

# TECHNICAL ADVISORY

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## CEQA REVIEW OF HOUSING PROJECTS



October 2018

This technical advisory is one in a series of advisories provided by the Governor’s Office of Planning and Research (OPR) as a service to professional planners, land use officials, and California Environmental Quality Act (CEQA) practitioners. OPR creates and updates technical advisories as needed on current issues in environmental law and land use planning that broadly affect the practice of CEQA and land use planning in California. The purpose of this technical advisory is to provide a list of statutes and regulations related to the CEQA review of housing projects. This document should not be construed as legal advice.

This technical advisory covers the following statutes and regulations:

Government Code, § 65457

Public Resources Code, § 20181.3

Public Resources Code, § 21094.5

Public Resources Code, § 21099

Public Resources Code, § 21155.1

Public Resources Code, § 21155.2

Public Resources Code, § 21155.4

Public Resources Code, § 21159.22

Public Resources Code, § 21159.23

Public Resources Code, § 21159.24

Public Resources Code, § 21159.25

Public Resources Code, § 21159.28

CEQA Guidelines, § 15183

CEQA Guidelines, § 15303

CEQA Guidelines, § 15332

A chart comparing the various requirements is included as Appendix A.

#### [PRC § 21159.25 \(NEW – AB 1804; Effective January 1, 2019\) – Infill Housing in Unincorporated Counties](#)

- Applies only to multifamily housing and mixed use projects in unincorporated counties within the boundaries of an urbanized area or urban cluster, as designated by the Census Bureau.

- The project is substantially surrounded (75%) by qualified urban uses; remaining area must be designated for qualified urban uses.
- The project is consistent with general plan and zoning.
- The project site is less than 5 acres.
- The project contains at least 6 units.
- The density of the residential portion of the project is not less than the greater of the following:
  - The average density of the residential properties that adjoin, or are separated only by an improved public right-of-way from, the perimeter of the project site, if any.
  - The average density of the residential properties within 1,500 feet of the project site.
  - Six dwelling units per acre.
- The project site does not have any value as habitat for endangered, rare, or threatened species and can be served by public utilities and services.
- The Project will not cause significant effects relating to transportation, noise, air quality, greenhouse gas emissions, or water quality.
- Subject to the exceptions to the categorical exemptions (unusual circumstances, cumulative impacts, scenic resources, historical resources, hazards, etc.).

#### PRC § 21159.24 – Infill Housing in Urbanized Areas near Transit

- The project is 100 percent residential or up to 25 percent of the building square footage of the residential project includes primarily neighborhood-serving goods, services, or retail uses.
- Project site is an infill site.
- The project is located within an urbanized area.
- The project is consistent with an applicable general plan, specific plan, local coastal plan and any mitigation measures required by a plan or program.
- The project and other prior approved projects can be adequately served by existing utilities.
- The project has paid, or has committed to pay, all applicable in-lieu or development fees.
- The site does not contain wetlands, does not have any value as wildlife habitat, and the project does not harm species protected by local ordinance or the state and federal endangered species acts.
- The site is not included on any list of facilities and sites compiled by the Department of Toxic Substances Control pursuant to Section 65962.5 of the Government Code.
- The project is subject to a preliminary endangerment assessment prepared to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity and, if any such release or exposure is identified, it must be mitigated to a level of insignificance in compliance with state and federal requirements.
- The project does not have a significant effect on historical resources.
- The project is not subject to a wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.
- Materials stored or used near the project site do not create an unusually high risk of fire or explosion.

- The project site would not create a risk of public health exposures at a level that exceed standards established by any state or federal agency.
- The project site is not located within a delineated earthquake fault zone or seismic hazard zone unless the applicable general plan or zoning ordinance contains provision to mitigate the risk.
- The project site is not located in a landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk.
- The project is not located on developed open space.
- The project site is not located within the boundaries of a state conservancy.
- Within five years of the date that the project application is deemed complete, community-level environmental review was certified or adopted.
- The site is less than four acres.
- The project contains less than 100 residential units.
- The project either:
  - Provides at least 10 percent of the housing for sale to families of moderate income, or not less than 10 percent of the housing for rent to families of low income, or not less than 5 percent for rent to families of very low income, and the developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs with an affordable housing cost determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.
  - The project has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units as under the prior bullet.
- The project is within ½ mile of a major transit stop.
- The project does not include any building that exceeds 100,000 square feet.
- The project promotes higher density infill housing.
- None of the following apply:
  - There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.
  - Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.
  - New information becomes available regarding the circumstances under which the project is being undertaken that was not known, and could not have been known, at the time the community-level environmental review was certified or adopted.

*See also* **PRC § 21159.21 – Criteria to Qualify for Housing Project Exemptions; PRC § 21159.22 – Agricultural Employee Housing; PRC § 21159.23 – Low-Income Housing**

**PRC § 21155.1 (SB 375) – Transit Priority Projects**

- The project is consistent with the general use designation, density, building intensity, and applicable polices in an ARB accepted SCS or APS.

- The project and projects approved prior to the project can be adequately served by existing utilities.
- The project has paid or committed to pay to any in-lieu development fees.
- The site does not contain wetlands or riparian areas and does not have significant value as wildlife habitat, and the project does not harm species protected by local ordinance or the state and federal endangered species acts.
- The site is not included on any list of facilities and sites compiled by the Department of Toxic Substances Control pursuant to Section 65962.5 of the Government Code.
- The project is subject to a preliminary endangerment assessment to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity and, if any such release or exposure is identified, it must be mitigated to a level of insignificance in compliance with state and federal requirements.
- The project does not have a significant effect on historical resources.
- The project is not subject to a wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.
- Materials stored or used near the project site do not create an unusually high risk of fire or explosion.
- The project site would not create a risk of public health exposures at a level that would exceed standards established by any state or federal agency.
- The project site is not located within a delineated earthquake fault zone or seismic hazard zone unless the applicable general plan or zoning ordinance contains provision to mitigate the risk.
- The project site is not located in a landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk.
- The project is not located on developed open space.
- The buildings proposed as part of the project are 15 percent more energy efficient than required by Chapter 6 of Title 24 of the California Code of Regulations.
- The buildings and landscaping proposed as part of the project are designed to achieve 25 percent less water usage than the average household use in the region.
- The site is not more than eight acres in total area.
- The project does not contain more than 200 residential units.
- The project does not result in any net loss in the number of affordable housing units within the project area.
- The project does not include any single level building that exceeds 75,000 square feet.
- The project implements all applicable mitigation measures or performance standards or criteria set forth in the prior EIR, and adopted in findings.
- The project is determined not to conflict with nearby operating industrial uses.
- If the project is not located within one-half mile of a rail transit station or a ferry terminal included in a regional transportation plan (RTP), then the project must be located within one-quarter mile of a high-quality transit corridor included in an RTP.
- The project meets at least one of the following three additional criteria:

- At least 20 percent of the housing will be sold to families of moderate income, or not less than 10 percent of the housing will be rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income, and the developer shall provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs with an affordable housing cost or affordable rent for the period required by the applicable financing. Rental units shall be affordable for at least 55 years. Ownership units shall be subject to resale restrictions or equity sharing requirements for at least 30 years.
- The project has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units as under the prior bullet.
- The project provides public open space equal to or greater than five acres per 1,000 residents of the project.

**See also PRC § 21159.28 (SB 375) – Residential or Mixed-Use Project Streamlining re Growth-Inducing Impacts, GHGs, and Regional Transportation Network; PRC § 21155.2 (SB 375) – Streamlined environmental analysis for Transit Priority Projects**

**PRC § 21094.5, CEQA Guidelines 15183.3 (SB 226) – Infill Housing**

- Covers residential and mixed-use projects that are located in an urban area on a site that either has been previously developed or that adjoins existing qualified urban uses on at least seventy-five percent of the site's perimeter.
- The project satisfies all applicable statewide performance standards set forth in Appendix M of the CEQA Guidelines.
- The project meets one of the three criteria:
  - Are consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in a qualifying Sustainable Communities Strategy (SCS) or Alternative Planning Strategy (APS).
  - Where a project is located within the boundaries of a metropolitan planning organization (MPO) for which an SCS or APS is required but has not yet been adopted, this streamlining applies to residential infill projects with a density of at least 20 units per acre or mixed-use projects with a floor area ratio (FAR) of at least 0.75.
  - Where a project is outside the boundaries of an MPO, the infill project must be a small walkable community project, as defined by PRC § 21094.5(e)(4).
- The lead agency prepares a written checklist that demonstrates all potential effects of the project are either:
  - Addressed in a prior EIR for a planning level decision even if that effect was not reduced to a less than significant level in the prior EIR; or
  - Addressed by uniformly applicable development policies or standards, adopted by the lead agency or a city or county.

#### PRC § 21155.4 (SB 743) – Transit-Oriented Housing

- Covers residential and mixed-use development projects.
- The project is proposed within a transit priority area.
- The project is consistent and undertaken to implement a specific plan for which an EIR has been certified.
- The project is consistent with the general use designation, density, building intensity, and applicable policies for the project area in either an SCS or APS.
- None of the events below as set forth in PRC section 21166 requiring supplemental review have occurred:
  - Substantial changes are proposed in the project which will require major revisions of the EIR.
  - Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the EIR.
  - New information, which was not known and could not have been known at the time the EIR certified as complete, becomes available.

#### PRC § 21099 (SB 743) – Transit-Oriented Housing; Streamlined Review

- Aesthetic and parking impacts of a residential or mixed-use residential project on an infill site within a transit priority area shall not be considered significant impacts on the environment.

*See also* **PRC § 21081.3 (NEW; Effective Jan. 1, 2019)** – Not required to analyze aesthetic impacts for infill housing projects converting abandoned or dilapidated buildings

#### CEQA Guidelines § 15183; PRC § 21083.3 – Projects Consistent with Applicable Zoning and Planning

- The zoning, community plan, or general plan policies must have been approved based on a certified EIR and all agencies required to implement mitigation measures identified in the EIR have committed to undertake the measures.
- The lead agency should prepare an initial study or other analysis limited to determining whether any impacts:
  - are peculiar to the project or the parcel on which the project would be located;
  - were not analyzed as significant effects in a prior EIR on the zoning action, general plan, or community plan, with which the project is consistent;
  - are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action; or
  - are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.
- The lead agency must hold a hearing and make findings that the feasible mitigation measures in the prior EIR will be implemented.

- An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.

#### Government Code § 65457 – Housing Covered by a Specific Plan

- Covers any residential development project, including any subdivision, or any zoning change that is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified after January 1, 1980.
- If after adoption of the specific plan, an event as specified in Section 21166 of the Public Resources Code occurs, the exemption does not apply unless and until a supplemental environmental impact report for the specific plan is prepared and certified in accordance with CEQA.
- After a supplemental environmental impact report is certified, the exemption applies to projects undertaken pursuant to the specific plan.

## Categorical Exemptions

#### CEQA Guidelines § 15303 (Class 3 Categorical Exemption) – New Construction of a Small Number of Housing Units

- Outside Urbanized Areas:
  - One single-family residence, or a second dwelling unit in a residential zone.
  - A duplex or similar multi-family residential structure totaling no more than four dwelling units.
  - A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances and not exceeding 2,500 square feet in floor area.
- In Urbanized Areas:
  - Up to three single-family residences may be constructed or converted.
  - Apartments, duplexes and similar structures designed for not more than six dwelling units.
  - Up to four commercial buildings not involving the use of significant amounts of hazardous substances and not exceeding 10,000 square feet in floor area on sites zoned for such use where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

#### CEQA Guidelines § 15332 (Class 32 Categorical Exemption) – Infill Housing

- The project is consistent with the applicable general plan designation and all general plan policies, as well as with zoning designation and regulations.



- The project occurs within city limits on a site that is five acres or less and is substantially surrounded by urban uses.
- The project site does not have any value as habitat for endangered, rare or threatened species.
- The project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- The site can be adequately served by all needed utilities and public services.

**Note: The categorical exemptions are limited by the exceptions contained in CEQA Guidelines § 15300.2.**

# CEQA Review of Housing Projects Technical Advisory

## Appendix A: Comparison Chart

	<b>Infill Housing</b> PRC 21159.24	<b>SB 375</b> PRC 21155.1	<b>SB 226</b> PRC 21094.5	<b>SB 743</b> PRC 21155.4	<b>Specific Plan</b> GC 65457	<b>Tiering</b> Guideline 15183	<b>Class 32</b> Guideline 15332	<b>AB 1804</b> PRC 21159.25	<b>Class 3</b> Guideline 15303
<b>Type of Housing Covered</b>	Residential or mixed-use (up to 25% commercial)	Residential or mixed-use	Residential or mixed-use	Residential or mixed-use	Residential	Residential or mixed-use	Residential or mixed-use	Must be multifamily; residential or mixed-use (up to 33% commercial)	Residential; single family and multifamily
<b>Location Requirements</b>	“Urbanized area” as defined by PRC 21071 <sup>i</sup>	N/A	“Urban area” as defined by 21094.5 <sup>ii</sup>	N/A	N/A	N/A	Within city limits	Unincorporated urbanized area or urban cluster, as designated by the Census Bureau	Different requirements depending on whether urbanized or non-urbanized area.  “Urbanized area” as defined by PRC 21071
<b>Transit-Proximity Requirements</b>	Within ½ mile of major transit stop	If the project is not located within one-half mile of a rail transit station or a ferry terminal included in a regional transportation plan (RTP), then the project must be located within	Within ½ mile of existing major transit stop or transit corridor;  OR  In “low vehicle travel area”;  OR	Transit priority area as defined by PRC 21099 <sup>iii</sup>	N/A	N/A	N/A	N/A	N/A

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		one-quarter mile of a high-quality transit corridor included in an RTP.	100% affordable with 300 or fewer units						
<b>Infill Requirements</b>	"Infill site" as defined by PRC 21061.3 <sup>iv</sup>	N/A	Site either has been previously developed or that adjoins existing qualified urban uses on at least seventy-five percent of the site's perimeter	N/A	N/A	N/A	Substantially surrounded by urban uses (not defined)	substantially surrounded (75%) by qualified urban uses; remaining area must be designated for qualified urban uses;  Qualified urban uses as defined by PRC 21072. <sup>v</sup>	N/A
<b>Density Requirements</b>	20 du/acre or 10 du/acre depending on surrounding area;  No building can exceed 100,000 square feet	Based on SCS;  Does not include any single level building that exceeds 75,000 square feet	Based on SCS;  For areas outside of MPO, density of at least 8 units per acre or a FAR of not less than 0.50	Based on SCS	N/A	Must be consistent with the development density established by existing zoning, community plan, or general plan policies for which	N/A	At least 6 du/acre but could require more based on density of surrounding area	N/A

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						an EIR was certified.  Consistency defined by subd. (i)(2) <sup>vi</sup>			
<b>Plan consistency Requirements</b>	Local plan and zoning consistency required, see PRC 21159.21(a); must have a community-level environmental review <sup>vii</sup> within the last 5 years	Consistent with SCS	Consistent with SCS	Consistent with SCS;  Must be consistent with a specific plan with an EIR	Must be consistent with a specific plan adopted after Jan 1, 1980	Must be consistent with zoning, community plan, <u>OR</u> general plan	Local plan and zoning consistency required	Local plan and zoning consistency required	N/A
<b>Minimum or Maximum Number of Units</b>	Less than 100	Less than 200	Less than 300 (but only if not near transit or in low VMT area)	N/A	N/A	N/A	N/A	More than 6	<u>In Urbanized Areas:</u> Up to 3 single-family residences  Up to 6 units of apartments, duplexes and similar structures  <u>Outside Urbanized Areas:</u>

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									1 single-family residence, or a second dwelling unit in a residential zone.  Up to 4 units of a duplex or similar multi-family residential structure
<b>Acreage limitations</b>	Less than 4	Less than 8	N/A	N/A	N/A	N/A	N/A	less than 5	N/A
<b>Affordability Requirements</b>	Yes, inclusionary or in lieu	Inclusionary, in lieu OR public open space; plus no net loss of affordable units.	100% (but only if not near transit or in low VMT area)	N/A	N/A	N/A	N/A	N/A	N/A
<b>Environmental limitations</b>	Wetlands, habitat, species, hazards, historical resources, wildfire or fire hazard, public	Wetlands; habitat; species; hazards; historical resources; wildfire or fire hazard; public	Must do soil and water remediation; must comply with air district requirements if	N/A	N/A	Must analyze impacts that are peculiar to the project;  If an impact is not peculiar to	Habitat, utilities, "traffic", noise, air quality, water quality	Habitat, utilities, transportation, noise, air quality, GHG, water quality	None

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	health, earthquake, landslide, flood plan, open space	health; earthquake; landslide; flood plan; open space;  Utilities; 15 percent more efficient than Title 24; 25% less water usage than average household; no conflict with nearby industrial uses	near high-volume roadway			the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards, as contemplated by subdivision (e) below, then an additional EIR need not be prepared for the project solely on the basis of that impact			
<b>Exceptions</b>	Unusual circumstances, or new information		Environmental impacts must be analyzed in plan-level decision <sup>viii</sup> prior EIR <sup>ix</sup>	Must be covered by a specific plan with an EIR;  PRC 21166	PRC 21166; if 21166 is triggered, can't use exemption unless update to specific plan is prepared	Substantial new information shows that the uniformly applied development policies or standards will	All Cat Ex exceptions  See Guideline 15300.2	All Cat Ex exceptions (codified in statute)	All Cat Ex exceptions  See Guideline 15300.2

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						not substantially mitigate the environmental effect			

<sup>i</sup> **“Urbanized area”** means either of the following:

(a) An incorporated city that meets either of the following criteria:

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

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

(b) An unincorporated area that satisfies the criteria in both paragraph (1) and (2) of the following criteria:

(1) Is either of the following:

(A) Completely surrounded by one or more incorporated cities, and both of the following criteria are met:

(i) The population of the unincorporated area and the population of the surrounding incorporated city or cities equals not less than 100,000 persons.

(ii) The population density of the unincorporated area at least equals the population density of the surrounding city or cities.

(B) Located within an urban growth boundary and has an existing residential population of at least 5,000 persons per square mile. For purposes of this subparagraph, an “urban growth boundary” means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.

(2) The board of supervisors with jurisdiction over the unincorporated area has previously taken both of the following actions:

(A) Issued a finding that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that encourage compact development in a manner that does both of the following:

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

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

(B) Submitted a draft finding to the Office of Planning and Research at least 30 days prior to issuing a final finding, and allowed the office 30 days to submit comments on the draft findings to the board of supervisors.

<sup>ii</sup> **“Urban area”** includes either an incorporated city or an unincorporated area that is completely surrounded by one or more incorporated cities that meets both of the following criteria:

(A) The population of the unincorporated area and the population of the surrounding incorporated cities equal a population of 100,000 or more.

(B) The population density of the unincorporated area is equal to, or greater than, the population density of the surrounding cities.

<sup>iii</sup> **“Transit priority area”** means an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations.

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<sup>iv</sup> **“Infill site”** means a site in an urbanized area that meets either of the following criteria:

(a) The site has not been previously developed for urban uses and both of the following apply:

(1) The site is immediately adjacent to parcels that are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses, and the remaining 25 percent of the site adjoins parcels that have previously been developed for qualified urban uses.

(2) No parcel within the site has been created within the past 10 years unless the parcel was created as a result of the plan of a redevelopment agency.

(b) The site has been previously developed for qualified urban uses.

<sup>v</sup> **“Qualified urban use”** means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

<sup>vi</sup> **“Consistent”** means that the density of the proposed project is the same or less than the standard expressed for the involved parcel in the general plan, community plan or zoning action for which an EIR has been certified, and that the project complies with the density-related standards contained in that plan or zoning. Where the zoning ordinance refers to the general plan or community plan for its density standard, the project shall be consistent with the applicable plan.

<sup>vii</sup> **“Community-level environmental review”** means either of the following:

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

(A) A general plan.

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

(C) An applicable community plan.

(D) An applicable specific plan.

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

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

<sup>viii</sup> **“Planning level decision”** means the enactment or amendment of a general plan, community plan, specific plan, or zoning code.

<sup>ix</sup> **“Prior environmental impact report”** means the environmental impact report certified for a planning level decision, as supplemented by any subsequent or supplemental environmental impact reports, negative declarations, or addenda to those documents.