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CEQA

The California Environmental Quality Act

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

Article 6. Negative Declaration Process

Sections 15070 to 15075

15070. Decision to Prepare a Negative or Mitigated Negative Declaration

A public agency shall prepare or have prepared a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when:

- (a) The initial study shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a significant effect on the environment, or
- (b) The initial study identifies potentially significant effects, but:
 - (1) Revisions in the project plans or proposals made by, or agreed to by the applicant before a proposed mitigated 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 effects would occur, and
 - (2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21064, 21064.5, 21080(c), and 21082.1, Public Resources Code; *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988; *Running Fence Corp. v. Superior Court* (1975) 51 Cal.App.3d 400..

Discussion: Section 15070 substantially mirrors the language of Public Resources Code section 21080 (c). Under subsection (a) a Negative Declaration shall be adopted when the Initial Study shows that the project may not have a significant effect on the environment.

Subsection (b) states that the Negative Declaration shall be adopted when two conditions are met: (1) the project or plan or proposals as agreed to by the applicant prior to public review of the proposed Negative Declaration has been revised to avoid significant effects or the effects have been mitigated down to a point where the effects are clearly insignificant and (2), there is no substantial evidence before the agency that the project as revised may have a significant effect.

Subsection (b) reflects the concept of the "Mitigated Negative Declaration" as defined in Public Resources Code section 21064.5. A Mitigated Negative Declaration is not intended to be a new kind of document. It is merely a Negative Declaration prepared in a slightly different situation. The Guidelines would continue to give Lead Agencies the option of allowing applicants to modify their projects so that the Lead Agency could make a finding that the project would not have a significant effect on the environment.

The portion of this section dealing with the Mitigated Negative Declaration provides efficiencies in the process where the applicant can modify his project to avoid all potential significant effects. The

applicant can avoid the time and costs involved in preparing an EIR and qualify for a Negative Declaration instead. The public is still given an opportunity to review the proposal to determine whether the changes are sufficient to eliminate the significance of the effects.

Any needed or proposed mitigation measures must be incorporated into a proposed negative declaration and the project revised accordingly before the negative declaration is released for public review. *Sundstrom v. Mendocino* (1988) 202 Cal. App. 3d 296.

Under subsection (a) or (b), if there is any substantial evidence before the Lead Agency that the project as proposed or revised may have a significant effect, an EIR must be prepared.

15071. Contents

A Negative Declaration circulated for public review shall include:

- (a) A brief description of the project, including a commonly used name for the project, if any;
- (b) The location of the project, preferably shown on a map, and the name of the project proponent;
- (c) A proposed finding that the project will not have a significant effect on the environment;
- (d) An attached copy of the Initial Study documenting reasons to support the finding; and
- (e) Mitigation measures, if any, included in the project to avoid potentially significant effects.

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

Discussion: The purpose of this section is to prescribe the contents of a Negative Declaration. The statute itself does not say what a Negative Declaration must contain. The contents described in this section appear to be the minimum required to meet the public participation and disclosure policies of CEQA.

15072. Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration

(a) A lead agency shall provide a notice of intent to adopt a negative declaration or mitigated negative declaration to the public, responsible agencies, trustee agencies, and the county clerk of each county within which the proposed project is located, sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the public and agencies the review period provided under Section 15105.

(b) The lead agency shall mail a notice of intent to adopt a negative declaration or mitigated negative declaration to the last known name and address of all organizations and individuals who have previously requested such notice in writing and shall also give notice of intent to adopt a negative declaration or mitigated negative declaration by at least one of the following procedures to allow the public the review period provided under Section 15105:

(1) Publication at least one time by the lead agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the lead agency on and off site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(c) The alternatives for providing notice specified in subdivision (b) shall not preclude a lead agency from providing additional notice by other means if the agency so desires, nor shall the requirements of this section preclude a lead agency from providing the public notice at the same time and in the same manner as public notice required by any other laws for the project.

(d) The county clerk of each county within which the proposed project is located shall post such notices in the office of the county clerk within 24 hours of receipt for a period of at least 20 days.

(e) For a project of statewide, regional, or areawide significance, the lead agency shall also provide notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in Section 21092.4(a) of the Public Resources Code. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site and freeways, highways and rail transit service within 10 miles of the project site.

(f) A notice of intent to adopt a negative declaration or mitigated negative declaration shall specify the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments on the proposed negative declaration or mitigated negative declaration. This shall include starting and ending dates for the review period. If the review period has been shortened pursuant to Section 15105, the notice shall include a statement to that effect.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project, when known to the lead agency at the time of notice.

(4) The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions developed under Section 15070(b) and all documents referenced in the proposed negative declaration or mitigated negative declaration are available for review. This location or locations shall be readily accessible to the public during the lead agency's normal working hours.

(5) The presence of the site on any of the lists enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, and hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subdivision (f) of that section.

(6) Other information specifically required by statute or regulation for a particular project or type of project.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21091, 21092, 21092.2, 21092.4, 21092.3, 21092.6, and 21151.8, Public Resources Code.

Discussion: Section 15072 prescribes the notice requirements for a Negative Declaration. Although most of these requirements are contained in Section 21092 of the statute, the Guidelines provide additional explanation and interpretation. In the interest of clarity, the requirements are combined in one place. Subsection (a)(1) explains what is required by the cross-reference in Section 21092 to Section 6061 of the Government Code. Section 6061 requires publication of a notice at least one time in a newspaper of general circulation.

Public Resources Code section 21092 requires that the notice specify the period during which comments will be received, the date, time, and place of any public meetings or hearings on the project, a brief description of the project and its location, and the address where copies of the negative declaration and all documents referenced in the negative declaration are available for review. Section

21092.3 of the Public Resources Code establishes additional requirements for the filing of notice with the County Clerk for posting during the review period.

15073. Public Review of a Proposed Negative Declaration or Mitigated Negative Declaration

- (a) The lead agency shall provide a public review period pursuant to Section 15105 of not less than 20 days. When a proposed negative declaration or mitigated negative declaration and initial study are submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 30 days, unless a shorter period is approved by the State Clearinghouse under Section 15105(d).
- (b) When a proposed negative declaration or mitigated negative declaration and initial study have been submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least as long as the review period established by the State Clearinghouse.
- (c) A copy of the proposed negative declaration or mitigated negative declaration and the initial study shall be attached to the notice of intent to adopt the proposed declaration that is sent to every responsible agency and trustee agency concerned with the project and every other public agency with jurisdiction by law over resources affected by the project.
- (d) Where one or more state agencies will be a responsible agency or a trustee agency or will exercise jurisdiction by law over natural resources affected by the project, or where the project is of statewide, regional, or areawide environmental significance, the lead agency shall send copies of the proposed negative declaration or mitigated negative declaration to the State Clearinghouse for distribution to state agencies.
- (e) The lead agency shall notify in writing any public agency which comments on a proposed negative declaration or mitigated negative declaration of any public hearing to be held for the project for which the document was prepared. A notice provided to a public agency pursuant to Section 15072 satisfies this requirement.

Note: Authority cited: Section 21083, Public Resources Code; References: Sections 21000(e), 21003 (b), 21080(c), 21081.6, 21091, and 21092.5, Public Resources Code; *Plaggmier v. City of San Jose* (1980) 101 Cal.App.3d 842..

Discussion: This section makes clear that a public review period is required with a Negative Declaration. The section also brings together in one easily recognizable place the requirements concerning submitting Negative Declarations to the State Clearinghouse for review.

Section 21091 of the Public Resources Code now requires that the public review period for a Negative Declaration shall not be less than 20 days. The review period for Negative Declaration which has been submitted to the State Clearinghouse is 30 days, but the Clearinghouse may authorize a shorter state review period upon formal request by the decision-making body, if consistent with criteria adopted by the Clearinghouse. However, the revised review period so authorized shall not be less than 20 days.

15073.5. Recirculation of a Negative Declaration Prior to Adoption.

- (a) A lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. Notice of recirculation shall comply with Sections 15072 and 15073.
- (b) A "substantial revision" of the negative declaration shall mean:

(1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or

(2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

(c) Recirculation is not required under the following circumstances:

(1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.

(2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.

(3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.

(4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

(d) If during the negative declaration process there is substantial evidence in light of the whole record, before the lead agency that the project, as revised, may have a significant effect on the environment which cannot be mitigated or avoided, the lead agency shall prepare a draft EIR and certify a final EIR prior to approving the project. It shall circulate the draft EIR for consultation and review pursuant to Sections 15086 and 15087, and advise reviewers in writing that a proposed negative declaration had previously been circulated for the project.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080, Public Resources Code; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337; *Long Beach Savings and Loan Assn. v. Long Beach Redevelopment Agency* (1986) 188 Cal.App.3d 249.

Discussion: This section clarifies the situations under which a proposed negative declaration must be recirculated for public review. The recirculation requirements have been established by case law, including *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337 and *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359. By applying this section, agencies will be able to determine whether a negative declaration has been revised to such an extent that it must be recirculated before it may be adopted. The requirements will ensure that the public and other agencies have the opportunity to comment on the revised document. At the same time, this section clarifies that an EIR must be prepared if substantial evidence exists that the project may result in a significant effect. This section only applies where the proposed negative declaration has not yet been adopted and the project has not been approved.

15074. Consideration and Adoption of a Negative Declaration or Mitigated Negative Declaration.

(a) Any advisory body of a public agency making a recommendation to the decisionmaking body shall consider the proposed negative declaration or mitigated negative declaration before making its recommendation.

(b) Prior to approving a project, the decisionmaking body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. The decisionmaking body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the

project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis.

(c) When adopting a negative declaration or mitigated negative declaration, the lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(d) When adopting a mitigated negative declaration, the lead agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects.

(e) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted, for a project within two nautical miles of a public airport or public use airport, without first considering whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21080(c), 21081.6, 21082.1, and 21096, Public Resources Code; *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988.

Discussion: The purpose of this section is to make it clear that the decision-making body of the Lead Agency must consider the Negative Declaration before approving the project. The decision-making body is required to decide whether to approve the Negative Declaration on the basis of the Initial Study and any public comment received. This approach serves the public participation policies in CEQA by requiring the Lead Agency to consider the public comments on a proposed Negative Declaration before approving the Negative Declaration.

Section 21081.6 of the Public Resources Code provides that when a public agency adopts a Negative Declaration which includes provisions to mitigate potentially significant effects or which was issued on the basis of project revisions aimed at mitigating potential environmental effects, the agency shall also adopt a program of monitoring or reporting to ensure that the provisions or revisions are complied with during implementation of the project.

15074.1. Substitution of Mitigation Measures in a Proposed Mitigated Negative Declaration.

(a) As a result of the public review process for a proposed mitigated negative declaration, including any administrative decisions or public hearings conducted on the project prior to its approval, the lead agency may conclude that certain mitigation measures identified in the mitigated negative declaration are infeasible or otherwise undesirable. Prior to approving the project, the lead agency may, in accordance with this section, delete those mitigation measures and substitute for them other measures which the lead agency determines are equivalent or more effective.

(b) Prior to deleting and substituting for a mitigation measure, the lead agency shall do both of the following:

(1) Hold a public hearing on the matter. Where a public hearing is to be held in order to consider the project, the public hearing required by this section may be combined with that hearing. Where no public hearing would otherwise be held to consider the project, then a public hearing shall be required before a mitigation measure may be deleted and a new measure adopted in its place.

(2) Adopt a written finding that the new measure is equivalent or more effective in mitigating or avoiding potential significant effects and that it in itself will not cause any potentially significant effect on the environment.

(c) No recirculation of the proposed mitigated negative declaration pursuant to Section 15072 is required where the new mitigation measures are made conditions of, or are otherwise incorporated into, project approval in accordance with this section.

(d) "Equivalent or more effective" means that the new measure will avoid or reduce the significant effect to at least the same degree as, or to a greater degree than, the original measure and will create no more adverse effect of its own than would have the original measure.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21080(f), Public Resources Code.

Discussion: Public Resources Code Section 21080 allows a lead agency to delete mitigation measures which it concludes are infeasible or otherwise undesirable when it substitutes equivalent or more effective measures. Any proposed substitute measures must be considered at a public hearing. This section defines what can be considered an "equivalent or more effective" measure and clarifies that the lead agency may consider substitute measures at the same public hearing during which it considers that project.

15075. Notice of Determination on a Project for which a Proposed Negative or Mitigated Negative Declaration has been Approved.

(a) The lead agency shall file a notice of determination within five working days after deciding to carry out or approve the project. For projects with more than one phase, the lead agency shall file a notice of determination for each phase requiring a discretionary approval.

(b) The notice of determination shall include:

(1) An identification of the project including the project title as identified on the proposed negative declaration, its location, and the State Clearinghouse identification number for the proposed negative declaration if the notice of determination is filed with the State Clearinghouse.

(2) A brief description of the project.

(3) The agency's name and the date on which the agency approved the project.

(4) The determination of the agency that the project will not have a significant effect on the environment.

(5) A statement that a negative declaration or a mitigated negative declaration was adopted pursuant to the provisions of CEQA.

(6) A statement indicating whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted.

(7) The address where a copy of the negative declaration or mitigated negative declaration may be examined.

(c) If the lead agency is a state agency, the lead agency shall file the notice of determination with the Office of Planning and Research within five working days after approval of the project by the lead agency.

(d) If the lead agency is a local agency, the local lead agency shall file the notice of determination with the county clerk of the county or counties in which the project will be located, within five working days after approval of the project by the lead agency. If the project requires a discretionary approval from any state agency, the local lead agency shall also, within five working days of this approval, file a copy of the notice of determination with the Office of Planning and Research.

(e) A notice of determination filed with the county clerk shall be available for public inspection and shall be posted by the county clerk within 24 hours of receipt for a period of at least 30 days.

Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period during which it was posted. The local lead agency shall retain the notice for not less than 12 months.

(f) A notice of determination filed with the Office of Planning and Research shall be available for public inspection and shall be posted for a period of at least 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.

(g) The filing of the notice of determination pursuant to subdivision (c) above for state agencies and the filing and posting of the notice of determination pursuant to subdivisions (d) and (e) above for local agencies, start a 30-day statute of limitations on court challenges to the approval under CEQA.

(h) A sample notice of determination is provided in Appendix D. Each public agency may devise its own form, but the minimum content requirements of subdivision (b) above shall be met. Public agencies are encouraged to make copies of all notices filed pursuant to this section available in electronic format on the Internet. Such electronic notices are in addition to the posting requirements of these guidelines and the Public Resources Code.

Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(c), 21108(a) and (c), 21152(a) and (c) and 21167(b), Public Resources Code; *Citizens of Lake Murray Area Association v. City Council* (1982) 129 Cal. App. 3d 436.