by the governing body of a public water system, or the city or county lead agency, pursuant to and in compliance with sections 10910 to 10915 of the Water Code, and that includes, without limitation, the elements of the assessment required to comply with subdivisions (d), (e), (f), and (g) of section 10910 of the Water Code.
 - (5) “City or county lead agency” means a city or county, acting as lead agency, for purposes of certifying or approving an environmental impact report, a negative declaration, or a mitigated negative declaration for a water-demand project.
- (b) Subject to section 15155, subdivision (d) below, at the time a city or county lead agency determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration, or any supplement thereto, is required for the water-demand project, the city or county lead agency shall take the following steps:
- (1) The city or county lead agency shall identify any water system that either: (A) is a public water system that may supply water to the water-demand project, or (B) that may become such a public water system as a result of supplying water to the water-demand project. The city or county lead agency shall request the governing body of each such public water system to determine whether the projected water demand associated with a water-demand project was included in the most recently adopted urban water management plan adopted pursuant to Part 2.6 (commencing with section 10610) of the Water Code, and to prepare a water assessment approved at a regular or special meeting of that governing body.
 - (2) If the city or county lead agency is not able to identify any public water system that may supply water for the water-demand project, the city or county lead agency shall prepare a water assessment after consulting with any entity serving domestic water supplies whose service area includes the site of the water-demand project, the local agency formation commission, and the governing body of any public water system adjacent to the site of the water-demand project. The governing body of the city or county lead agency must approve the water assessment prepared pursuant to this section at a regular or special meeting.
- (c) The city or county lead agency shall grant any reasonable request for an extension of time that is made by the governing body of a public water system preparing the water assessment, provided that the request for an extension of time is made within 90 days after the date on which the governing body of the public water system received the request to prepare a water assessment. If the governing body of the public water system fails to request and receive an extension of time, or fails to submit the water assessment notwithstanding the 30-day extension, the city or county lead agency may seek a writ of mandamus to compel the governing body of the public water system to comply with the requirements of Part 2.10 of Division 6 (commencing with section 10910) of the Water Code relating to the submission of the water assessment.
- (d) If a water-demand project has been the subject of a water assessment, no additional water assessment shall be required for subsequent water-demand projects that were included in such larger water-demand project if all of the following criteria are met:
- (1) The entity completing the water assessment had concluded that its water supplies are sufficient to meet the projected water demand associated with the larger water-demand project, in addition to the existing and planned future uses, including, but not limited to, agricultural and industrial uses; and

- (2) None of the following changes has occurred since the completion of the water assessment for the larger water-demand project:
 - (A) Changes in the larger water-demand project that result in a substantial increase in water demand for the water-demand project.
 - (B) Changes in the circumstances or conditions substantially affecting the ability of the public water system or the water supplying city or county identified in the water assessment to provide a sufficient supply of water for the water demand project.
 - (C) Significant new information becomes available which was not known and could not have been known at the time when the entity had reached the conclusion in subdivision (d)(1).
- (e) The city or county lead agency shall include the water assessment, and any water acquisition plan in the EIR, negative declaration, or mitigated negative declaration, or any supplement thereto, prepared for the water-demand project, and may include an evaluation of the water assessment and water acquisition plan information within such environmental document. The city or county lead agency shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If a city or county lead agency determines that water supplies will not be sufficient, the city or county lead agency shall include that determination in its findings for the water-demand project.

Note: Authority Cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code, Sections 10910-10915 of the Water Code.

Article 11. Types of EIRs

SECTIONS 15160 TO 15170

15160. GENERAL

This article describes a number of examples of variations in EIRs as the documents are tailored to different situations and intended uses. These variations are not exclusive. Lead Agencies may use other variations consistent with the Guidelines to meet the needs of other circumstances. All EIRs must meet the content requirements discussed in Article 9 beginning with Section 15120.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21061, 21100, and 21151, Public Resources Code.

15161. PROJECT EIR

The most common type of EIR examines the environmental impacts of a specific development project. This type of EIR should focus primarily on the changes in the environment that would result from the development project. The EIR shall examine all phases of the project including planning, construction, and operation.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21061, 21100, and 21151, Public Resources Code.

15162. SUBSEQUENT EIRS AND NEGATIVE DECLARATIONS

- (a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

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(B) If the project does not result in housing units being available as set forth in subdivision (A) above, then the project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

- (b) A project that otherwise meets the criteria set forth in subdivision (a) is not exempt from CEQA if any of the following occur:
- (1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.
 - (2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.
 - (3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project that was not known, and could not have been known at the time that community-level environmental review was certified or adopted.

If a project is not exempt from CEQA due to subdivision (b), the analysis of the environmental effects of the project covered in the EIR or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to subdivisions (b)(2) and (3).

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.24, Public Resources Code.

15196. NOTICE OF EXEMPTION FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS

- (a) When a local agency determines that a project is not subject to CEQA under Section 15193, 15194, or 15195, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file the notice required by Section 21152.1 of the Public Resources Code, pursuant to Section 15062.
- (b) Failure to file the notice required by this section does not affect the validity of a project.
- (c) Nothing in this section affects the time limitations contained in Section 21167.

Note: Authority cited: Section 21083, Public Resources Code. Reference: 21152.1, Public Resources Code.

Article 13. Review and Evaluation of EIRs and Negative Declarations

SECTIONS 15200 TO 15209

15200. PURPOSES OF REVIEW

The purposes of review of EIRs and Negative Declarations include:

- (a) Sharing expertise,
- (b) Disclosing agency analyses,
- (c) Checking for accuracy,
- (d) Detecting omissions,

- (e) Discovering public concerns, and
- (f) Soliciting counter proposals.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21000, 21108, and 21152, Public Resources Code; *Environmental Defense Fund v. Coastside County Water District*, (1972) 27 Cal. App. 3d 695; *County of Inyo v. City of Los Angeles*, (1977) 71 Cal. App. 3d 185.

15201. PUBLIC PARTICIPATION

Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities. Such procedures should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21000, 21082, 21108, and 21152, Public Resources Code; *Environmental Defense Fund v. Coastside County Water District*, (1972) 27 Cal. App. 3d 695; *People v. County of Kern*, (1974) 39 Cal. App. 3d 830; *County of Inyo v. City of Los Angeles*, (1977) 71 Cal. App. 3d 185.

15202. PUBLIC HEARINGS

- (a) CEQA does not require formal hearings at any stage of the environmental review process. Public comments may be restricted to written communication.
- (b) If an agency provides a public hearing on its decision to carry out or approve a project, the agency should include environmental review as one of the subjects for the hearing.
- (c) A public hearing on the environmental impact of a project should usually be held when the Lead Agency determines it would facilitate the purposes and goals of CEQA to do so. The hearing may be held in conjunction with and as a part of normal planning activities.
- (d) A draft EIR or Negative Declaration should be used as a basis for discussion at a public hearing. The hearing may be held at a place where public hearings are regularly conducted by the Lead Agency or at another location expected to be convenient to the public.
- (e) Notice of all public hearings shall be given in a timely manner. This notice may be given in the same form and time as notice for other regularly conducted public hearings of the public agency. To the extent that the public agency maintains an Internet web site, notice of all public hearings should be made available in electronic format on that site.
- (f) A public agency may include, in its implementing procedures, procedures for the conducting of public hearings pursuant to this section. The procedures may adopt existing notice and hearing requirements of the public agency for regularly conducted legislative, planning, and other activities.
- (g) There is no requirement for a public agency to conduct a public hearing in connection with its review of an EIR prepared by another public agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21000, 21082, 21108, and 21152, Public Resources Code; *Concerned Citizens of Palm Desert, Inc. v. Board of Supervisors*, (1974) 38 Cal. App. 3d 272.

15203. ADEQUATE TIME FOR REVIEW AND COMMENT

The Lead Agency shall provide adequate time for other public agencies and members of the public to review and comment on a draft EIR or Negative Declaration that it has prepared.

- (a) Public agencies may establish time periods for review in their implementing procedures and shall notify the public and reviewing agencies of the time for receipt of comments on EIRs. These time periods shall be consistent with applicable statutes, the State CEQA Guidelines, and applicable Clearinghouse review periods.
- (b) A review period for an EIR does not require a halt in other planning or evaluation activities related to a project. Planning should continue in conjunction with environmental evaluation.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21082, 21108 and 21152, Public Resources Code.

15204. FOCUS OF REVIEW

- (a) In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.
- (b) In reviewing negative declarations, persons and public agencies should focus on the proposed finding that the project will not have a significant effect on the environment. If persons and public agencies believe that the project may have a significant effect, they should:
 - (1) Identify the specific effect,
 - (2) Explain why they believe the effect would occur, and
 - (3) Explain why they believe the effect would be significant.
- (c) Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.
- (d) Reviewing agencies or organizations should include with their comments the name of a contact person who would be available for later consultation if necessary. Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency's statutory responsibility.
- (e) This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.
- (f) Prior to the close of the public review period for an EIR or mitigated negative declaration, a responsible or trustee agency which has identified significant effects on the environment may submit to the lead agency proposed mitigation measures which would address those significant

effects. Any such measures shall be limited to impacts affecting those resources which are subject to the statutory authority of that agency. If mitigation measures are submitted, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for the mitigation measures, or shall refer the lead agency to appropriate, readily available guidelines or reference documents which meet the same purpose.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080, 21081.6, and 21080.4, 21104 and 21153, Public Resources Code, Formerly Section 15161; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; and *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.

15205. REVIEW BY STATE AGENCIES

- (a) Draft EIRs and negative declarations to be reviewed by state agencies shall be submitted to the State Clearinghouse, 1400 Tenth Street, Sacramento, California 95814. For U.S. Mail, submit to P.O. Box 3044, Sacramento, California 95812-3044. When submitting such documents to the State Clearinghouse, the public agency shall include, in addition to the printed copy, a copy of the document in electronic form on a diskette or by electronic mail transmission, if available.
- (b) The following environmental documents shall be submitted to the State Clearinghouse for review by state agencies:
 - (1) Draft EIRs and Negative Declarations prepared by a state agency where such agency is a Lead Agency.
 - (2) Draft EIRs and Negative Declarations prepared by a public agency where a state agency is a Responsible Agency, Trustee Agency, or otherwise has jurisdiction by law with respect to the project.
 - (3) Draft EIRs and Negative Declarations on projects identified in Section 15206 as being of statewide, regional, or areawide significance.
 - (4) Draft EISs, environmental assessments, and findings of no significant impact prepared pursuant to NEPA, the Federal Guidelines (Title 40 CFR, Part 1500, commencing with Section 1500.1).
- (c) Public agencies may send environmental documents to the State Clearinghouse for review where a state agency has special expertise with regard to the environmental impacts involved. The areas of statutory authorities of state agencies are identified in Appendix B. Any such environmental documents submitted to the State Clearinghouse shall include, in addition to the printed copy, a copy of the document in electronic format, on a diskette or by electronic mail transmission, if available.
- (d) When an EIR or Negative Declaration is submitted to the State Clearinghouse for review, the review period set by the Lead Agency shall be at least as long as the period provided in the state review system operated by the State Clearinghouse. In the state review system, the normal review period is 45 days for EIRs and 30 days for Negative Declarations. In exceptional circumstances, the State Clearinghouse may set shorter review periods when requested by the Lead Agency.
- (e) A sufficient number of copies of an EIR, negative declaration, or mitigated negative declaration, shall be submitted to the State Clearinghouse for review and comment by state agencies. The notice of completion form required by the State Clearinghouse must be submitted together with the copies of the EIR and may be submitted together with the copies of the negative declaration or mitigated negative declaration. The notice of completion form required by the State Clearinghouse is included in Appendix C. If the lead agency uses the on-

line process for submittal of the notice of completion form to the State Clearinghouse, the form generated from the Internet shall satisfy this requirement (refer to www.ceqanet.ca.gov).

- (f) While the Lead Agency is encouraged to contact the regional and district offices of state Responsible Agencies, the Lead Agency must, in all cases, submit documents to the State Clearinghouse for distribution in order to comply with the review requirements of this section.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21083, 21091, 21104, and 21153, Public Resources Code.

15206. PROJECTS OF STATEWIDE, REGIONAL, OR AREAWIDE SIGNIFICANCE

- (a) Projects meeting the criteria in this section shall be deemed to be of statewide, regional, or areawide significance.
- (1) A draft EIR or negative declaration prepared by any public agency on a project described in this section shall be submitted to the State Clearinghouse and should be submitted also to the appropriate metropolitan area council of governments for review and comment. The notice of completion form required by the State Clearinghouse must be submitted together with the copies of the EIR and may be submitted together with the copies of the negative declaration. The notice of completion form required by the State Clearinghouse is included in Appendix C. If the lead agency uses the on-line process for submittal of the notice of completion form to the State Clearinghouse, the form generated from the Internet shall satisfy this requirement (refer to www.ceqanet.ca.gov).
 - (2) When such documents are submitted to the State Clearinghouse, the public agency shall include, in addition to the printed copy, a copy of the document in electronic format on a diskette or by electronic mail transmission, if available.
- (b) The Lead Agency shall determine that a proposed project is of statewide, regional, or areawide significance if the project meets any of the following criteria:
- (1) A proposed local general plan, element, or amendment thereof for which an EIR was prepared. If a Negative Declaration was prepared for the plan, element, or amendment, the document need not be submitted for review.
 - (2) A project has the potential for causing significant effects on the environment extending beyond the city or county in which the project would be located. Examples of the effects include generating significant amounts of traffic or interfering with the attainment or maintenance of state or national air quality standards. Projects subject to this subdivision include:
 - (A) A proposed residential development of more than 500 dwelling units.
 - (B) A proposed shopping center or business establishment employing more than 1,000 persons or encompassing more than 500,000 square feet of floor space.
 - (C) A proposed commercial office building employing more than 1,000 persons or encompassing more than 250,000 square feet of floor space.
 - (D) A proposed hotel/motel development of more than 500 rooms.
 - (E) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or encompassing more than 650,000 square feet of floor area.
 - (3) A project which would result in the cancellation of an open space contract made pursuant to the California Land Conservation Act of 1965 (Williamson Act) for any parcel of 100 or more acres.

- (4) A project for which an EIR and not a Negative Declaration was prepared which would be located in and would substantially impact the following areas of critical environmental sensitivity:
 - (A) The Lake Tahoe Basin.
 - (B) The Santa Monica Mountains Zone as defined by Section 33105 of the Public Resources Code.
 - (C) The California Coastal Zone as defined in, and mapped pursuant to, Section 30103 of the Public Resources Code.
 - (D) An area within 1/4 mile of a wild and scenic river as defined by Section 5093.5 of the Public Resources Code.
 - (E) The Sacramento-San Joaquin Delta, as defined in Water Code Section 12220.
 - (F) The Suisun Marsh as defined in Public Resources Code Section 29101.
 - (G) The jurisdiction of the San Francisco Bay Conservation and Development Commission as defined in Government Code Section 66610.
- (5) A project which would substantially affect sensitive wildlife habitats including but not limited to riparian lands, wetlands, bays, estuaries, marshes, and habitats for endangered, rare and threatened species as defined by Section 15380 of this Chapter.
- (6) A project which would interfere with attainment of regional water quality standards as stated in the approved areawide waste treatment management plan.
- (7) A project which would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21083, Public Resources Code.

15207. FAILURE TO COMMENT

If any public agency or person who is consulted with regard to an EIR or Negative Declaration fails to comment within a reasonable time as specified by the Lead Agency, it shall be assumed, without a request for a specific extension of time, that such agency or person has no comment to make. Although the Lead Agency need not respond to late comments, the Lead Agency may choose to respond to them.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21104 and 21153, Public Resources Code; *Cleary v. County of Stanislaus*, (1981) 118 Cal. App. 3d 348.

15208. RETENTION AND AVAILABILITY OF COMMENTS

Comments received through the consultation process shall be retained for a reasonable period and available for public inspection at an address given in the final EIR. Comments which may be received on a draft EIR or Negative Declaration under preparation shall also be considered and kept on file.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21104, 21082.1 and 21153, Public Resources Code; Section 4, Chapter 480, Statutes of 1981; *People v. County of Kern*, (1974) 39 Cal. App. 3d 830. Formerly Section 15166.

15209. COMMENTS ON INITIATIVE OF PUBLIC AGENCIES

Every public agency may comment on environmental documents dealing with projects which affect resources with which the agency has special expertise regardless of whether its comments were solicited or whether the effects fall within the legal jurisdiction of the agency.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21002, 21104, and 21153, Public Resources Code.

Article 14. Projects Also Subject to the National Environmental Policy Act (NEPA)

SECTIONS 15220 TO 15229

15220. GENERAL

This article applies to projects that are subject to both CEQA and NEPA. NEPA applies to projects which are carried out, financed, or approved in whole or in part by federal agencies. Accordingly, this article applies to projects which involve one or more state or local agencies and one or more federal agencies.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21083.5, 21083.6, and 21083.7, Public Resources Code; National Environmental Policy Act of 1969, Public Law 91-190 as amended, 42 U.S.C.A. 4321-4347; NEPA Regulations, 40 Code of Federal Regulations (C.F.R.) Parts 1500-1508.

15221. NEPA DOCUMENT READY BEFORE CEQA DOCUMENT

- (a) When a project will require compliance with both CEQA and NEPA, state or local agencies should use the EIS or Finding of No Significant Impact rather than preparing an EIR or Negative Declaration if the following two conditions occur:
- (1) An EIS or Finding of No Significant Impact will be prepared before an EIR or Negative Declaration would otherwise be completed for the project; and
 - (2) The EIS or Finding of No Significant Impact complies with the provisions of these Guidelines.
- (b) Because NEPA does not require separate discussion of mitigation measures or growth inducing impacts, these points of analysis will need to be added, supplemented, or identified before the EIS can be used as an EIR.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21083.5 and 21083.7, Public Resources Code; Section 102(2)(C) of NEPA, 43 U.S.C.A. 4322(2)(C).

15222. PREPARATION OF JOINT DOCUMENTS

If a Lead Agency finds that an EIS or Finding of No Significant Impact for a project would not be prepared by the federal agency by the time when the Lead Agency will need to consider an EIR or Negative Declaration, the Lead Agency should try to prepare a combined EIR-EIS or Negative Declaration-Finding of No Significant Impact. To avoid the need for the federal agency to prepare a separate document for the same project, the Lead Agency must involve the federal agency in the preparation of the joint document.