

## **Chapter 4.5: Streamlined Environmental Review**

### **Article 1: Findings**

#### **§ 21156. Legislative intent**

It is the intent of the Legislature in enacting this chapter that a master environmental impact report shall evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment of subsequent projects to the greatest extent feasible. The Legislature further intends that the environmental review of subsequent projects be substantially reduced to the extent that the project impacts have been reviewed and appropriate mitigation measures are set forth in a certified master environmental impact report.

### **Article 2: Master Environmental Impact Report**

#### **§ 21157. Preparation; content; fee program**

(a) A master environmental impact report may be prepared for any one of the following projects:

(1) A general plan, element, general plan amendment, or specific plan.

(2) A project that consists of smaller individual projects that will be carried out in phases.

(3) A rule or regulation that will be implemented by subsequent projects.

(4) A project that will be carried out or approved pursuant to a development agreement.

(5) A public or private project that will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan.

(6) A state highway project or mass transit project that will be subject to multiple stages of review or approval.

(7) A regional transportation plan or congestion management plan.

(8) A plan proposed by a local agency for the reuse of a federal military base or reservation that has been closed or that is proposed for closure.

(9) Regulations adopted by the Fish and Game Commission for the regulation of hunting and fishing.

(10) A plan for district projects to be undertaken by a school district, that also complies with applicable school facilities requirements, including, but not limited to, the requirements of Chapter 12.5 (commencing with Section 17070.10) of Part 10 of, and Article 1 (commencing with Section 17210) of Chapter 1 of Part 10.5 of, Division 1 of Title 1 of Education Code.

(b) When a lead agency prepares a master environmental impact report, the document shall include all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of anticipated subsequent projects that would be within the scope of the master environmental impact report, that contains sufficient information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to, all of the following:

(A) The specific type of project anticipated to be undertaken.

(B) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and, with regard to a public works facility, its anticipated capacity and service area.

(C) The anticipated location and alternative locations for any development projects.

(D) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects.

(3) A description of potential impacts of anticipated subsequent projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the master environmental impact report. This description shall not be construed as a limitation on the impacts which may be considered in a focused environmental impact report.

(c) Lead agencies may develop and implement a fee program in accordance with applicable provisions of law to generate the

revenue necessary to prepare a master environmental impact report.

### **§ 21157.1. Review of subsequent projects described in report; requirements**

The preparation and certification of a master environmental impact report, if prepared and certified consistent with this division, may allow for the limited review of subsequent projects that were described in the master environmental impact report as being within the scope of the report, in accordance with the following requirements:

(a) The lead agency for a subsequent project shall be the lead agency or any responsible agency identified in the master environmental impact report.

(b) The lead agency shall prepare an initial study on any proposed subsequent project. This initial study shall analyze whether the subsequent project may cause any significant effect on the environment that was not examined in the master environmental impact report and whether the subsequent project was described in the master environmental impact report as being within the scope of the report.

(c) If the lead agency, based on the initial study, determines that a proposed subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158, that was not identified in the master environmental impact report and that no new or additional mitigation measures or alternatives may be required, the lead agency shall make a written

finding based upon the information contained in the initial study that the subsequent project is within the scope of the project covered by the master environmental impact report. No new environmental document nor findings pursuant to Section 21081 shall be required by this division. Prior to approving or carrying out the proposed subsequent project, the lead agency shall provide notice of this fact pursuant to Section 21092 and incorporate all feasible mitigation measures or feasible alternatives set forth in the master environmental impact report which are appropriate to the project. Whenever a lead agency approves or determines to carry out any subsequent project pursuant to this section, it shall file a notice pursuant to Section 21108 or 21152.

(d) Where a lead agency cannot make the findings required in

subdivision (c), the lead agency shall prepare, pursuant to Section 21157.7, either a mitigated negative declaration or environmental impact report.

### **§ 21157.5. Mitigated negative declarations; preparation; conditions; alternative**

(a) A proposed mitigated negative declaration shall be prepared for any proposed subsequent project if both of the following occur:

(1) An initial study has identified potentially new or additional significant effects on the environment that were not analyzed in the master environmental impact report.

(2) Feasible mitigation measures or alternatives will be incorporated to revise the proposed subsequent project, before the negative declaration is released for public review, in order to avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment will occur.

(b) If there is substantial evidence in light of the whole record before the lead agency that the proposed subsequent project may have a significant effect on the environment and a mitigated negative declaration is not prepared, the lead agency shall prepare an environmental impact report or a focused environmental impact report pursuant to Section 21158.

### **§ 21157.6. Limitation period on use of environmental impact report**

(a) The master environmental impact report shall not be used for the purposes of this chapter if either of the following has occurred:

(1) The certification of the master environmental impact report occurred more than five years prior to the filing of an application for the subsequent project.

(2) The filing of an application for the subsequent project occurs following the certification of the master environmental impact report, and the approval of a project that was not described in the master environmental impact report, may affect the adequacy of the environmental review in the master

environmental impact report for any subsequent project.

(b) A master environmental impact report that was certified more than five years prior to the filing of an application for the subsequent project may be used for purposes of this chapter to review a subsequent project that was described in the master environmental impact report if the lead agency reviews the adequacy of the master environmental impact report and does either of the following:

(1) Finds that no substantial changes have occurred with respect to the circumstances under which the master environmental impact report was certified or that no new information, which was not known and could not have been known at the time that the master environmental impact report was certified as complete, has become available.

(2) Prepares an initial study and, pursuant to the findings of the initial study, does either of the following:

(A) Certifies a subsequent or supplemental environmental impact report that has been either incorporated into the previously certified master environmental impact report or references any deletions, additions, or any other modifications to the previously certified master environmental impact report.

(B) Approves a mitigated negative declaration that addresses substantial changes that have occurred with respect to the circumstances under which the master environmental impact report was certified or the new information that was not known and could not have been known at the time the master environmental impact report was certified.

### **§ 21157.7. Preparation of master environmental impact report for improvements to regional segments of Highway 99 and review of subsequent projects**

(a) For purposes of this section, a master environmental impact report is a document prepared in accordance with subdivision (c) for the projects described in subdivision (b) that, upon certification, is followed by review of subsequent projects as provided in Sections 21157.1 and 21157.5.

(b) A master environmental impact report may be prepared for a plan adopted by the Department of Transportation for improvements to regional segments of Highway 99 funded pursuant to subdivision (b) of Section 8879.23 of the Government Code, to streamline, coordinate, and improve environmental review.

(c) The report shall include all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of the anticipated highway improvements along

Highway 99 that would be within the scope of the master environmental impact report, that contains sufficient information about all phases of the Highway 99 construction activities, including, but not limited to, all of the following:

(A) The specific types of improvements that will be undertaken.

(B) The anticipated location and alternative locations for any of the Highway 99 improvements, including overpasses, bridges, railroad crossings, and interchanges.

(C) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the construction activities associated with the Highway 99 improvements.

(d) Notwithstanding Section 21157.6, the master environmental impact report shall not be used for the purposes of this section, if the certification of the master environmental impact report occurred more than seven years prior to the filing of an application for the subsequent project.

### **Article 3: Focused Environmental Impact Report**

#### **§ 21158. Purpose; content; additional significant effect on the environment**

(a) A focused environmental impact report is an environmental impact report on a subsequent project identified in a master environmental impact report. A focused environmental impact report may be utilized only if the lead agency finds that the analysis in the master environmental impact report of cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment is adequate for the subsequent project. The focused environmental impact report shall incorporate, by reference, the master environmental impact report and analyze only the subsequent project's additional significant effects on the environment, as defined in subdivision (d), and any new or additional mitigation measures or alternatives that were not identified and analyzed by the master environmental impact report.

(b) The focused environmental impact report need not examine those effects which the lead agency finds were one of the following:

(1) Mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of mitigation

measures identified in the master environmental impact report which will be required as part of the approval of the subsequent project.

(2) Examined at a sufficient level of detail in the master environmental impact report to enable those significant environmental effects to be mitigated or avoided by specific revisions to the project, the imposition of conditions, or by other means in connection with the approval of the subsequent project.

(3) Subject to a finding pursuant to paragraph (2) of subdivision

(a) of Section 21081.

(c) A focused environmental impact report on any subsequent project shall analyze any significant effects on the environment where substantial new or additional information shows that the adverse environmental impact may be more significant than was described in the master environmental impact report. The substantial new or additional information may also show that mitigation measures or alternatives identified in the master environmental impact report, which were previously determined to be infeasible, are feasible and will avoid or reduce the significant effects on the environment of the subsequent project to a level of insignificance.

(d) For purposes of this chapter, "additional significant effects on the environment" are those project specific effects on the environment which were not addressed as significant effects on the environment in the master environmental impact report.

(e) Nothing in this chapter is intended to limit or abridge the ability of a lead agency to focus upon the issues that are ripe for decision at each level of environmental review, or to exclude duplicative analysis of environmental effects examined in previous environmental impact reports pursuant to Section 21093.

### **§ 21158.1. Regulatory programs certified under Public Resources Code § 21080.5; certain master and focused environmental impact reports**

When a lead agency is required to prepare an environmental impact report pursuant to subdivision (d) of Section 21157.1 or is authorized to prepare a focused environmental impact report pursuant to Section 21158, the lead agency may not rely on subdivision (a) of Section 21080.5 for that purpose even though

the lead agency's regulatory program is otherwise certified in accordance with Section 21080.5.

**§ 21158.5. Multiple-family residential development of not more than 100 units; residential and commercial or retail mixed-use development of not more than 100,000 square feet; preparation of report; limitations**

(a) Where a project consists of multiple-family residential development of not more than 100 units or a residential and commercial or retail mixed-use development of not more than 100,000 square feet which complies with all of the following, a focused environmental impact report shall be prepared, notwithstanding that the project was not identified in a master environmental impact report:

(1) Is consistent with a general plan, specific plan, community plan, or zoning ordinance for which an environmental impact report was prepared within five years of the certification of the focused environmental impact report.

(2) The lead agency cannot make the finding described in subdivision (c) of Section 21157.1, a negative declaration or mitigated negative declaration cannot be prepared pursuant to Section 21080, 21157.5, or 21158, and Section 21166 does not apply.

(3) Meets one or more of the following conditions:

(A) The parcel on which the project is to be developed is surrounded by immediately contiguous urban development.

(B) The parcel on which the project is to be developed has been previously developed with urban uses.

(C) The parcel on which the project is to be developed is within one-half mile of an existing rail transit station.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project, or which substantial new information shows will be more significant than described in the prior environmental impact report. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.



## **Article 4: Expedited Environmental Review for Environmentally Mandated Projects**

### **§ 21159. Rule or regulation adoption; environmental analysis; content**

(a) An agency listed in Section 21159.4 shall perform, at the time of the adoption of a rule or regulation requiring the installation of pollution control equipment, or a performance standard or treatment requirement, an environmental analysis of the reasonably foreseeable methods of compliance. In the preparation of this analysis, the agency may utilize numerical ranges or averages where specific data is not available; however, the agency shall not be required to engage in speculation or conjecture. The environmental analysis shall, at minimum, include, all of the following:

(1) An analysis of the reasonably foreseeable environmental impacts of the methods of compliance.

(2) An analysis of reasonably foreseeable feasible mitigation measures.

(3) An analysis of reasonably foreseeable alternative means of compliance with the rule or regulation.

(b) The preparation of an environmental impact report at the time of adopting a rule or regulation pursuant to this division shall be deemed to satisfy the requirements of this section.

(c) The environmental analysis shall take into account a reasonable range of environmental, economic, and technical factors, population and geographic areas, and specific sites.

(d) Nothing in this section shall require the agency to conduct a project level analysis.

(e) For purposes of this article, the term "performance standard" includes process or raw material changes or product reformulation.

(f) Nothing in this section is intended, or may be used, to delay the adoption of any rule or regulation for which an analysis is required to be performed pursuant to this section.

## **§ 21159.1 Utilization of focused environmental impact report; requirements; limitations**

(a) A focused environmental impact report may be utilized if a project meets all of the following requirements:

(1) The project consists solely of the installation of pollution control equipment required by a rule or regulation of an agency listed in Section 21159.4 and other components necessary to complete the installation of that equipment.

(2) The agency certified an environmental impact report on the rule or regulation or reviewed it pursuant to a certified regulatory program, and, in either case, the review included an assessment of growth inducing impacts and cumulative impacts of, and alternatives to, the project.

(3) The environmental review required by paragraph (2) was completed within five years of certification of the focused environmental impact report.

(4) An environmental impact report is not required pursuant to Section 21166.

(b) The discussion of significant effects on the environment in the focused environmental impact report shall be limited to project-specific potentially significant effects on the environment of the project which were not discussed in the environmental analysis of the rule or regulation required pursuant to subdivision (a) of Section 21159. No discussion of growth-inducing impacts or cumulative impacts shall be required in the focused environmental impact report, and the discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

## **§ 21159.2. Negative declaration; mitigated negative declaration; environmental impact report on compliance project; project-specific issued; contents**

(a) If a project consists solely of compliance with a performance standard or treatment requirement imposed by an agency listed in Section 21159.4, the lead agency for the compliance project shall, to the greatest extent feasible, utilize

the environmental analysis required pursuant to subdivision (a) of Section 21159 in the preparation of a negative declaration, mitigated negative declaration, or environmental impact report on the compliance project or in otherwise fulfilling its responsibilities under this division.

The use of numerical averages or ranges in an environmental analysis shall not relieve a lead agency of its obligations under this division to identify and evaluate the environmental effects of a compliance project.

(b) If the lead agency determines that an environmental impact report on the compliance project is required, the lead agency shall prepare an environmental impact report which addresses only the project-specific issues related to the compliance project or other issues that were not discussed in sufficient detail in the environmental analysis to enable the lead agency to fulfill its responsibilities under Section 21100 or 21151, as applicable. The mitigation measures imposed by the lead agency for the project shall relate only to the significant effects on the environment to be mitigated. The discussion of alternatives shall be limited to a discussion of alternative means of compliance, if any, with the rule or regulation.

### **§ 21159.3. Deadlines for preparation of report**

In the preparation of any environmental impact report pursuant to Section 21159.1 or 21159.2, the following deadlines shall apply:

(a) A lead agency shall determine whether an environmental impact report should be prepared within 30 days of its determination that the application for the project is complete.

(b) If the environmental impact report will be prepared under contract to the lead agency pursuant to Section 21082.1, the lead agency shall issue a request for proposals for preparation of the environmental impact report as soon as it has enough information to prepare a request for proposals, and in any event, not later than 30 days after the time for response to the notice of preparation has expired. The contract shall be awarded within 30 days of the response date for the request for proposals.

#### **§ 21159.4. Agencies; article application**

This article shall apply to the following agencies: the State Air Resources Board, any district as defined in Section 39025 of the Health and Safety Code, the State Water Resources Control Board, a California regional water quality control board, the Department of Toxic Substances Control, and the California Integrated Waste Management Board.

### **Article 5: Public Assistance Program**

#### **§ 21159.9. Implementation of program**

The Office of Planning and Research shall implement, utilizing existing resources, a public assistance and information program, to ensure efficient and effective implementation of this division, to do all of the following:

- (a) Establish a public education and training program for planners, developers, and other interested parties to assist them in implementing this division.
- (b) Establish and maintain a data base to assist in the preparation of environmental documents.
- (c) Establish and maintain a central repository for the collection, storage, retrieval, and dissemination of notices of exemption, notices of preparation, notices of determination, and notices of completion provided to the office, and make the notices available through the Internet. The office may coordinate with another state agency for that agency to make the notices available through the Internet.
- (d) Commencing January 1, 2003, copies of any documents submitted in electronic format to the Office of Planning and Research pursuant to this division shall be furnished by the office to the California State Library. The California State Library shall be the repository for those electronic documents, which shall be made available for viewing by the general public upon request.

## **Article 6: Special Review of Housing Projects**

### **§ 21159.20. Definitions**

For the purposes of this article, the following terms have the following meanings:

(a) "Census-defined place" means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

(b) "Community-level environmental review" means either of the following:

(1) An environmental impact report certified on any of the following:

(A) A general plan.

(B) A revision or update to the general plan that includes at least the land use and circulation elements.

(C) An applicable community plan.

(D) An applicable specific plan.

(E) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.

(2) Pursuant to this division and the implementing guidelines adopted pursuant to this division that govern subsequent review following a program environmental impact report, or pursuant to Section 21157.1, 21157.5, or 21166, a negative declaration or mitigated negative declaration was adopted as a subsequent environmental review document, following and based upon an environmental impact report on any of the projects listed in subparagraphs (A), (C), or (D) of paragraph (1).

(c) "Low-income households" means households of persons and families of very low and low income, as defined in Sections 50093 and 50105 of the Health and Safety Code.

(d) "Low- and moderate-income households" means households of persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

### **§ 21159.21 Criteria to qualify for housing project exemptions**

A housing project qualifies for an exemption from this

division pursuant to Section 21159.22, 21159.23, or 21159.24 if it meets the criteria in the applicable section and all of the following criteria:

(a) The project is consistent with any applicable general plan, specific plan, and local coastal program, including any mitigation measures required by a plan or program, as that plan or program existed on the date that the application was deemed complete and with any applicable zoning ordinance, as that zoning ordinance existed on the date that the application was deemed complete, except that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.

(b) Community-level environmental review has been adopted or certified.

(c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(d) The site of the project does not contain wetlands, does not have any value as a wildlife habitat, and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act

(Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete. For the purposes of this subdivision, "wetlands" has the same meaning as in Section 328.3 of Title 33 of the Code of Federal Regulations and "wildlife habitat" means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant

health hazards from any nearby property or activity.

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1.

(h) The project site is not subject to any of the following:

(1) A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(2) An unusually high risk of fire or explosion from materials stored or used on nearby properties.

(3) Risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(4) Within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.

(5) Landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(i) (1) The project site is not located on developed open space.

(2) For the purposes of this subdivision, "developed open space" means land that meets all of the following criteria:

(A) Is publicly owned, or financed in whole or in part by public funds.

(B) Is generally open to, and available for use by, the public.

(C) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.

(3) For the purposes of this subdivision, "developed open space" includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(j) The project site is not located within the boundaries of a

state conservancy.

## **§ 21159.22 Agricultural employee housing exemption**

(a) This division does not apply to any development project that meets the requirements of subdivision (b), and meets either of the following criteria:

(1) Consists of the construction, conversion, or use of residential housing for agricultural employees, and meets all of the following criteria:

(A) Is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Lacks public financial assistance.

(C) The developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years.

(2) Consists of the construction, conversion, or use of residential housing for agricultural employees and meets all of the following criteria:

(A) Is housing for very low, low-, or moderate-income households as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(B) Public financial assistance exists for the development project.

(C) The developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least 15 years.

(b) (1) If the development project is proposed within incorporated city limits or within a census defined place with a minimum population density of at least 5,000 persons per square mile, it is located on a project site that is adjacent, on at least two sides, to land that has been developed, and consists of not more than 45 units, or is housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(2) If the development project is located on a project site zoned for general agricultural use, and consists of not more than 20 units, or is housing for a total of 20 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(3) The project satisfies the criteria in Section 21159.21.

(4) The development project is not more than five acres in



area, except that a project site located in an area with a population density of at least 1,000 persons per square mile shall not be more than two acres in area.

(c) Notwithstanding subdivision (a), if a project satisfies the criteria described in subdivisions (a) and (b), but does not satisfy the criteria described in paragraph (1) of subdivision (b), this division does not apply to the project if the project meets all of the following criteria:

(1) Is located within either an incorporated city or a census-defined place.

(2) The population density of the incorporated city or census-defined place has a population density of at least 1,000 persons per square mile.

(3) The project site is adjacent on at least two sides to land that has been developed and the project consists of not more than 45 units, or the project consist of dormitories, barracks, or other group housing facilities for a total of 45 or fewer agricultural employees.

(d) Notwithstanding subdivision (c), this division shall apply to a project that meets the criteria described in subdivision (c) if a public agency that is carrying out or approving the project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impacts of successive projects of the same type in the same area, over time, would be significant.

For the purposes of this section, "agricultural employee" has the same meaning as defined by subdivision (b) of Section 1140.4 of the Labor Code.

## **§ 21159.23 Low-income housing exemption**

(a) This division does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of 100 or fewer that is affordable to low-income households if both of the following criteria are met:

(1) The developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households, as defined in Section 50079.5 of the Health and Safety Code, for a period of at least 30 years, at monthly housing costs, as determined pursuant to Section 50053 of the Health and Safety Code.

(2) The development project meets all of the following requirements:

(A) The project satisfies the criteria described in Section 21159.21.

(B) The project site meets one of the following conditions:

(i) Has been previously developed for qualified urban uses.

(ii) The parcels immediately adjacent to the site are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses and the remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses, and the site has not been developed for urban uses and no parcel within the site has been created within 10 years prior to the proposed development of the site.

(C) The project site is not more than five acres in area.

(D) The project site is located within an urbanized area or within a census-defined place with a population density of at least 5,000 persons per square mile or, if the project consists of 50 or fewer units, within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(b) Notwithstanding subdivision (a), if a project satisfies all of the criteria described in subdivision (a) except subparagraph (D) of paragraph (2) of that subdivision, this division does not apply to the project if the project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile.

(c) Notwithstanding subdivision (b), this division applies to a project that meets the criteria of subdivision (b), if there is a reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

(d) For the purposes of this section, "residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

## **§ 21159.24 Infill housing exemption**

(a) Except as provided in subdivision (b), this division does not apply to a project if all of the following criteria are met:

- (1) The project is a residential project on an infill site.
- (2) The project is located within an urbanized area.
- (3) The project satisfies the criteria of Section 21159.21.
- (4) Within five years of the date that the application for the project is deemed complete pursuant to Section 65943 of the Government Code, community-level environmental review was certified or adopted.
- (5) The site of the project is not more than four acres in total area.
- (6) The project does not contain more than 100 residential units.
- (7) Either of the following criteria are met:
  - (A) (i) At least 10 percent of the housing is sold to families of moderate income, or not less than 10 percent of the housing is rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.
  - (ii) The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.
  - (B) 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).
- (8) The project is within one-half mile of a major transit stop.
- (9) The project does not include any single level building that exceeds 100,000 square feet.
- (10) The project promotes higher density infill housing. A project with a density of at least 20 units per acre shall be conclusively presumed to promote higher density infill housing. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density housing unless the preponderance of the evidence demonstrates otherwise.

(b) Notwithstanding subdivision (a), this division shall apply to a development project that meets the criteria described in subdivision (a), 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.

(c) If a project satisfies the criteria described in subdivision (a), but is not exempt from this division as result of satisfying the criteria described in subdivision (b), the analysis of the environmental effects of the project in the environmental impact report or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to paragraph (2) or (3) of subdivision (b).

(d) For the purposes of this section, "residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

### **§ 21159.25 Multiple-family residential development, or mixed-use development in the City of Oakland; use of focused environmental impact report**

(a) For a project in the City of Oakland that consists of multiple-family residential development, or a residential and commercial or retail mixed-use development with not more than 25 percent of the total floor area of the project utilized as retail space, a focused environmental impact report may be prepared, notwithstanding that the project was not identified in a master environmental impact report, if all of the following conditions are met:

(1) The Oakland City Council does both of the following:

(A) Authorizes the implementation of this section. The city

council may authorize the implementation of this section only by voting to approve the practice of preparing focused environmental impact reports for projects in the central business district housing target areas specified in paragraph (11).

(B) Determines that the general plan, zoning ordinance, and related policies and programs are consistent with principles that encourage compact development in a manner that does both of the following:

(i) Promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing.

(ii) Protects the environment, open space, and agricultural areas.

(2) The city submits a draft determination to the Office of Planning and Research that the applicable general plan, zoning ordinance, and any related policies and programs are consistent with the principles described in subparagraph (B) of paragraph (1) prior to the city council making its determination regarding that consistency. The office may submit comments on the draft findings to the city council within 30 days from the date that the city submits

the draft determination to the office.

(3) The city has an average population density of at least 5,000 persons per square mile.

(4) The project is consistent with the general plan, any applicable specific plan and community plan, and zoning ordinance, including any variance that is properly granted pursuant to that zoning ordinance, an environmental impact report was prepared for the general plan, and the application for the project is deemed complete pursuant to Section 65943 of the Government Code within three years of the date this section is effective.

(5) The lead agency cannot make the finding described in subdivision (c) of Section 21157.1, a negative declaration or mitigated negative declaration cannot be prepared pursuant to Section 21080, 21157.5, or 21158, and Section 21166 does not apply.

(6) The project meets one or both of the following conditions:

(A) The parcel on which the project is to be developed is surrounded by immediately contiguous urban development.

(B) The parcel on which the project is to be developed is, or has been previously, developed with urban uses.

(7) The density of the project is at least 40 units per net acre.

(8) The parcel on which the project is to be developed is within

one-half mile of an existing rail transit station.

(9) The project can be adequately served by existing utilities and municipal services, and there will be adequate capacity for infrastructure, utilities, and services to serve other projects approved and proposed in the service area.

(10) The project does not include a single level building that exceeds 100,000 square feet.

(11) The project is located in one of the following central business district housing target areas:

(A) The Valdez cluster, which is bounded on the west by Telegraph Avenue, on the south by 23rd Street, on the east by Harrison Street, and on the north by 27th Street. A project located in this cluster that meets the condition described in paragraph (8) may include a portion up to one acre that does not meet that condition.

(B) The Uptown cluster, which is bounded on the west by Castro Street, on the south by 14th Street from Castro Street to Jefferson Street and 16th Street and Broadway from 16th Street to 22nd Street, and on the north by 22nd Street.

(C) The 11th Street cluster, which is bounded by Franklin Street from 12th Street to 15th Street, by Webster Street from 11th Street to 12th Street, by Alice Street from 11th Street to 13th Street, by 12th Street from Franklin Street to Webster Street, by 11th Street from Webster Street to Alice Street and 13th Street from Alice Street to Madison Street, and on the east by Madison Street from 13th Street to 15th Street, and on the north by 15th Street from Franklin Street to Madison Street.

(D) The Old Oakland cluster, which is bounded on the west by Castro Street, on the south by 7th Street, on the east by Broadway, and on the north by 11th Street.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

(c) (1) On or before July 1, 2004, the city shall submit a report to the Office of Planning and Research that includes, but that is not necessarily limited to, all of the following information:

(A) The number of focused environmental impact reports prepared pursuant to this section.

(B) The types of projects for which focused environmental impact reports were prepared pursuant to this section.

(C) The time periods for preparing each of the focused environmental impact reports prepared pursuant to this section,

and for acting on each project from the date that the application was deemed complete.

(D) A description of any alternatives to a project, cumulative impacts of a project, growth inducing impacts of a project, or other issues that may have been identified and analyzed if an environmental document, other than a focused environmental impact report, had been prepared for the project.

(2) Prior to submitting the report to the office pursuant to paragraph (1), the city shall hold at least one public hearing and shall respond to oral and written comments regarding the draft report. The city shall include the comments and responses in the final report.

(d) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

### **§ 21159.26 Reductions in housing units as mitigation discouraged**

With respect to a project that includes a housing development, a public agency may not reduce the proposed number of housing units as a mitigation measure or project alternative for a particular significant effect on the environment if it determines that there is another feasible specific mitigation measure or project alternative that would provide a comparable level of mitigation. This section does not affect any other requirement regarding the residential density of that project.

### **§ 21159.27 Prohibition against piecemealing to qualify for exemptions**

A project may not be divided into smaller projects to qualify for one or more exemptions pursuant to this article.

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