

AMENDED IN SENATE APRIL 17, 2002

SENATE BILL

No. 1925

Introduced by Senators Sher and Polanco

February 22, 2002

An act to amend Sections ~~21108 and 21152~~ of 21080.10, 21108, and 21152 of, to add Sections 21061.0.5, 21065.3, 21070, 21071, and 21072 to, to add Article 6 (commencing with Section 21159.20) to Chapter 4.5 of Division 13 of, to add and repeal Section 21159.25 of, and to repeal Sections 21080.7, 21080.14, 21083.3, 21085, and 21158.6 of, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 1925, as amended, Sher. ~~Environmental quality: notice of determination~~ *California Environmental Quality Act: exemptions.*

(1) Existing law, the California Environmental Quality Act (*CEQA*), requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect, unless the project is exempt from the act. ~~The act~~ *CEQA* authorizes a state or local lead agency or project proponent to file a notice of determination, as prescribed, whenever the lead agency determines that a project is not subject to ~~the act~~ *CEQA* and the lead agency approves or determines to carry out the project.

This bill would require, rather than authorize, the filing of that notice of determination. The bill would impose a state-mandated local program by imposing new duties on local agencies.

(2) CEQA provides for various exemptions from the requirements of the act relating to housing, including exemptions for agricultural housing, affordable housing projects in urbanized areas, as defined, and projects in the central business district in the City of Oakland.

This bill would recast, recodify, and consolidate those exemptions. The bill would revise the definition of an urbanized area for purposes of those provisions to include any incorporated city with a population of at least 100,000 persons or an incorporated city of less than 100,000 persons if the population of that city and not more than 2 contiguous incorporated cities combined equals at least 100,000 persons.

The bill would also provide an exemption from CEQA for any residential project located on an infill site within an urbanized area that meets specified criteria.

The bill would prohibit the division of a project into smaller projects to qualify for one or more exemptions from CEQA, and would also prohibit a project from qualifying for an exemption from CEQA if the developer or owner of the project, or any entity affiliated with the developer or landowner, has qualified for an exemption from CEQA for another housing project, if that project is located within one-half mile of the boundary of the project.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) *It is the intent of the Legislature to promote*
- 2 *housing in the state by taking all of the following actions:*
- 3 (1) *Placing statutes that provide for a special review of housing*
- 4 *projects under the California Environmental Quality Act, Division*
- 5 *13 (commencing with Section 21000) of the Public Resources*
- 6 *Code, in a single part of the act.*
- 7 (2) *Eliminating any general standard that applies to housing*
- 8 *exemptions that is inconsistent with those provisions.*



1 (3) *Creating a streamlined procedure for certain infill housing*
2 *projects that do not have an adverse effect on the environment.*

3 (b) *The Legislature finds and declares that encouraging infill*
4 *housing will assist in reducing urban sprawl and the*
5 *well-documented and harmful environmental effects caused by*
6 *urban sprawl.*

7 SEC. 2. *Section 21061.0.5 is added to the Public Resources*
8 *Code, to read:*

9 21061.0.5. *“Infill site” means a site that meets both of the*
10 *following criteria:*

11 (a) *The immediately adjacent parcels are developed with urban*
12 *uses or at least 75 percent of the perimeter of the site adjoins*
13 *parcels that are developed with urban uses and the remaining 25*
14 *percent of the site adjoins parcels that have previously been*
15 *developed for urban uses.*

16 (b) *The site meets either of the following:*

17 (1) *The site has been previously developed for urban uses.*

18 (2) *The site has not been developed for urban uses and no*
19 *parcel within the site has been created within the last 10 years.*

20 SEC. 3. *Section 21065.3 is added to the Public Resources*
21 *Code, to read:*

22 21065.3. *“Project-specific impact” means all the direct or*
23 *indirect environmental impacts of a project other than cumulative*
24 *impacts and growth-inducing impacts.*

25 SEC. 4. *Section 21070 is added to the Public Resources Code,*
26 *to read:*

27 21070. *“Transit center” means a site containing an existing*
28 *rail transit station, a ferry terminal served by either a bus or rail*
29 *transit service, or the intersection of three or more major bus*
30 *routes.*

31 SEC. 5. *Section 21071 is added to the Public Resources Code,*
32 *to read:*

33 21071. *“Urbanized area” means an incorporated city that*
34 *meets either of the following criteria:*

35 (a) *Has a population of at least 100,000 persons.*

36 (b) *Has a population of less than 100,000 persons if the*
37 *population of that city and not more than two contiguous*
38 *incorporated cities combined equals at least 100,000 persons.*

39 SEC. 6. *Section 21072 is added to the Public Resources Code,*
40 *to read:*



1 21072. "Urban use" means any residential, commercial,
2 retail, or industrial use, or any combination of those uses.

3 SEC. 7. Section 21080.7 of the Public Resources Code is
4 repealed.

5 21080.7. ~~(a) No environmental impact report or negative
6 declaration is required for any project involving the construction
7 of housing or neighborhood commercial facilities in an urbanized
8 area if the lead agency does all of the following:~~

9 ~~(1) Finds, after giving notice pursuant to subdivision (c) or (d)
10 of Section 21092 and following the procedure prescribed by law
11 or regulation which would be necessary to make a determination
12 pursuant to Section 21080.1, all of the following:~~

13 ~~(A) The project is consistent with a comprehensive regulatory
14 document which has been adopted pursuant to Article 8
15 (commencing with Section 65450) of Chapter 3 of Title 7 of the
16 Government Code or, in the coastal zone, a local coastal program
17 certified pursuant to Article 2 (commencing with Section 30510)
18 of Chapter 6 of Division 20.~~

19 ~~(B) For purposes of this section, the plan or program was
20 adopted pursuant to the procedure established by Article 8
21 (commencing with Section 65450) of Chapter 3 of Title 7 of the
22 Government Code not more than five years prior to the finding
23 made pursuant to this section.~~

24 ~~(C) The plan or program has been the subject of an
25 environmental impact report.~~

26 ~~(D) The environmental impact report is sufficiently detailed so
27 that the significant effects on the environment of the project and
28 measures necessary to mitigate or avoid those effects can be
29 determined, including any significant physical effects on existing
30 structures and neighborhoods of historical or aesthetic
31 significance that exist in the area covered by the plan or program
32 and measures necessary to mitigate or avoid those effects.~~

33 ~~(2) Makes one or more of the findings as required pursuant to
34 Section 21081.~~

35 ~~(3) Files a notice of the decision on the proposed activity with
36 the county clerk. Those notices shall be available for public
37 inspection, and a list of the notices shall be posted on a weekly
38 basis in the office of the county clerk. Each list shall remain posted
39 for a period of 30 days.~~

40 ~~(b) As used in this section:~~



1 ~~(1) “Neighborhood commercial facilities” means those~~
2 ~~commercial facilities which are an integral part of a project~~
3 ~~involving the construction of housing and which will serve the~~
4 ~~residents of the housing.~~

5 ~~(2) “Urbanized area” means a central city or cities and~~
6 ~~surrounding closely settled territory, as defined by the United~~
7 ~~States Department of Commerce Bureau of the Census in the~~
8 ~~Federal Register, Volume 39, Number 85, for Wednesday, May 1,~~
9 ~~1974, at pages 15202 and 15203, and as periodically updated.~~

10 *SEC. 8. Section 21080.10 of the Public Resources Code is*
11 *amended to read:*

12 21080.10. This division does not apply to any of the
13 following:

14 (a) An extension of time, granted pursuant to Section 65361 of
15 the Government Code, for the preparation and adoption of one or
16 more elements of a city or county general plan.

17 (b) Actions taken by the Department of Housing and
18 Community Development or the California Housing Finance
19 Agency to provide financial assistance or insurance for the
20 development and construction of residential housing for persons
21 and families of low or moderate income, as defined in Section
22 50093 of the Health and Safety Code, if the project ~~which~~ *that* is
23 the subject of the application for financial assistance or insurance
24 will be reviewed pursuant to this division by another public
25 agency.

26 ~~(c) (1) Any development project which consists of the~~
27 ~~construction, conversion, or use of residential housing for~~
28 ~~agricultural employees, as defined in paragraph (2), that is~~
29 ~~affordable to lower-income households, as defined in Section~~
30 ~~50079.5 of the Health and Safety Code, if there is no public~~
31 ~~financial assistance for the development project and the developer~~
32 ~~of the development project provides sufficient legal commitments~~
33 ~~to the appropriate local agency to ensure the continued availability~~
34 ~~and use of the housing units for lower-income households for a~~
35 ~~period of at least 15 years, or any development project that consists~~
36 ~~of the construction, conversion, or use of residential housing for~~
37 ~~agricultural employees, as defined in paragraph (2) that is housing~~
38 ~~for very low, low, or moderate income households, as defined in~~
39 ~~paragraph (2) of subdivision (h) of Section 65589.5 of the~~
40 ~~Government Code, if there is public financial assistance for the~~



1 development project and the developer of the development project
2 provides sufficient legal commitments to the appropriate local
3 agency to ensure the continued availability and use of the housing
4 units for low- and moderate-income households for a period of at
5 least 15 years, if either type of development project meets all of the
6 following requirements:

7 (A) (i) If the development project is proposed for an urbanized
8 area, it is located on a project site which is adjacent, on at least two
9 sides, to land that has been developed, and consists of not more
10 than 45 units, or is housing for a total of 45 or fewer agricultural
11 employees if the housing consists of dormitories, barracks, or
12 other group living facilities.

13 (ii) If the development project is proposed for a nonurbanized
14 area, it is located on a project site zoned for general agricultural
15 use, and consists of not more than 20 units, or is housing for a total
16 of 20 or fewer agricultural workers if the housing consists of
17 dormitories, barracks, or other group living facilities.

18 (B) The development project is consistent with the
19 jurisdiction's general plan as it existed on the date that the
20 application was deemed complete.

21 (C) The development project is consistent with the zoning
22 designation, as specified in the zoning ordinance as it existed on
23 the date that the application was deemed complete, unless the
24 zoning is inconsistent with the general plan because the local
25 agency has not rezoned the property to bring it into conformity
26 with the general plan.

27 (D) The development project site is not more than five acres in
28 area, except that a project site located in an area with a population
29 density of at least 1,000 persons per square mile shall not be more
30 than two acres in area.

31 (E) The development project site can be adequately served by
32 utilities.

33 (F) The development project site has no value as a wildlife
34 habitat.

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

38 (H) The development project will not involve the demolition
39 of, or any substantial adverse change, in any structure that is listed;



1 ~~or is determined to be eligible for listing, in the California Register~~
2 ~~of Historic Resources.~~

3 ~~(2) As used in paragraph (1), “residential housing for~~
4 ~~agricultural employees” means housing accommodations for an~~
5 ~~agricultural employee, as defined in subdivision (b) of Section~~
6 ~~1140.4 of the Labor Code.~~

7 ~~(3) As used paragraph (1), “urbanized area” means either of~~
8 ~~the following:~~

9 ~~(A) An area with a population density of at least 1,000 persons~~
10 ~~per square mile.~~

11 ~~(B) An area with a population density of less than 1,000 persons~~
12 ~~per square mile that is identified as an urban area in a general plan~~
13 ~~adopted by a local government, and was not designated, on the date~~
14 ~~that the application was deemed complete, as an area reserved for~~
15 ~~future urban growth.~~

16 ~~(4) This division shall apply to any development project~~
17 ~~described in this subdivision if a public agency which is carrying~~
18 ~~out or approving the development project determines that there is~~
19 ~~a reasonable possibility that the project, if completed, would have~~
20 ~~a significant effect on the environment due to unusual~~
21 ~~circumstances, or that the cumulative impact of successive~~
22 ~~projects of the same type in the same area over time would be~~
23 ~~significant.~~

24 ~~SEC. 9. Section 21080.14 of the Public Resources Code is~~
25 ~~repealed.~~

26 ~~21080.14. (a) Except as provided in subdivision (e), this~~
27 ~~division does not apply to any development project that consists~~
28 ~~of the construction, conversion, or use of residential housing~~
29 ~~consisting of not more than 100 units in an urbanized area that is~~
30 ~~affordable to lower income households, as defined in Section~~
31 ~~50079.5 of the Health and Safety Code, if the developer of the~~
32 ~~development project provides sufficient legal commitments to the~~
33 ~~appropriate local agency to ensure the continued availability and~~
34 ~~use of the housing units for lower income households for a period~~
35 ~~of at least 15 years, or that is housing for very low, low, or~~
36 ~~moderate-income households, as defined in paragraph (2) of~~
37 ~~subdivision (h) of Section 65589.5 of the Government Code, if the~~
38 ~~developer of the development project provides sufficient legal~~
39 ~~commitments to the appropriate local agency to ensure the~~
40 ~~continued availability and use of the housing units for low and~~



1 moderate-income households at monthly housing costs as
2 determined pursuant to paragraph (2) of subdivision (h) of Section
3 65589.5 of the Government Code, the developer provides
4 sufficient legal commitments to ensure continued availability of
5 units for the lower income households for 30 years as provided in
6 paragraph (3) of subdivision (h) of Section 65589.5 of the
7 Government Code, and the development project meets all of the
8 following requirements:

9 (1) The development project is consistent with the
10 jurisdiction's general plan or any applicable specific plan or local
11 coastal program as it existed on the date that the application was
12 deemed complete.

13 (2) The development project is consistent with the zoning
14 designation, as specified in the zoning ordinance as it existed on
15 the date that the application was deemed complete, unless the
16 zoning is inconsistent with the general plan because the local
17 agency has not rezoned the property to bring it into conformity
18 with the general plan.

19 (3) The project site is an infill site that has been previously
20 developed for urban uses, or the immediately contiguous
21 properties surrounding the project site are, or previously have
22 been, developed for urban uses.

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

24 (5) The project site can be adequately served by utilities.

25 (6) The project site has no value as a wildlife habitat.

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

29 (8) The project site is subject to an assessment prepared by a
30 California registered environmental assessor to determine the
31 presence of hazardous contaminants on the site and the potential
32 for exposure of site occupants to significant health hazards from
33 nearby properties and activities. If hazardous contaminants on the
34 site are found, the contaminants shall be removed or any
35 significant effects of those contaminants shall be mitigated to a
36 level of insignificance. If the potential for exposure to significant
37 health hazards from surrounding properties or activities is found
38 to exist, the effects of the potential exposure shall be mitigated to
39 a level of insignificance.



1 ~~(9) The project will not involve the demolition of, or any~~
2 ~~substantial adverse change in, any district, landmark, object,~~
3 ~~building, structure, site, area, or place that is listed, or determined~~
4 ~~to be eligible for listing, in the California Register of Historical~~
5 ~~Resources.~~

6 ~~(b) As used in subdivision (a), “urbanized area” means an area~~
7 ~~that has a population density of at least 1,000 persons per square~~
8 ~~mile.~~

9 ~~(c) Notwithstanding subdivision (a), this division does apply to~~
10 ~~a development project described in subdivision (a) if there is a~~
11 ~~reasonable possibility that the development project would have a~~
12 ~~significant effect on the environment or the residents of the~~
13 ~~development project due to unusual circumstances or due to~~
14 ~~related or cumulative impacts of reasonably foreseeable projects~~
15 ~~in the vicinity of the development project.~~

16 *SEC. 10. Section 21083.3 of the Public Resources Code is*
17 *repealed.*

18 ~~21083.3.—(a) If a parcel has been zoned to accommodate a~~
19 ~~particular density of development or has been designated in a~~
20 ~~community plan to accommodate a particular density of~~
21 ~~development and an environmental impact report was certified for~~
22 ~~that zoning or planning action, the application of this division to~~
23 ~~the approval of any subdivision map or other project that is~~
24 ~~consistent with the zoning or community plan shall be limited to~~
25 ~~effects upon the environment which are peculiar to the parcel or~~
26 ~~to the project and which were not addressed as significant effects~~
27 ~~in the prior environmental impact report, or which substantial new~~
28 ~~information shows will be more significant than described in the~~
29 ~~prior environmental impact report.~~

30 ~~(b) If a development project is consistent with the general plan~~
31 ~~of a local agency and an environmental impact report was certified~~
32 ~~with respect to that general plan, the application of this division to~~
33 ~~the approval of that development project shall be limited to effects~~
34 ~~on the environment which are peculiar to the parcel or to the~~
35 ~~project and which were not addressed as significant effects in the~~
36 ~~prior environmental impact report, or which substantial new~~
37 ~~information shows will be more significant than described in the~~
38 ~~prior environmental impact report.~~

39 ~~(c) Nothing in this section affects any requirement to analyze~~
40 ~~potentially significant offsite impacts and cumulative impacts of~~



1 the project not discussed in the prior environmental impact report
2 with respect to the general plan. However, all public agencies with
3 authority to mitigate the significant effects shall undertake or
4 require the undertaking of any feasible mitigation measures
5 specified in the prior environmental impact report relevant to a
6 significant effect which the project will have on the environment
7 or, if not, then the provisions of this section shall have no
8 application to that effect. The lead agency shall make a finding, at
9 a public hearing, as to whether those mitigation measures will be
10 undertaken.

11 (d) An effect of a project upon the environment shall not be
12 considered peculiar to the parcel or to the project, for purposes of
13 this section, if uniformly applied development policies or
14 standards have been previously adopted by the city or county, with
15 a finding based upon substantial evidence, which need not include
16 an environmental impact report, that the development policies or
17 standards will substantially mitigate that environmental effect
18 when applied to future projects, unless substantial new
19 information shows that the policies or standards will not
20 substantially mitigate the environmental effect.

21 (e) Where a community plan is the basis for application of this
22 section, any rezoning action consistent with the community plan
23 shall be a project subject to exemption from this division in
24 accordance with this section. As used in this section, "community
25 plan" means a part of the general plan of a city or county which
26 (1) applies to a defined geographic portion of the total area
27 included in the general plan, (2) complies with Article 5
28 (commencing with Section 65300) of Chapter 3 of Division 1 of
29 Title 7 of the Government Code by including or referencing each
30 of the mandatory elements specified in Section 65302 of the
31 Government Code, and (3) contains specific development policies
32 adopted for the area included in the community plan and identifies
33 measures to implement those policies, so that the policies which
34 will apply to each parcel can be determined.

35 (f) No person shall have standing to bring an action or
36 proceeding to attack, review, set aside, void, or annul a finding of
37 a public agency made at a public hearing pursuant to subdivision
38 (a) with respect to the conformity of the project to the mitigation
39 measures identified in the prior environmental impact report for
40 the zoning or planning action, unless he or she has participated in



1 ~~that public hearing. However, this subdivision shall not be~~
2 ~~applicable if the local agency failed to give public notice of the~~
3 ~~hearing as required by law. For purposes of this subdivision, a~~
4 ~~person has participated in the public hearing if he or she has either~~
5 ~~submitted oral or written testimony regarding the proposed~~
6 ~~determination, finding, or decision prior to the close of the~~
7 ~~hearing.~~

8 (g) ~~Any community plan adopted prior to January 1, 1982,~~
9 ~~which does not comply with the definitional criteria specified in~~
10 ~~subdivision (e) may be amended to comply with that criteria, in~~
11 ~~which case the plan shall be deemed a “community plan” within~~
12 ~~the meaning of subdivision (e) if (1) an environmental impact~~
13 ~~report was certified for adoption of the plan, and (2) at the time of~~
14 ~~the conforming amendment, the environmental impact report has~~
15 ~~not been held inadequate by a court of this state and is not the~~
16 ~~subject of pending litigation challenging its adequacy.~~

17 *SEC. 11. Section 21085 of the Public Resources Code is*
18 *repealed.*

19 ~~21085. With respect to a project which includes housing~~
20 ~~development, a public agency shall not, pursuant to this division,~~
21 ~~reduce the proposed number of housing units as a mitigation~~
22 ~~measure or project alternative for a particular significant effect on~~
23 ~~the environment if it determines that there is another feasible~~
24 ~~specific mitigation measure or project alternative that would~~
25 ~~provide a comparable level of mitigation. This section shall not~~
26 ~~affect any other requirement regarding the residential density of~~
27 ~~that project.~~

28 *SEC. 12. Section 21108 of the Public Resources Code is*
29 *amended to read:*

30 21108. (a) Whenever a state agency approves or determines
31 to carry out a project that is subject to this division, it shall file
32 notice of that approval or that determination with the Office of
33 Planning and Research. The notice shall indicate the determination
34 of the state agency whether the project will, or will not, have a
35 significant effect on the environment and shall indicate whether an
36 environmental impact report has been prepared pursuant to this
37 division.

38 (b) Whenever a state agency determines that a project is not
39 subject to this division pursuant to subdivision (b) of Section
40 21080 or pursuant to Section 21085 or 21172, and it approves or



1 determines to carry out that project, the state agency, or the person
2 specified in subdivision (b) or (c) of Section 21065, shall file
3 notice of the determination with the Office of Planning and
4 Research. Any notice of determination filed pursuant to this
5 subdivision by a person specified in subdivision (b) or (c) of
6 Section 21065 shall have a certificate of determination attached to
7 it issued by the state agency responsible for making the
8 determination that the project is not subject to this division
9 pursuant to subdivision (b) of Section 21080 or pursuant to Section
10 21085 or 21172. The certificate of determination may be in the
11 form of a certified copy of an existing document or record of the
12 state agency.

13 (c) All notices filed pursuant to this section shall be available
14 for public inspection, and a list of these notices shall be posted on
15 a weekly basis in the Office of Planning and Research. Each list
16 shall remain posted for a period of 30 days.

17 ~~SEC. 2.—~~

18 *SEC. 13.* Section 21152 of the Public Resources Code is
19 amended to read:

20 21152. (a) Whenever a local agency approves or determines
21 to carry out a project that is subject to this division, it shall file
22 notice of the approval or the determination within five working
23 days after the approval or determination becomes final, with the
24 county clerk of each county in which the project will be located.
25 The notice shall indicate the determination of the local agency
26 whether the project will, or will not, have a significant effect on the
27 environment and shall indicate whether an environmental impact
28 report has been prepared pursuant to this division. The notice shall
29 also include certification that the final environmental impact
30 report, if one was prepared, together with comments and
31 responses, is available to the general public.

32 (b) Whenever a local agency determines that a project is not
33 subject to this division pursuant to subdivision (b) of Section
34 21080 or pursuant to Section 21085 or 21172, and it approves or
35 determines to carry out the project, the local agency, or the person
36 specified in subdivision (b) or (c) of Section 21065, shall file a
37 notice of the determination with the county clerk of each county
38 in which the project will be located. Any notice of determination
39 filed pursuant to this subdivision by a person specified in
40 subdivision (b) or (c) of Section 21065 shall have a certificate of



1 determination attached to it issued by the local agency responsible
2 for making the determination that the project is not subject to this
3 division pursuant to subdivision (b) of Section 21080 or pursuant
4 to Section 21085 or 21172. The certificate of determination may
5 be in the form of a certified copy of an existing document or record
6 of the local agency.

7 (c) All notices filed pursuant to this section shall be available
8 for public inspection, and shall be posted within 24 hours of receipt
9 in the office of the county clerk. Each notice shall remain posted
10 for a period of 30 days. Thereafter, the clerk shall return the notice
11 to the local agency with a notation of the period it was posted. The
12 local agency shall retain the notice for not less than nine months.

13 ~~SEC. 3.—~~

14 ~~SEC. 14. Section 21158.6 of the Public Resources Code is~~
15 ~~repealed.~~

16 ~~21158.6.—(a) For a project in the City of Oakland that consists~~
17 ~~of multiple-family residential development, or a residential and~~
18 ~~commercial or retail mixed-use development with not more than~~
19 ~~25 percent of the total floor area of the project utilized as retail~~
20 ~~space, a focused environmental impact report may be prepared,~~
21 ~~notwithstanding that the project was not identified in a master~~
22 ~~environmental impact report, if all of the following conditions are~~
23 ~~met:~~

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

25 ~~(A) Authorizes the implementation of this section. The city~~
26 ~~council may authorize the implementation of this section only by~~
27 ~~voting to approve the practice of preparing focused environmental~~
28 ~~impact reports for projects in the central business district housing~~
29 ~~target areas specified in paragraph (10):~~

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

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

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

39 ~~(2) The city submits a draft determination to the Office of~~
40 ~~Planning and Research that the applicable general plan, zoning~~



1 ordinance, and any related policies and programs are consistent
2 with the principles described in subparagraph (B) of paragraph (1)
3 prior to the city council making its determination regarding that
4 consistency. The office may submit comments on the draft
5 findings to the city council within 30 days from the date that the
6 city submits the draft determination to the office.

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

9 (4) The project is consistent with the general plan, any
10 applicable specific plan and community plan, and zoning
11 ordinance, including any variance that is properly granted
12 pursuant to that zoning ordinance, an environmental impact report
13 was prepared for the general plan, and the application for the
14 project is deemed complete pursuant to Section 65943 of the
15 Government Code within 3 years of the date this section is
16 effective.

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

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

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

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

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

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

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

34 (10) The project does not include a single level building that
35 exceeds the square footage limitation specified in subdivision (a)
36 of Section 21158.5.

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

39 (A) The Valdez cluster, which is bounded on the west by
40 Telegraph Avenue, on the south by 23rd Street, on the east by



1 ~~Harrison Street, and on the north by 27th Street. A project located~~
2 ~~in this cluster that meets the condition described in paragraph (8)~~
3 ~~may include a portion up to one acre that does not meet that~~
4 ~~condition.~~

5 ~~(B) The Uptown cluster, which is bounded on the west by~~
6 ~~Castro Street, on the south by 14th Street from Castro Street to~~
7 ~~Jefferson Street and 16th Street from Jefferson Street to Broadway,~~
8 ~~on the east by Jefferson Street from 14th Street to 16th Street and~~
9 ~~Broadway from 16th Street to 22nd Street, and on the north by~~
10 ~~22nd Street.~~

11 ~~(C) The 11th Street cluster, which is bounded by Franklin~~
12 ~~Street from 12th Street to 15th Street, by Webster from 11th Street~~
13 ~~to 12th Street, by Alice Street from 11th Street to 13th Street, by~~
14 ~~12th Street from Franklin Street to Webster Street, by 11th Street~~
15 ~~from Webster Street to Alice Street and 13th Street from Alice~~
16 ~~Street to Madison Street, and on the east by Madison Street from~~
17 ~~13th Street to 15th Street, and on the north by 15th Street from~~
18 ~~Franklin Street to Madison Street.~~

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

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

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

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

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

35 ~~(C) The time periods for preparing each of the focused~~
36 ~~environmental impact reports prepared pursuant to this section,~~
37 ~~and for acting on each project from the date that the application~~
38 ~~was deemed complete.~~

39 ~~(D) A description of any alternatives to a project, cumulative~~
40 ~~impacts of a project, growth inducing impacts of a project, or other~~



1 ~~issues that may have been identified and analyzed if an~~
2 ~~environmental document, other than a focused environmental~~
3 ~~impact report, had been prepared for the project.~~

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

9 ~~(d) This section shall remain in effect only until January 1,~~
10 ~~2005, and as of that date is repealed, unless a later enacted statute,~~
11 ~~that is enacted before January 1, 2005, deletes or extends that date.~~

12 *SEC. 15. Article 6 (commencing with Section 21159.20) is*
13 *added to Chapter 4.5 of Division 13 of the Public Resources Code,*
14 *to read:*

15

16 *Article 6. Special Review of Housing Projects*

17

18 *21159.20. For the purposes of this article, the following terms*
19 *have the following meanings:*

20 *(a) "Low-income households" means households of persons*
21 *and families of very low and low income, as defined in Sections*
22 *50093 and 50105 of the Health and Safety Code.*

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

26 *21159.21. A housing project qualifies for an exemption from*
27 *this division if it meets all of the following criteria:*

28 *(a) The project is in compliance with any applicable general*
29 *plan, specific plan, and local coastal program, including any*
30 *mitigation measures required by a plan or program, and with any*
31 *applicable zoning ordinance, without the need for a variance.*

32 *(b) An environmental impact report is certified on the adoption*
33 *of the general plan and any applicable specific plan.*

34 *(c) The project and other projects approved prior to the*
35 *approval of the project can be adequately served by existing*
36 *infrastructure, utilities, and services.*

37 *(d) The site of the project does not contain wetlands, does not*
38 *have any value as a wildlife habitat, and does not harm any species*
39 *entitled to protection by law.*



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

4 (f) The site of the project is subject to a preliminary
5 endangerment assessment prepared by a registered environmental
6 assessor to determine the existence of any release of a hazardous
7 substance on the site and to determine the potential for exposure
8 of future occupants to significant health hazards from any nearby
9 property or activity.

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

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

18 (g) The project does not have a significant effect on historical
19 resources.

20 (h) The project site is not subject to a risk for fire, flood,
21 earthquake, explosion, or public health exposure that is unusual
22 to the neighborhood or is subject to that risk, but the risk has been
23 mitigated as a result of policies of the general plan or provisions
24 of the zoning ordinance.

25 (i) The project site does not contain developed open space,
26 park, or recreation land or facilities.

27 21159.22. (a) This division does not apply to any
28 development project that meets the requirements of subdivision
29 (b), and meets either of the following criteria:

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

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

35 (B) Lacks public financial assistance.

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



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

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

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

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

14 (b) (1) If the development project is proposed for an urbanized
15 area, it is located on a project site that is adjacent, on at least two
16 sides, to land that has been developed, and consists of not more
17 than 45 units, or is housing for a total of 45 or fewer agricultural
18 employees if the housing consists of dormitories, barracks, or
19 other group living facilities.

20 (2) If the development project is proposed for a nonurbanized
21 area, it is located on a project site zoned for general agricultural
22 use, and consists of not more than 20 units, or is housing for a total
23 of 20 or fewer agricultural workers if the housing consists of
24 dormitories, barracks, or other group living facilities.

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

26 (4) The development project is not more than five acres in area,
27 except that a project site located in an area with a population
28 density of at least 1,000 persons per square mile shall not be more
29 than two acres in area.

30 (c) Notwithstanding this section, this division applies to any
31 development project that otherwise meets the criteria described in
32 this section, if the public agency that is carrying out or approving
33 the development project determines that there is a reasonable
34 possibility that the project would have a significant effect on the
35 environment due to unusual circumstances, or that the cumulative
36 impact of successive projects of the same type in the same area over
37 time would be significant.

38 (d) For the purposes of this section, “agricultural employee”
39 has the same meaning as defined by subdivision (b) of Section
40 1140.4 of the Labor Code.



1 21159.23. (a) Except as provided in subdivision (b), this
2 division does not apply to any development project that consists of
3 the construction, conversion, or use of residential housing
4 consisting of not more than 100 units in an urbanized area that is
5 affordable to low-income households if both of the following
6 criteria are met:

7 (1) The developer of the development project provides
8 sufficient legal commitments to the appropriate local agency to
9 ensure the continued availability and use of the housing units for
10 either of the following:

11 (A) Lower-income households, as defined in Section 50079.5,
12 for a period of at least 15 years.

13 (B) Very low-, low-, or moderate-income households at
14 monthly housing costs, as determined pursuant to paragraph (2)
15 of subdivision (h) of Section 65589.5 of the Government Code for
16 30 years.

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

19 (A) The project satisfies the criteria described in Section
20 21159.21.

21 (B) The project site is an infill site.

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

23 (D) The project site is located within an urbanized area.

24 (b) Notwithstanding subdivision (a), this division applies to a
25 development project, if all of the following criteria are met:

26 (1) The project includes more than 50 units.

27 (2) The environmental impact report on the applicable plan,
28 program, or ordinance was certified more than five years prior to
29 the project application.

30 (3) A reasonable possibility exists that the development project
31 would have a significant effect on the environment or the residents
32 of the development project due to unusual circumstances or due to
33 related or cumulative impacts of reasonably foreseeable projects
34 in the vicinity of the development project.

35 21159.24. (a) Except as provided in subdivision (b), this
36 division does not apply to a project if all of the following criteria
37 are met:

38 (1) The project is a residential project on an infill site.

39 (2) The project is located within an urbanized area.

40 (3) The project satisfies the criteria of Section 21159.20.



1 (4) An environmental impact report was certified on the
2 adoption of the general plan or any applicable specific plan,
3 within five years of the date that the application for the project is
4 deemed complete pursuant to Section 65943 of the Government
5 Code.

6 (5) The site of the project is not more than four acres in total
7 area and the residential density is at least 20 units per acre.

8 (6) The project does not contain more than 100 residential
9 units.

10 (7) At least 10 percent of the housing is affordable to low- and
11 moderate-income households and the project developer provides
12 sufficient legal commitments to the appropriate local agency to
13 ensure the continued availability and use of the housing units for
14 low- and moderate-income households at monthly housing costs
15 determined pursuant to paragraph (2) of subdivision (h) of Section
16 65589.5 of the Government Code.

17 (8) The project is within one-half mile of a transit center.

18 (9) The project does not include any single level building that
19 exceeds 100,000 square feet.

20 (b) Notwithstanding subdivision (a), this division shall apply to
21 a development project that meets the criteria described in
22 subdivision (a), if any of the following occur:

23 (1) There is a reasonable possibility that the project will have
24 a project-specific, significant impact on the environment due to
25 unusual circumstances.

26 (2) Substantial changes with respect to the circumstances
27 under which the project is being undertaken have occurred since
28 the certification of the environmental impact report on the general
29 plan or any applicable specific plan.

30 (3) New information regarding the circumstances under which
31 the project was undertaken, that was not known, and could not
32 have been known at the time the environmental impact report on
33 the general plan or applicable specific plan was certified, becomes
34 available.

35 (c) For the purposes of this section, “residential” means a use
36 consisting of either of the following:

37 (1) Residential units only.

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



1 21159.25. (a) For a project in the City of Oakland that
2 consists of multiple-family residential development, or a
3 residential and commercial or retail mixed-use development with
4 not more than 25 percent of the total floor area of the project
5 utilized as retail space, a focused environmental impact report may
6 be prepared, notwithstanding that the project was not identified in
7 a master environmental impact report, if all of the following
8 conditions are met:

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

10 (A) Authorizes the implementation of this section. The city
11 council may authorize the implementation of this section only by
12 voting to approve the practice of preparing focused environmental
13 impact reports for projects in the central business district housing
14 target areas specified in paragraph (II).

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

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

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

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

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

34 (4) The project is consistent with the general plan, any
35 applicable specific plan and community plan, and zoning
36 ordinance, including any variance that is properly granted
37 pursuant to that zoning ordinance, an environmental impact report
38 was prepared for the general plan, and the application for the
39 project is deemed complete pursuant to Section 65943 of the



1 Government Code within three years of the date this section is
2 effective.

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

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

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

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

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

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

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

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

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

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

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

34 (C) The 11th Street cluster, which is bounded by Franklin Street
35 from 12th Street to 15th Street, by Webster Street from 11th Street
36 to 12th Street, by Alice Street from 11th Street to 13th Street, by
37 12th Street from Franklin Street to Webster Street, by 11th Street
38 from Webster Street to Alice Street and 13th Street from Alice Street
39 to Madison Street, and on the east by Madison Street from 13th



1 *Street to 15th Street, and on the north by 15th Street from Franklin*
2 *Street to Madison Street.*

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

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

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

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

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

19 *(C) The time periods for preparing each of the focused*
20 *environmental impact reports prepared pursuant to this section,*
21 *and for acting on each project from the date that the application*
22 *was deemed complete.*

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

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

33 *(d) This section shall remain in effect only until January 1,*
34 *2005, and as of that date is repealed, unless a later enacted statute,*
35 *that is enacted before January 1, 2005, deletes or extends that date.*

36 *21159.26. With respect to a project that includes a housing*
37 *development, a public agency may not reduce the proposed*
38 *number of housing units as a mitigation measure or project*
39 *alternative for a particular significant effect on the environment if*
40 *it determines that there is another feasible specific mitigation*



1 *measure or project alternative that would provide a comparable*
2 *level of mitigation. This section does not affect any other*
3 *requirement regarding the residential density of that project.*
4 *21159.27. A project may not be divided into smaller projects*
5 *to qualify for one or more exemptions pursuant to this article. A*
6 *project may not qualify for an exemption pursuant to this article*
7 *if the developer or landowner of the project, or any entity affiliated*
8 *with the developer or landowner, has obtained approval for a*
9 *project located within a one-half-mile of the boundary of the*
10 *projects for which an exemption has been obtained pursuant to this*
11 *article.*
12 *SEC. 16.* No reimbursement is required by this act pursuant
13 to Section 6 of Article XIII B of the California Constitution
14 because a local agency or school district has the authority to levy
15 service charges, fees, or assessments sufficient to pay for the
16 program or level of service mandated by this act, within the
17 meaning of Section 17556 of the Government Code.

