

CEQA

The California Environmental Quality Act

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

Article 20. Definitions

Sections 15350 to 15387

15350. General

The definitions contained in this article apply to terms used throughout the Guidelines unless a term is otherwise defined in a particular section.

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

15351. Applicant

"Applicant" means a person who proposes to carry out a project which needs a lease, permit, license, certificate, or other entitlement for use or financial assistance from one or more public agencies when that person applies for the governmental approval or assistance.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21065, Public Resources Code.

Discussion: This section defines a term used frequently in the Guidelines to refer to a person who applies to a public agency for a lease, permit, license, certificate, or other entitlement in the Guidelines apply only to applicants and not to governmental agencies that carry out projects directly.

15352. Approval

(a) "Approval" means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person. The exact date of approval of any project is a matter determined by each public agency according to its rules, regulations, and ordinances. Legislative action in regard to a project often constitutes approval.

(b) With private projects, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21061 and 21065, Public Resources Code.

Discussion: The term "approval" needs definition because the term is critical to the CEQA process. A public agency must comply with CEQA when the agency proposes to approve some kind of project. The statute does not define the term, and it is often difficult to identify the time when the project is approved. This section spells out criteria for determining when the approval occurs.

15353. CEQA

"CEQA" means the California Environmental Quality Act, California Public Resources Code Sections 21000 et seq.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21050, Public Resources Code.

15354. Categorical Exemption

"Categorical exemption" means an exemption from CEQA for a class of projects based on a finding by the Secretary for Resources that the class of projects does not have a significant effect on the environment.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21080 (b)(10) and 21084, Public Resources Code.

Discussion: This section provides a simple term and definition to apply to the administrative exemptions from CEQA established by the Secretary for Resources under Section 21084 in CEQA. These exemptions apply to classes of projects for which the Secretary for Resources has made a finding that the class of projects will not have a significant effect on the environment.

15355. Cumulative Impacts

"Cumulative impacts" refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

(a) The individual effects may be changes resulting from a single project or a number of separate projects.

(b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21083 (b), Public Resources Code; *Whitman v. Board of Supervisors*, 88 Cal. App. 3d 397, *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal. App. 3d 61, Formerly Section 15023.5.

Discussion: The definition of the term "cumulative impacts" is provided because the term is related to one of the mandatory findings of significant effect required by Section 21083. A common understanding of the term is needed in order to implement the section. Further, this definition is needed to codify the court rulings in *Whitman v. Board of Supervisors* and *San Franciscans for Reasonable Growth v. City and County of San Francisco*.

15356. Decision-Making Body

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"Decision-making body" means any person or group of people within a public agency permitted by law to approve or disapprove the project at issue.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21003 (b), Public Resources Code; *Kleist v. City of Glendale*, (1976) 56 Cal. App. 3d 770.

Discussion: This definition is added because there is a need for a term to apply to the person or group which has authority to make the decision to approve or carry out a project. The individuals or groups which are granted this authority seem to have no one common name or common description among the many agencies subject to CEQA. Accordingly, the Guidelines must provide a term which could apply to these people in all situations.

15357. Discretionary Project

"Discretionary project" means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations. A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code Sections 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. Section 21065(c).

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080 (a), Public Resources Code; *Johnson v. State of California*, (1968) 69 Cal. 2d 782; *People v. Department of Housing and Community Development*, (1975) 45 Cal. App. 3d 185; *Day v. City of Glendale*, (1975) 51 Cal. App. 3d 817; *N.R.D.C. v. Arcata National Corp.*, (1976) 59 Cal. App. 3d 959.

Discussion: A definition of the term "discretionary project" is essential for defining the scope of activities subject to CEQA. The Act provides that it applies to discretionary projects, but the Act does not define the term. The definition offered here is taken from the State Supreme Court decision in *Johnson v. State of California*, a 1968 decision. The definition in this section has been approved in a number of court decisions since that time. Several of these decisions are cited in the note. See also discussion for Section 15268.

15358. Effects

"Effects" and "impacts" as used in these Guidelines are synonymous.

(a) Effects include:

- (1) Direct or primary effects which are caused by the project and occur at the same time and place.
- (2) Indirect or secondary effects which are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect or secondary effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

(b) Effects analyzed under CEQA must be related to a physical change.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21068 and 21100, Public Resources Code.

Discussion: Confusion has arisen in interpreting CEQA because the law uses the terms "effects" and "impacts" without making clear whether the words have different or identical meanings. This section is intended to eliminate that confusion and to use the federal definition of the term from the NEPA

regulations to the extent that the statutes are similar. Subsection (a) is identical to part of Section 1508.8 in the NEPA regulations, but subsection (b) is different because CEQA is more focused on physical changes than is NEPA.

15359. Emergency

"Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080 (b)(2), (3), and (4), Public Resources Code.

Discussion: The definition of the term "emergency" was originally developed in these Guidelines. Later legislation added the definition to the statute.

15360. Environment

"Environment" means the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The "environment" includes both natural and man-made conditions.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21060.5, Public Resources Code.

Discussion: This definition combines statutory language in the first sentence with administrative interpretation in the second and third sentences.

15361. Environmental Documents

"Environmental documents" means Initial Studies, Negative Declarations, draft and final EIRs, documents prepared as substitutes for EIRs and Negative Declarations under a program certified pursuant to Public Resources Code Section 21080.5, and documents prepared under NEPA and used by a state or local agency in the place of an Initial Study, Negative Declaration, or an EIR.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21061, 21080(b), 21080.5, 21108, and 21152, Public Resources Code.

Discussion: The term "environmental documents" is intended to provide a shorthand way of referring to all the documents listed in the definition.

15362. EIR - Environmental Impact Report

"EIR" or "Environmental Impact Report" means a detailed statement prepared under CEQA describing and analyzing the significant environmental effects of a project and discussing ways to mitigate or avoid the effects. The contents of an EIR are discussed in Article 9, commencing with Section 15120 of these Guidelines. The term "EIR" may mean either a draft or a final EIR depending on the context.

(a) Draft EIR means an EIR containing the information specified in Sections 15122 through 15131.

(b) Final EIR means an EIR containing the information contained in the draft EIR, comments either

verbatim or in summary received in the review process, a list of persons commenting, and the response of the Lead Agency to the comments received. The final EIR is discussed in detail in Section 15132.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21061, 21100, and 21151, Public Resources Code.

Discussion: This section identifies the abbreviation "EIR" and provides a short definition of the term "Environmental Impact Report" although the term "Environmental Impact Report" is defined in detail with a number of other requirements in Section 21061 of the statute. This section provides a more focused definition and introduces the terms "draft EIR" and "final EIR."

15363. EIS - Environmental Impact Statement

"EIS" or "Environmental Impact Statement" means an environmental impact document prepared pursuant to the National Environmental Policy Act (NEPA). NEPA uses the term EIS in the place of the term EIR which is used in CEQA.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21083.5, 21083.6, and 21083.7, Public Resources Code; 43 U.S.C.A. 4322(2)(c).

Discussion: This section introduces the abbreviation "EIS" and provides a short definition of the term "Environmental Impact Statement." This definition is needed because CEQA and the Guidelines refer to EISs in many places where the CEQA process may involve overlaps with NEPA.

15364. Feasible

"Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21002, 21002.1, 21004, 21061.1, 21080.5, and 21081, Public Resources Code; Section 4, Chapter 1438 of the Statutes of 1982.

Discussion: This section provides an additional interpretation of the statutory language by adding the word "legal" to the statutory language. The legal limitation is incorporated in the concept of feasibility as it applies to the findings an agency must make concerning whether to mitigate or avoid significant effects identified in an EIR. The lack of legal powers of an agency to use in imposing an alternative or mitigation measure may be as great a limitation as any economic, environmental, social, or technological factor.

15365. Initial Study

"Initial Study" means a preliminary analysis prepared by the Lead Agency to determine whether an EIR or a Negative Declaration must be prepared or to identify the significant environmental effects to be analyzed in an EIR. Use of the Initial Study is discussed in Article 5, commencing with Section 15060.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21080.1, 21080.2, 21080.3, and 21100, Public Resources Code.

Discussion: This definition is added to define a term which is created in these Guidelines.

15366. Jurisdiction by Law

(a) "Jurisdiction by law" means the authority of any public agency:

- (1) To grant a permit or other entitlement for use;
- (2) To provide funding for the project in question; or
- (3) To exercise authority over resources which may be affected by the project.

(b) A city or county will have jurisdiction by law with respect to a project when the city or county having primary jurisdiction over the area involved is:

- (1) The site of the project;
- (2) The area in which the major environmental effects will occur, and/or
- (3) The area in which reside those citizens most directly concerned by any such environmental effects.

(c) Where an agency having jurisdiction by law must exercise discretionary authority over a project in order for the project to proceed, it is also a Responsible Agency, see Section 15381, or the Lead Agency, see Section 15367.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21080.3, 21080.4, 21104, and 21153, Public Resources Code.

Discussion: This section defines the term "jurisdiction by law" in order to establish which agencies must be consulted by the Lead Agency in preparing an EIR. The statute does not define this term.

15367. Lead Agency

"Lead Agency" means the public agency which has the principal responsibility for carrying out or approving a project. The Lead Agency will decide whether an EIR or Negative Declaration will be required for the project and will cause the document to be prepared. Criteria for determining which agency will be the Lead Agency for a project are contained in Section 15051.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21165, Public Resources Code.

Discussion: This section combines the statutory definition of the term "Lead Agency" with a more complete explanation in terms related to the CEQA process. The fundamental point is that CEQA gives the Lead Agency the tasks of determining whether an EIR or a Negative Declaration will be required for the project and preparing the document.

15368. Local Agency

"Local agency" means any public agency other than a state agency, board, or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, school districts, special districts, redevelopment agencies, local agency formation commissions, and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21062 and 21151, Public Resources Code.

Discussion: This section supplements the definition of the term "local agency" contained in the Public Resources Code to recognize the possibility that a city may designate a particular sub-unit of the city government as being a separate Lead Agency for a particular project. In this situation, the subunit would qualify as a local agency under these Guidelines, and all the requirements placed on a local agency would apply to that unit.

An agency created by state statute such as an agricultural district may be considered a local agency for the purposes of CEQA even though it may be considered a state agency for other purposes; this is possible because the agency's activities are most likely to affect only the local area in which it operates. (See: *Lewis v. 17th District Agricultural Ass'n.* (1985) 165 Cal. App. 3d 823. Agencies should be aware that the notice and filing requirements stated either in Sections 21150 et seq. or Sections 21100 et seq. of CEQA may apply depending upon whether the agency is defined as "state" or "local" for CEQA purposes.

15369. Ministerial

"Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080 (b)(1), Public Resources Code; *Johnson v. State of California*, 69 Cal. 2d 782; *Day v. City of Glendale*, 51 Cal. App. 3d 817.

Discussion: This definition draws upon earlier judicial definitions of "ministerial" and discretionary governmental actions and provides examples. Neither term is technically precise.

As carefully pointed out in *Friends of Westwood, Inc. v. Los Angeles* (1987) 191 Cal. App. 3d 259, usually building permits are ministerial but the approval process for a project unusual in size, dimension and location involve discretionary aspects which are subject to CEQA; it is enough the [agency] possesses discretion to require changes which would mitigate in whole or in part one or more of the [significant] environmental consequences an EIR might conceivably uncover. See also discussion for Section 15268.

15369.5. Mitigated Negative Declaration

"Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21064.5, Public Resources Code.

15370. Mitigation

"Mitigation" includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

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- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21002, 21002.1, 21081, and 21100(c), Public Resources Code.

Discussion: This definition of the term "mitigation" adopts the definition contained in the federal NEPA regulations. The federal definition is used so that this term will have identical meanings under NEPA and CEQA for projects which are subject to both acts.

15371. Negative Declaration

"Negative Declaration" means a written statement by the Lead Agency briefly describing the reasons that a proposed project, not exempt from CEQA, will not have a significant effect on the environment and therefore does not require the preparation of an EIR. The contents of a Negative Declaration are described in Section 15071.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080 (c), Public Resources Code.

Discussion: This definition is added in order to provide a clear, short identification of the term "Negative Declaration." The section identifies four essential concepts dealing with the document. First, the Negative Declaration applies to projects which are not exempt. Second, the document must be written and provide a brief explanation of its conclusion. Third, the document is used where the agency concludes that the project will not have a significant effect on the environment. Fourth, the document serves as a statement that the agency will not prepare an EIR, but the statement is used only where it is based on a finding that the project will not cause a significant effect on the environment.

15372. Notice of Completion

"Notice of Completion" means a brief notice filed with OPR by a Lead Agency as soon as it has completed a draft EIR and is prepared to send out copies for review. The contents of this notice are explained in Section 15085.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21161, Public Resources Code.

Discussion: This section defines the term "Notice of Completion" to provide a commonly used and recognized term for the notice which the statute requires a Lead Agency to file when an EIR has been completed.

15373. Notice of Determination

"Notice of Determination" means a brief notice to be filed by a public agency after it approves or determines to carry out a project which is subject to the requirements of CEQA. The contents of this notice are explained in Sections 15075 and 15094.

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

Discussion: This section defines the term "Notice of Determination" to provide a commonly used and recognized term for the notice which the statute requires an agency to file after it has approved the project at the end of the CEQA process. One cross-reference describes the contents of the notice when

used with a Negative Declaration. The other describes the contents after an EIR has been prepared.

15374. Notice of Exemption

"Notice of Exemption" means a brief notice which may be filed by a public agency after it has decided to carry out or approve a project and has determined that the project is exempt from CEQA as being ministerial, categorically exempt, an emergency, or subject to another exemption from CEQA. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project. The contents of this notice are explained in Section 15062.

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

Discussion: This section provides a definition for the notice which an agency is authorized to file when it determines that a particular project is exempt from the requirements of CEQA. The statute authorizes the use of this notice but does not provide a name or detailed explanation for it.

15375. Notice of Preparation

"Notice of Preparation" means a brief notice sent by a Lead Agency to notify the Responsible Agencies, Trustee Agencies, and involved federal agencies that the Lead Agency plans to prepare an EIR for the project. The purpose of the notice is to solicit guidance from those agencies as to the scope and content of the environmental information to be included in the EIR. Public agencies are free to develop their own formats for this notice. The contents of this notice are described in Section 15082.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21080.4, Public Resources Code.

Discussion: This definition provides a commonly used and easily recognizable name for the notice which a Lead Agency is required to send to Responsible Agencies to obtain the views of Responsible Agencies on the contents of an EIR which the Lead Agency will prepare. The reference to federal agencies was added because Section 15082 requires this notice to be sent to federal agencies.

15376. Person

"Person" includes any person, firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, city, county, city and county, town, the state, and any of the agencies or political subdivisions of such entities.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21066, Public Resources Code.

Discussion: This definition indicates the broad scope of the term "person" as used in CEQA. This term is used in a number of different places in the Guidelines and the statute in ways that require use of such a broad definition. Legislation enacted in 1998 specifies that "person" includes federal agencies to the extent permitted by federal law (AB 2397 -- Chapter 272, Statutes of 1998). This addition is pertinent where federal law has delegated regulatory responsibility for actions on federal land or by federal agencies to the state.

15377. Private Project

A "private project" means a project which will be carried out by a person other than a governmental agency, but the project will need a discretionary approval from one or more governmental agencies for:

- (a) A contract or financial assistance, or
- (b) A lease, permit, license, certificate, or other entitlement for use.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21065, Public Resources Code.

Discussion: This section defines a term to be used in the place of a much longer phrase several places in the statute. In a number of different contexts, the statute sets up special requirements that apply by way of a cross-reference to activities which involve the issuance of a lease, license, certificate, permit, or other entitlement for use. It is clearer in these situations to refer to private projects.

15378. Project

(a) "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

- (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100-65700.
- (2) An activity undertaken by a person which is supported in whole or in part through public agency contacts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
- (3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(b) Project does not include:

- (1) Proposals for legislation to be enacted by the State Legislature;
- (2) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, general policy and procedure making (except as they are applied to specific instances covered above);
- (3) The submittal of proposals to a vote of the people of the state or of a particular community. (*Stein v. City of Santa Monica* (1980) 110 Cal.App.3d 458);
- (4) The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.
- (5) Organizational or administrative activities of governments which are political or which are not physical changes in the environment (such as the reorganization of a school district or detachment of park land).

(c) The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term "project" does not mean each separate governmental approval.

(d) Where the Lead Agency could describe the project as either the adoption of a particular regulation under subsection (a)(1) or as a development proposal which will be subject to several governmental approvals under subsections (a)(2) or (a)(3), the Lead Agency shall describe the project as the development proposal for the purpose of environmental analysis. This approach will implement the Lead Agency principle as described in Article 4.

Note: Authority: Sections 21083 and 21087, Public Resources Code; Reference: Section 21065, Public Resources Code; *Kaufman and Broad-South Bay, Inc. v. Morgan Hill Unified School District*

(1992) 9 Cal.App.4th 464; and *Fullerton Joint Union High School District v. State Board of Education* (1982) 32 Cal.3d 779; *Simi Valley Recreation and Park District v. Local Agency Formation Commission of Ventura County* (1975) 51 Cal.App.3d 648

Discussion: This section provides a more complete explanation of the term "project." This term describes activities which are subject to CEQA. This definition brings together a number of separate provisions in the Act. These are the definition of the term contained in Section 21065 of the statute, the Lead Agency concept in Section 21165 of the statute, and the result of a number of court decisions interpreting this term. Chapter 1230 of the Statutes of 1994 codifies the emphasis on "physical change" in the environment.

Following the State Supreme Court's decision in *Friends of Mammoth*, the Legislature added a definition of the term "project" to the statute. The definition provided that "project" meant activities directly undertaken by government, activities financed by government, or activities requiring a permit or other approval from government. The Legislature then added the words "or approve" to the section requiring that agencies shall prepare an EIR "on any project they proposed to carry out or approve which may have a significant effect on the environment."

Reading the language of Sections 21065 and 21100 together, the project which is to be analyzed in the EIR is not the approval itself but is that which is being approved.

With some activities carried out by government, the plan, control, or regulation being adopted may need to be regarded as the project even though the plan, etc., is being adopted to control activities to be initiated later by other people. For example, in approving a new general plan for a city, the city council would properly regard the general plan itself as the project. The EIR would examine the environmental changes that would probably result from adopting the new plan. In this situation, the governmental plan would not be proposed in conjunction with a proposal for a specific development project, and the EIR on the plan would need to examine the range of possible effects of the plan. If, however, a small amendment to the general plan was requested as one of several approvals necessary for a specific development project, the city should characterize the proposed development as the project. In this way, the city would implement the Lead Agency concept by designating as the project the activity which would be approved by a number of agencies. This approach would result in only one EIR being prepared for the proposed development as required by Sections 21165 and 21166 of CEQA.

In *Livermore v. Local Agency Formation Commission of Alameda County* (1986) 184 Cal. App. 3d 531/(1986) 183 Cal. App. 3d. 681, the court ruled that LAFCO's guideline revisions fit within CEQA's broad definition of a project because they are a discretionary activity of a public agency that will unquestionably have an ultimate impact on the environment, i.e., major policy decisions that determine whether growth will occur in unincorporated areas and whether agricultural land will be preserved or developed.

However, in marked contrast, *Northwood Homes, Inc. v. Moraga* (1989) 216 Cal. App. 3d 1197 concluded that general guidelines enacted as administrative activities for procedural implementation as to definitions of terms and application procedures of land use decisions are not a project.

Items (4) and (5) under subsection (b) codify the decisions in *Kaufman and Broad-South Bay, Inc. v. Morgan Hill Unified School District* (1992) 9 Cal.App.4th 464 and *Simi Valley Recreation and Park District v. Local Agency Formation Commission of Ventura County* (1975) 51 Cal.App.3d 648 which clarify that CEQA does not apply to activities which do not result, either directly or in a reasonably foreseeable indirect way, in a physical change to the environment.

15379. Public Agency

"Public agency" includes any state agency, board, or commission and any local or regional agency, as defined in these Guidelines. It does not include the courts of the state. This term does not include agencies of the federal government.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21063, Public Resources Code.

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Discussion: This definition is necessary in order to show that the scope of the term "public agency" under CEQA does not include agencies of the federal government.

15380. Endangered, Rare or Threatened Species

(a) "Species" as used in this section means a species or subspecies of animal or plant or a variety of plant.

(b) A species of animal or plant is:

(1) "Endangered" when its survival and reproduction in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors; or

(2) "Rare" when either:

(A) Although not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens; or

(B) The species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range and may be considered "threatened" as that term is used in the Federal Endangered Species Act.

(c) A species of animal or plant shall be presumed to be endangered, rare or threatened, as it is listed in:

(1) Sections 670.2 or 670.5, Title 14, California Code of Regulations; or

(2) Title 50, Code of Federal Regulations Section 17.11 or 17.12 pursuant to the Federal Endangered Species Act as rare, threatened, or endangered.

(d) A species not included in any listing identified in subsection (c) shall nevertheless be considered to be endangered, rare or threatened, if the species can be shown to meet the criteria in subsection (b).

(e) This definition shall not include any species of the Class Insecta which is a pest whose protection under the provisions of CEQA would present an overwhelming and overriding risk to man as determined by:

(1) The Director of Food and Agriculture with regard to economic pests; or

(2) The Director of Health Services with regard to health risks.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21001 (c), Public Resources Code.

Discussion: This definition is modeled after the definition in the Federal Rare and Endangered Species Act and the sections of the California Fish and Game Code dealing with rare or endangered plants or animals.

The definition provides that plants or animals already listed by a governmental agency as being rare or endangered shall be presumed rare or endangered for the purposes of CEQA. This presumption allows a Lead Agency to consider a listed species as rare or endangered without the need for any further proof. The section also provides that a plant or animal may be treated as rare or endangered even if it has not been placed on an official list. The section also adds the concept that rare or endangered status shall not be applied to insect pests designated by the Director of Food and Agriculture as meeting the criteria in this section.

15381. Responsible Agency

"Responsible Agency" means a public agency which proposes to carry out or approve a project, for which a Lead Agency is preparing or has prepared an EIR or Negative Declaration. For the purposes of CEQA, the term "Responsible Agency" includes all public agencies other than the Lead Agency which have discretionary approval power over the project.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21002.1, 21069, 21080.1, 21080.3, 21080.4, 21167.2, and 21167.3, Public Resources Code.

Discussion: This section provides explanation of the term "Responsible Agency".

15382. Significant Effect on the Environment

"Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21068, 21083, 21100, and 21151, Public Resources Code; *Hecton v. People of the State of California*, 58 Cal. App. 3d 653.

Discussion: The first sentence combines the statutory language in the definitions of "significant effect" and "environment" in the interest of clarity because they are interrelated.

The second and third sentences pose a problem of interpretation that has caused controversy for many years. The controversy centers around the extent to which CEQA applies to economic and social effects of projects. In determining whether an effect is significant, however, Section 21083(c) of CEQA requires an effect to be found significant if the activity would cause an adverse effect on people.

This section also codifies the holding in *Hecton v. People of the State of California*, 58 Cal. App. 3d 653, which ruled that a claim that a project would cause a decline in property values was not enough by itself to require an EIR to be prepared.

In *Cathay Mortuary, Inc. v. San Francisco Planning Commission* (1989) 207 Cal. App. 3d 275, the court in analyzing significant effect offered inverse guidance regarding whether an alternative site for a proposed park would have better access to sunlight, i.e., it is irrelevant whether some body of opinion views some other alternative site as "better suited" (essentially as a planning determination), if the net impact of the project site is not an adverse change, no EIR is required. In this case, demolition of a building would provide access to sunlight in a portion of the impacted area that currently did not have access to sunlight -- in other words, access to sunlight when none currently exists is not an adverse change.

15383. State Agency

"State agency" means a governmental agency in the executive branch of the State Government or an entity which operates under the direction and control of an agency in the executive branch of State Government and is funded primarily by the State Treasury.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21100, Public Resources Code.

Discussion: This section distinguishes state agencies from local agencies. Different requirements may

apply depending on whether a state or local agency is involved. For example, if a project will require a permit from a state agency, the EIR or Negative Declaration on the project must be sent to the State Clearinghouse for review. This term is not defined in the Public Resources Code, and there is often confusion as to whether a particular agency with a limited geographical jurisdiction is a state agency or a local agency. For example, the San Francisco Bay Conservation and Development Commission is a state agency, but the Bay Area Air Quality Management District is a local agency for all but Section 21080.5 of CEQA. The definition is an effort to provide a clearer basis for the distinction.

15384. Substantial Evidence

(a) "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

(b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; References: Sections 21080, 21082.2, 21168, and 21168.5, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68; *Running Fence Corp. v. Superior Court* (1975) 51 Cal.App.3d 400; *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988..

Discussion: "Substantial evidence" as used in the Guidelines is the same as the standard of review used by courts in reviewing agency decisions. Some cases suggest that a higher standard, the so called "fair argument standard" applies when a court is reviewing an agency's decision whether or not to prepare an EIR.

Public Resources Code section 21082.2 was amended in 1993 (Chapter 1131) to provide that substantial evidence shall include "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." The statute further provides that "argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence."

15385. Tiering

"Tiering" refers to the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site-specific EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared. Tiering is appropriate when the sequence of EIRs is:

(a) From a general plan, policy, or program EIR to a program, plan, or policy EIR of lesser scope or to a site-specific EIR;

(b) From an EIR on a specific action at an early stage to a subsequent EIR or a supplement to an EIR at a later stage. Tiering in such cases is appropriate when it helps the Lead Agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

Discussion: This definition of "tiering" is modeled closely after the definition in the federal NEPA

regulations. Tiering is needed in order to provide increased efficiency in the CEQA process. It allows agencies to deal with broad environmental issues in EIRs at planning stages and then to provide more detailed examination of specific effects in EIRs on later development projects that are consistent with or implement the plans. These later EIRs are excused by the tiering concept from repeating the analysis of the broad environmental issues examined in the general plan EIRs.

15386. Trustee Agency

"Trustee Agency" means a state agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. Trustee Agencies include:

- (a) The California Department of Fish and Game with regard to the fish and wildlife of the state, to designated rare or endangered native plants, and to game refuges, ecological reserves, and other areas administered by the department;
- (b) The State Lands Commission with regard to state owned "sovereign" lands such as the beds of navigable waters and state school lands;
- (c) The State Department of Parks and Recreation with regard to units of the State Park System;
- (d) The University of California with regard to sites within the Natural Land and Water Reserves System.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21080.3 and 21080.4, Public Resources Code.

Discussion: This section is included to provide a commonly used and clearly recognizable term to use in place of the statutory phrase describing state agencies "having jurisdiction by law over natural resources affected by the project which are held in trust for the people of the State of California." The section also identifies the four agencies which have been found to meet the statutory formula.

Agencies are designated as Trustee Agencies where they administer lands to protect the natural resources on those lands or where a law gives the agency responsibility for protecting the state's interest in a natural resource as with the Department of Fish and Game's responsibility for fish and wildlife. The Department of Fish and Game is listed as a Trustee Agency for designated rare and endangered native plants because Fish and Game Code Section 1913(c) gives the department special responsibilities for protecting these plants after they have been designated rare or endangered by the Fish and Game Commission

15387. Urbanized Area

"Urbanized area" means a central city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile. A Lead Agency shall determine whether a particular area meets the criteria in this section either by examining the area or by referring to a map prepared by the U.S. Bureau of the Census which designates the area as urbanized. Maps of the designated urbanized areas can be found in the California EIR Monitor of February 7, 1979. The maps are also for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The maps are sold in sets only as Stock Number 0301-3466. Use of the term "urbanized area" in Section 15182 is limited to areas mapped and designated as urbanized by the U.S. Bureau of the Census.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21080.7 and 21083, and 21084, Public Resources Code.

Discussion: This section is included to provide certainty and precision for the portions of CEQA that allow special treatment of projects in urbanized areas. These special provisions apply to residential projects in urbanized areas as well as categorical exemptions for certain kinds of activities. The revisions in this section allows a Lead Agency to determine on its own whether a project is located in

an area meeting the criteria for being "urbanized" even if the area is not included on the Census Bureau maps. This change allows the special relaxations of the CEQA process to be applied in areas.

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