LOCAL GUIDELINES FOR IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

(2009 REVISION)

1. GENERAL PROVISIONS, PURPOSE AND POLICY

1.01 GENERAL PROVISIONS.

These Local Guidelines ("Local Guidelines") are to assist the San Diego Metropolitan Transit District ("District") in implementing the provisions of the California Environmental Quality Act ("CEQA"). These Local Guidelines are consistent with the Guidelines for the Implementation of CEQA ("State Guidelines") which have been promulgated by the Resources Agency for the guidance of state and local agencies in California. These Local Guidelines have been adopted pursuant to California Public Resources Code Section 21082.

1.02 PURPOSE.

The purpose of these Local Guidelines is to help the District accomplish the following basic objectives of CEQA:

(a) To enhance and provide long-term protection for the environment, while providing a decent home and satisfying living environment for every Californian.
(b) To provide information to governmental decision-makers and the public regarding the potential significant environmental effects of the proposed project.
(c) To provide an analysis of the environmental effects of future actions associated with the project to adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project.
(d) To identify ways that environmental damage can be avoided or significantly reduced.
(e) To prevent significant avoidable environmental damage through utilization of feasible project alternatives or mitigation measures.
(f) To disclose and demonstrate to the public the reasons why a governmental agency approved the project in the manner chosen. Public participation is an essential part of the CEQA process. Each public agency should encourage wide public involvement, formal and informal, in order to receive and evaluate public reactions to environmental issues related to a public agency's activities. Such involvement should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency.

1.03 APPLICABILITY.

These Guidelines apply to any activity of the District which constitutes a "project" as defined in Local Guidelines Section 10.53. These Local Guidelines are also intended to assist the District in determining whether a proposed activity does not constitute a project that is subject to CEQA review, or whether the activity is exempt from CEQA.

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An Environmental Impact Report ("EIR") is required for each such project which may have a significant effect on the environment. When the District finds that a project will have no significant environmental effect, a Negative Declaration or Mitigated Negative Declaration rather than an EIR shall be prepared.

An EIR serves several functions for the benefit of the District and the public. An EIR (1) identifies and analyzes the significant environmental effects of a proposed project, (2) identifies alternatives to the project, and (3) discloses possible ways to reduce or avoid potential environmental damage. These matters are to be evaluated by the District before the project is approved or disapproved.

The EIR is an informational document. It should not be used to rationalize approval of a project. CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement. Indications of adverse environmental impacts from the project which are identified in the EIR do not necessarily require disapproval of a project. Rather, when an EIR shows that a project would cause substantial adverse changes in the environment, the District must respond to the information by one or more of the following methods:

(a) Changing the proposed project;
(b) Imposing conditions on the approval of the project;
(c) Adopting plans or ordinances to control a broader class of activities to avoid the problems;
(d) Choosing an alternative way of meeting the same need;
(e) Disapproving the project; or
(f) Finding that the unavoidable, significant environmental damage is acceptable pursuant to a Statement of Overriding Considerations.

Although CEQA requires that major consideration be given to preventing environmental damage, the District also has an obligation to balance other public objectives for each project including economic and social factors.

1.04 REDUCING DELAY AND PAPERWORK.

The State Guidelines encourage local governmental agencies to reduce delay and paperwork by, among other things:

(a) Integrating the CEQA process into early planning review; to this end, the project approval process and these procedures, to the maximum extent feasible, are to run concurrently, not consecutively;
(b) Identifying projects which fit within categorical or other exemptions and are therefore exempt from CEQA processing;
(c) Using initial studies to identify significant environmental issues and to narrow the scope of EIRs;
(d) Using a Negative Declaration when a project not otherwise exempt will not have a significant effect on the environment;

(e) Consulting with state and local responsible agencies before and during the preparation of an EIR so that the document will meet the needs of all the agencies which will use it;
(f) Allowing applicants to revise projects to eliminate possible significant effects on the environment, thereby enabling the project to qualify for a Negative Declaration rather than an EIR;
(g) Integrating CEQA requirements with other environmental review and consultation requirements;
(h) Emphasizing consultation before an EIR is prepared, rather than submitting adverse comments on a completed document;
(i) Combining environmental documents with other documents, such as general plans;
(j) Eliminating repetitive discussions of the same issues by using EIRs on programs, policies or plans and tiering from statements of broad scope to those of narrower scope;
(k) Reducing the length of EIRs by means such as setting appropriate page limits;
(l) Preparing analytic, rather than encyclopedic EIRs;
(m) Mentioning insignificant issues only briefly;
(n) Writing EIRs in plain language;
(o) Following a clear format for EIRs;
(p) Emphasizing the portions of the EIR that are useful to decision-makers and the public and reducing emphasis on background material;
(q) Incorporating information by reference; and
(r) Making comments on EIRs as specific as possible.

1.05 COMPLIANCE WITH STATE LAW.

These Local Guidelines are intended to implement the provisions of CEQA and the State Guidelines, and the provisions of CEQA and the State Guidelines shall be fully complied with even though they may not be set forth or referred to herein.

1.06 TERMINOLOGY.

The terms “must” or “shall” identify mandatory requirements. The terms “may” and “should” are permissive, with the particular decision being left to the discretion of the District.

1.07 PARTIAL INVALIDITY.

In the event any part or provision of these Local Guidelines shall be determined to be invalid, the remaining portions which can be separated from the invalid unenforceable provisions shall continue in full force and effect.

1.08 ELECTRONIC DELIVERY OF COMMENTS AND NOTICES.

Individuals may file a written request to receive copies of public notices provided under these Local Guidelines or the State Guidelines. The requestor may elect to receive these notices via email rather than regular mail. Notices sent by email are deemed delivered when the staff person sending the email sends it directed to the last email address provided by the requestor to the public agency. The District may require requests for notices to be renewed annually.

Individuals may also submit comments on the CEQA documentation for a project via email. Comments submitted via email shall be treated as written comments for all purposes. Comments sent to the public agency via email are deemed received when they actually arrive in an email account of a staff person who has been designated or identified as the point of contact for a particular project.

2. LEAD AND RESPONSIBLE AGENCIES

2.01 LEAD AGENCY PRINCIPLE.

The District will be the Lead Agency if it will have principal responsibility for carrying out or approving a project. Where a project is to be carried out or approved by more than one public agency, only one agency shall be responsible for the preparation of environmental documents. This agency shall be called the Lead Agency.

2.02 SELECTION OF LEAD AGENCY.

Where two or more public agencies will be involved with a project, the Lead Agency shall be designated according to the following criteria:

(a) If the project will be carried out by a public agency, that agency shall be the Lead Agency even if the project will be located within the jurisdiction of another public agency.

(b) If the project will be carried out by a nongovernmental person or entity, the Lead Agency shall be the public agency with the greatest responsibility for supervising and approving the project as a whole. The Lead Agency will normally be the agency with general governmental powers, rather than an agency with a single or limited purpose. (For example, a district which will provide a public service or utility to the project serves a limited purpose.) If two or more agencies meet this criteria equally, the agency which acts first on the project will be the Lead Agency.

If two or more public agencies have a substantial claim to be the Lead Agency under either (a) or (b), they may designate one agency as the Lead Agency by agreement. An agreement may also provide for cooperative efforts by contract, joint exercise of powers, or similar devices. If the agencies cannot agree which agency should be the Lead Agency for preparing the environmental document, any of the disputing public agencies or the project applicant may submit the dispute to the Office of Planning and Research. Within 21 days of receiving the request, the Office of Planning and Research will designate the Lead Agency. The Office of Planning and Research shall not designate a Lead Agency in the absence of a dispute. A “dispute” means a contested, active difference of opinion between two or more public agencies as to which of those agencies shall prepare any necessary environmental document. A dispute exists when each of those agencies claims that it either has or does not have the obligation to prepare that environmental document.

2.03 DUTIES OF A LEAD AGENCY.

As a Lead Agency, the District shall decide whether a Negative Declaration, Mitigated Negative Declaration or an EIR will be required for a project and shall prepare, or cause to be prepared, and consider the document before making its decision on whether and how to approve the project. The documents may be prepared by Staff or by private consultants pursuant to a contract with the District. However, the District shall independently review and analyze all draft and final EIRs or Negative Declarations prepared for a project and shall find that the EIR or Negative Declaration reflects the independent judgment of the District prior to approval of the document. If a Draft EIR or Final EIR is prepared under a contract to the District, the contract

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must be executed within forty-five (45) days from the date on which the District sends a Notice of Preparation. (See Local Guidelines Section 7.02.)

During the process of preparing an EIR, the District shall have the following duties:

(a) Immediately after deciding that an EIR is required for a project, the District shall send to the Office of Planning and Research and each Responsible Agency a Notice of Preparation (Form "G") stating that an EIR will be prepared. (See Local Guidelines Section 7.03.)
(b) The District shall prepare or cause to be prepared the Draft EIR for the project. (See Local Guidelines Section 7.05.)
(c) Once the Draft EIR is completed, the District shall file a Notice of Completion (Form "H") with the Office of Planning and Research. (See Local Guidelines Section 7.19.)
(d) The District shall consult with state, federal and local agencies which exercise authority over resources which may be affected by the project for their comments on the completed Draft EIR. (See, e.g., Local Guidelines Sections 5.02, 5.15, Section 7.20.)
(e) The District shall provide public notice of the availability of a Draft EIR (Form "K") at the same time that it sends a Notice of Completion to the Office of Planning and Research. (See Local Guidelines Section 7.19.)
(f) The District shall evaluate comments on environmental issues received from persons who reviewed the Draft EIR and shall prepare or cause to be prepared a written response to all comments that raise significant environmental issues and that were timely received during the public comment period. A written response must be provided to all public agencies who commented on the project during the public review period at least ten (10) days prior to certifying an EIR. (See Local Guidelines Section 7.24.)
(g) The District shall prepare or cause to be prepared a Final EIR before approving the project. (See Local Guidelines Section 7.25.)
(h) The District shall certify that the Final EIR has been completed in compliance with CEQA and has been reviewed by the Board of Directors. (See Local Guidelines Section 7.27.)
(i) The District shall include in the Final EIR any comments received from a Responsible Agency on the Notice of Preparation or the Draft EIR. (See Local Guidelines Sections 2.07, 7.24 and 7.25.)

As Lead Agency, the District may charge a non-elected body with the responsibility of making a finding of exemption or adopting, certifying or authorizing environmental documents; however, the District must have a procedure allowing for the appeal of the CEQA decisions of any non-elected body to the Board of Directors.

2.04 PROJECTS RELATING TO DEVELOPMENT OF HAZARDOUS WASTE AND OTHER SITES.

An applicant for a development project must submit a signed statement to the District stating whether the project and any alternatives are located on a site which is included in any list compiled by the Secretary for Environmental Protection of the California Environmental Protection Agency ("California EPA") listing hazardous waste sites and other specified sites located in the District. The applicant's statement must contain the following information:

(a) The applicant's name, address, and phone number.
(b) Address of site, and local agency (city/county).
(c) Assessor's book, page, and parcel number.
(d) The list which includes the site, identification number, and date of list.

Before accepting as complete an application for any development project as defined in Local Guidelines Section 10.14, the District shall consult lists compiled by the Secretary for Environmental Protection of the California EPA pursuant to Government Code Section 65962.5 listing hazardous waste sites and other specified sites located in the District. The District shall notify an applicant for a development project if the project site is located on such a list and not already identified. In the Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration (see Local Guidelines Section 6.04) or the Notice of Preparation of Draft EIR (see Local Guidelines Section 7.03), the District shall specify the California EPA list, if any, which includes the project site, and shall provide the information contained in the applicant's statement.

This provision applies only to projects for which applications have not been deemed complete on or before January 1, 1992.

2.05 RESPONSIBLE AGENCY PRINCIPLE.

When a project is to be carried out or approved by more than one public agency, all public agencies other than the Lead Agency which have discretionary approval power over the project shall be identified as Responsible Agencies.

2.06 DUTIES OF A RESPONSIBLE AGENCY.

When it is identified as a Responsible Agency, the District shall consider the environmental documents prepared or caused to be prepared by the Lead Agency and reach its own conclusions on whether and how to approve the project involved. The District shall also both respond to consultation by the Lead Agency and attend meetings as requested by the Lead Agency to assist the Lead Agency in preparing adequate environmental documents. The District should also review and comment on Draft EIRs and Negative Declarations. Comments shall be limited to those project activities which are within the District's area of expertise or are required to be carried out or approved by the District or are subject to the District's powers. As a Responsible Agency, the District may identify significant environmental effects of a project for which mitigation is necessary. As a Responsible Agency, the District may submit to the Lead Agency proposed mitigation measures which would address those significant environmental effects. If mitigation measures are required, the District should submit to the Lead Agency complete and detailed performance objectives for such mitigation measures which would address the significant environmental effects identified, or refer the Lead Agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to the Lead Agency by the District shall be limited to measures which mitigate impacts to resources that are within the District's authority. For private projects, the District, as a Responsible Agency, may require the project proponent to provide such information as may be required and to reimburse the District for all costs incurred by it in reporting to the Lead Agency.

2.07 RESPONSE TO NOTICE OF PREPARATION BY RESPONSIBLE AGENCIES.

Within thirty (30) days of receipt of a Notice of Preparation of an EIR, the District, as a Responsible Agency, shall specify to the Lead Agency the scope and content of the environmental information related to the District's area of statutory responsibility in connection with the proposed project. At a minimum, the response shall identify the significant environmental issues and possible alternatives and mitigation which the District, as a Responsible Agency, will need to have explored in the Draft EIR. Such information shall be specified in writing, shall be as specific as possible, and shall be communicated to the Lead Agency, by certified mail or any other method of transmittal which provides it with a record that the response was received. The Lead Agency shall incorporate this information into the EIR.

2.08 USE OF FINAL EIR OR NEGATIVE DECLARATION BY RESPONSIBLE AGENCIES.

The District, as a Responsible Agency, shall consider the Lead Agency's Final EIR or Negative Declaration before acting upon or approving a proposed project. The District shall consider the adequacy of the prior environmental documents for its purposes and in certain instances may require that a Subsequent EIR or a Supplemental EIR be prepared. Mitigation measures and alternatives deemed feasible and relevant to the District's role in carrying out the project shall be adopted. Findings which are relevant to the District's responsibility shall be made. A Notice of Determination shall be filed by the Responsible Agency, but need not state that the Lead Agency's EIR or Negative Declaration complies with CEQA.

2.09 SHIFT IN LEAD AGENCY RESPONSIBILITIES.

The District, as a Responsible Agency, shall assume the role of the Lead Agency if any one of the following three conditions is met:

(a) The Lead Agency did not prepare any environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency.

(b) The Lead Agency prepared environmental documents for the project, and all of the following conditions occur:

    (1) A Subsequent or Supplemental EIR is required;

    (2) The Lead Agency has granted a final approval for the project; and

    (3) The statute of limitations has expired for a challenge to the action of the appropriate Lead Agency.

(c) The Lead Agency prepared inadequate environmental documents without providing public notice of a Negative Declaration or sending Notice of Preparation of an EIR to Responsible Agencies and the statute of limitations has expired for a challenge to the action of the appropriate Lead Agency.

3. ACTIVITIES EXEMPT FROM CEQA

3.01 ACTIONS SUBJECT TO CEQA.

CEQA applies to discretionary projects proposed to be carried out or approved by public agencies. If the proposed activity does not come within the definition of "project" contained in Local Guidelines Section 10.53, it is not subject to environmental review under CEQA.

"Project" does not include:

(a) Proposals for legislation to be enacted by the State Legislature;
(b) Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, and general policy and procedure making (except as provided in Local Guidelines Section 10.53);
(c) The submittal of proposals to a vote of the people in response to a petition drive initiated by voters, or the enactment of a qualified voter-sponsored initiative under California Constitution Art. II, Section 11(a) and Election Code Section 9214;
(d) The creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to any specific project which may have a potentially significant physical impact on the environment. Government funding mechanisms may include, but are not limited to, assessment districts and community facilities districts;
(e) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment; and
(f) Activities that do not result in a direct or reasonably foreseeable indirect physical change in the environment.

3.02 MINISTERIAL ACTIONS.

Ministerial actions are not subject to CEQA review. A ministerial action is one that is approved or denied by a decision which a public official or a public agency makes that involves only the use of fixed standards or objective measurements without personal judgment or discretion.

When a project involves an approval that contains elements of both a ministerial and discretionary nature, the project will be deemed to be discretionary and subject to the requirements of CEQA. The decision whether a proposed project or activity is ministerial in nature may involve or require, to some extent, interpretation of the language of the legal mandate, and should be made on a case-by-case basis. The following is a non-exclusive list of examples of ministerial activities:

(a) Issuance of business licenses;
(b) Approval of final subdivision maps and final parcel maps;
(c) Approval of individual utility service connections and disconnections;
(d) Issuance of licenses;
(e) Issuance of a permit to do street work; and
(f) Issuance of building permits where the District does not retain significant discretionary power to modify or shape the project.

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3.03 EXEMPTIONS IN GENERAL.

CEQA and the State Guidelines exempt certain activities and provide that local agencies should further identify and describe certain exemptions. The requirements of CEQA and the obligation to prepare an EIR, Negative Declaration or Mitigated Negative Declaration do not apply to the exempt activities which are set forth in CEQA, the State Guidelines and Chapter 3 of these Local Guidelines.

3.04 PRELIMINARY EXEMPTION ASSESSMENT.

If, in the judgment of Staff, a proposed activity is exempt, Staff should so find on the form entitled "Preliminary Exemption Assessment" (Form "A"). The Preliminary Exemption Assessment shall be retained at District Offices as a public record.

3.05 NOTICE OF EXEMPTION.

After District approval of an exempt project, a "Notice of Exemption" (Form "B") may be filed by Staff with the Clerk. If District exempts an agricultural housing, affordable housing, or residential infill project under State Guidelines Sections 15193, 15194 or 15195 and the District approves or determines to carry out that project, it must file a notice with the Office of Planning and Research ("OPR") identifying the exemption. The Preliminary Exemption Assessment shall be attached to the Notice of Exemption for filing. If filed, the Clerk must post the Notice within twenty-four (24) hours of receipt, and the Notice must remain posted for thirty (30) days. Although no California Department of Fish and Game ("DFG") filing fee is applicable to exempt projects, most counties customarily charge a documentary handling fee to pay for record keeping on behalf of the DFG. Refer to the Index in the Staff Summary to determine if such a fee will be required for the project.

The filing of a Notice of Exemption is recommended because it starts a 35-day statute of limitations on legal challenges to the District's determination that the project is exempt from CEQA. The District is encouraged to make postings of all filed notices available in electronic format on the Internet. These electronic postings are in addition to the procedures required by the State Guidelines and the Public Resources Code. If a Notice of Exemption is not filed, a 180-day statute of limitations will apply. Please see Local Guidelines Section 3.12 for certain circumstances in which the District is required to file a Notice of Exemption.

When a request is made for a copy of the Notice prior to the date on which the District determines the project is exempt, the Notice must be mailed, first class postage prepaid, within five (5) days after the District's determination. If such a request is made following the District's determination, then the copy should be mailed in the same manner as soon as possible.

3.06 DISAPPROVED PROJECTS.

Projects which the Lead Agency rejects or disapproves are exempt. An applicant shall not be relieved of paying the costs for an EIR or Negative Declaration prepared for a project prior to the Lead Agency's disapproval of the project.

3.07 PROJECTS WITH NO POSSIBILITY OF SIGNIFICANT EFFECT.

Where it can be seen with absolute certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt.

3.08 EMERGENCY PROJECTS.

The following types of emergency projects are exempt: (The term "emergency" is defined in Local Guidelines Section 10.18.)

(a) Work in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Section 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter a historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to Section 5028(b) of the Public Resources Code.

(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare.

(c) Projects necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.

(d) Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. This exemption does not apply to highways designated as official state scenic highways, nor to any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide; and

(e) Seismic work on highways and bridges pursuant to Section 180.2 of the Streets and Highways Code Section.

3.09 FEASIBILITY AND PLANNING STUDIES.

A project that involves only feasibility or planning studies for possible future actions which the District has not yet approved, adopted or funded is exempt.

3.10 RATES, TOLLS, FARES AND CHARGES.

The establishment, modification, structuring, restructuring or approval of rates, tolls, fares or other charges by the District that the District finds are for one or more of the purposes listed below are exempt.

(a) Meeting operating expenses, including employee wage rates and fringe benefits;

(b) Purchasing or leasing supplies, equipment or materials;

(c) Meeting financial reserve needs and requirements; or

(d) Obtaining funds for capital projects necessary to maintain service within existing service areas.

(e) When the District determines that one of the aforementioned activities pertaining to rates, tolls, fares or charges is exempt from the requirements of CEQA, it shall incorporate written findings setting forth the specific basis for the claim of exemption in the record of any proceeding in which such an exemption is claimed.

3.11 SUBSURFACE PIPELINES WITHIN A PUBLIC RIGHT-OF-WAY.

The installation of a new pipeline or the maintenance, repair, restoration, reconditioning, relocation, replacement, removal or demolition of an existing subsurface pipeline is exempt where the project is less than one mile in length and located within a public street, highway or any other public right-of-way.

3.12 CERTAIN RESIDENTIAL HOUSING PROJECTS.

CEQA does not apply to the construction, conversion, or use of residential housing if the project meets all of the general requirements described in Section A below and satisfies the specific requirements for any one of the following three categories: (1) agricultural housing (Section B below), (2) affordable housing projects in urbanized areas (Section C below), or (3) affordable housing projects near major transit stops (Section D below).

A. **General Requirements**. The construction, conversion, or use of residential housing units affordable to low-income households (as defined in Section 10.32) located on an infill site in an urbanized area is exempt from CEQA if all of the following general requirements are satisfied:

(1) The project is consistent with:

(a) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application was deemed complete; and

(b) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application was deemed complete. However, the project may be inconsistent with zoning if the zoning is inconsistent with the general plan and the project site has not been rezoned to conform to the general plan;

(2) Community level environmental review has been adopted or certified;

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

(4) The project site meets all of the following four criteria relating to biological resources:

(a) The project site does not contain wetlands;

(b) The project site does not have any value as a wildlife habitat;

(c) The project does not harm any species protected by the federal Endangered Species Act of 1973, the Native Plant Protection Act, or the California Endangered Species Act; and

(d) The project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete;

(5) The site is not included on any list of facilities and sites compiled pursuant to Government Code Section 65962.5;

(6) The project site is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps must have been taken in response to the results of this assessment:

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

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

(7) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code (See Local Guidelines Section 10.25.);

(8) The project site is not subject to 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.

(9) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties;

(10) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency;

(11) Either the project site is not within a delineated earthquake fault zone, or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

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(12) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(13) The project site is not located on developed open space;

(14) The project site is not located within the boundaries of a state conservancy;

(15) The project site has not been divided into smaller projects to qualify for one or more of the exemptions for affordable housing, agricultural housing, or residential infill housing projects found in the subsequent sections; and

(16) The project meets the requirements set forth in either Public Resources Code Sections 21159.22, 21159.23 or 21159.24.

B. **Specific Requirements for Agricultural Housing**. (Public Resources Code Section 21159.22 and State Guidelines Section 15192.) CEQA does not apply to the construction, conversion, or use of residential housing for agricultural employees that meets all of the general requirements described above in Section A and meets the following additional criteria:

(1) The project either:

(a) Is affordable to lower income households, lacks public financial assistance, and the developer has provided sufficient legal commitments to ensure the continued availability and use of the housing units for lower income households for a period of at least fifteen (15) years; or

(b) If public financial assistance exists for the project, then the project must be housing for very low, low, or moderate-income households and the developer of the project has provided sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least fifteen (15) years;

(2) The project site is adjacent on at least two sides to land that has been developed and the project consists of not more than forty-five (45) units or provides dormitories, barracks, or other group-living facilities for a total of forty-five (45) or fewer agricultural employees, and either:

(a) The project site is within incorporated city limits or within a census-defined place with a minimum population density of at least five thousand (5,000) persons per square mile; or

(b) The project site is within incorporated city limits or within a census- defined place and the minimum population density of the

census-defined place is at least one thousand (1,000) persons per square mile, unless the Lead Agency determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative effects of successive projects of the same type in the same area would, over time, be significant;

(3) If the project is located on a site zoned for general agricultural use, it must consist of twenty (20) or fewer units, or, if the housing consists of dormitories, barracks, or other group-living facilities, the project must not provide housing for more than twenty (20) agricultural employees; and

(4) The project is not more than two (2) acres in area if the project site is located in an area with a population density of at least one thousand (1,000) persons per square mile, and is not more than five (5) acres in area for all other project sites.

C. **Specific Requirements for Affordable Housing Projects in Urbanized Areas**. (Reference: Public Resources Code Sections 21083, 21159.23 and State Guidelines Section 15194.) CEQA does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of one hundred (100) or fewer units that are affordable to low-income households if all of the general requirements described in Section A above are satisfied and the following additional criteria are also met:

(1) The developer of the project provides sufficient legal commitments to the local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least thirty (30) years, at monthly housing costs deemed to be "affordable rent" for lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code;

(2) The project site:

(a) Has been previously developed for qualified urban uses;
(b) Is immediately adjacent to parcels that are developed with qualified urban uses; or
(c) At least 75% of the perimeter of the site adjoins parcels that are developed with qualified urban uses and the remaining 25% of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses, the site has not been developed for urban uses and no parcel within the site has been created within ten (10) years prior to the proposed development of the site;

(3) The project site is not more than five (5) acres in area; and

(4) The project site meets one of the following requirements regarding population density:

(a) The project site is within an urbanized area or within a census-defined place with a population density of at least five thousand (5,000) persons per square mile; or

(b) If the project consists of fifty (50) or fewer units, the project site is within an incorporated city with a population density of at least twenty-five hundred (2,500) persons per square mile and a total population of at least twenty-five thousand (25,000) persons; or

(c) The project site is within either an incorporated city or a census-defined place with a population density of one thousand (1,000) persons per square mile, unless there is a reasonable possibility that the project would have a significant effect on the environment due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

D. **Specific Requirements for Affordable Housing Projects Near Major Transit Stops**. (Reference: Public Resources Code Sections 21083, 21159.24 and State Guidelines Section 15195.) CEQA does not apply to a residential project on an infill site within an urbanized area if all of the general requirements described above in Section A are satisfied and the following additional criteria are also met:

(1) Within five (5) years prior to the date that the application for the project is deemed complete, community-level environmental review was certified or adopted. This exemption does not apply, however, if new information about the project or substantial changes regarding the circumstances surrounding the project become available after the community-level environmental review was certified or adopted;

(2) The site is not more than four (4) acres in total area;

(3) The project does not contain more than one hundred (100) residential units;

(4) The project meets either of the following criteria:

(a) At least 10% of the housing is sold to families of moderate income or rented to families of low income, or at least 5% of the housing is rented to families of very low income, and the project developer has provided sufficient legal commitments to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs; or

(b) The project developer has paid or will pay in-lieu fees sufficient to pay for the development of the same number of units that would otherwise be sold or rented to families of moderate or very low income pursuant to subparagraph (a);

(5) The project is within one-half mile of a major transit stop;

(6) The project does not include any single-level building that exceeds one hundred thousand (100,000) square feet; and

(7) The project promotes higher density infill housing.

(a) A project with a density of at least 20 units per acre shall be conclusively presumed to promote higher density infill housing.

(b) A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density housing unless the preponderance of the evidence demonstrates otherwise.

(8) Exception.

(a) The Exemption for Affordable Housing Projects near Major Transit Stops does not apply if any one of the following criteria is met:

1. There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances;
2. Substantial changes have occurred since community-level environmental review was adopted or certified with respect to the circumstances under which the project is being undertaken, and those changes are related to the project; or
3. New information regarding the circumstances under which the project is being undertaken has become available, and that new information is related to the project and was not known and could not have been known at the time of the community-level environmental review.

(b) If a project satisfies any one of the three criteria described above in Section 3.12D(8)(a), the environmental effects of the project must be analyzed in an Environmental Impact Report or a Negative Declaration. The environmental analysis shall be limited to the project-specific effects and any effects identified pursuant to Section 3.12D(8)(a).

E. Whenever the Lead Agency determines that a project is exempt from environmental review based on Public Resources Code Section 21159.22 [Section 3.12B of these Local Guidelines], 21159.23 [Section 3.12C of these Local Guidelines], or 21159.24 [Section 3.12D of these Local Guidelines], Staff and/or the proponent of the project shall file a Notice of the Determination of Exemption with the Office of Planning and Research within five (5) working days after the approval of the project.

3.13 MINOR ALTERATIONS TO FLUORIDATE WATER UTILITIES.

Minor alterations to water utilities made for the purpose of complying with the fluoridation requirements of Health and Safety Code Sections 116410 and 116415 or regulations adopted there under are exempt.

3.14 BALLOT MEASURES.

The definition of project in the State Guidelines specifically excludes the submittal of proposals to a vote of the people of the state or of a particular community. This exemption does not apply to the public agency that sponsors the initiative. When a governing body makes a decision to put a measure on the ballot, that decision may be discretionary and therefore subject to CEQA. In contrast, the enactment of a qualified voter-sponsored initiative under California Constitution Art. II, Section 11(a) and Election Code Section 9214 is not a project and therefore is not subject to CEQA review. (See Local Guidelines Section 3.01.)

3.15 TRANSIT PRIORITY PROJECT.

Exemption: Transit priority projects that are part of either a sustainable community project consistent with the Sustainable Community Strategy or an alternative planning strategy are exempt. To qualify for the full CEQA exemption, the project must be a "transit priority project" for which the State Air Resources Board has accepted a determination that the Sustainable Communities Strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets. (Local Guidelines Section 10.67) To qualify for the exemption, the decision-making body must hold a hearing and make findings that the project meets all of Public Resources Code Section 21155.1's environmental, housing, and public safety conditions and requirements.

Streamlined Review: A Transit Priority Project that has incorporated all feasible mitigation measures or criteria set forth in a prior environmental impact report may be eligible for streamlined environmental review. For a complete description of the requirements for this streamlined review see Public Resources Code Section 21155.2. Similarly, the environmental review for a residential or mixed use residential project may limit, or entirely omit, its discussion of growth-inducing impacts or impacts from traffic on global warming under certain limited circumstances. For complete requirements see Public Resources Code Section 21159.28.

Note that neither the exemption nor the streamlined review will apply until: (1) the Air Resources Board sets target greenhouse gas emissions levels, a process that may not be completed until September 30, 2010; and (2) the applicable Metropolitan Planning Organization (MPO) prepares and adopts a Sustainable Communities Strategy for the region.

3.16 OTHER SPECIFIC EXEMPTIONS.

CEQA and the State Guidelines exempt many other specific activities, including early activities related to thermal power plants, ongoing projects, transportation improvement programs, family day care homes, congestion management programs, railroad grade separation projects, restriping of streets or highways to relieve traffic congestion, and hazardous or volatile liquid pipelines. Specific statutory exemptions are listed in the Public Resources Code,

including Sections 21080 through 21080.33, and in the State Guidelines, including Sections 15260 through 15285.

3.17 CATEGORICAL EXEMPTIONS.

The State Guidelines establish certain classes of categorical exemptions. These apply to classes of projects which have been determined not to have a significant effect on the environment and which, therefore, are generally exempt. Compliance with the requirements of CEQA or the preparation of environmental documents for any project which comes within one of these classes of categorical exemptions is not required. The classes of projects are briefly summarized below. (Reference the State Guidelines for the full description of each exemption is recommended.)

The exemptions for Classes 3, 4, 5, 6 and 11 below are qualified in that such projects must be considered in light of the location of the project. A project that is ordinarily insignificant in its impact on the environment may, in a particularly sensitive environment, be significant. Therefore, these classes are considered to apply in all instances except when the project may impact on an environmental resource of hazardous or critical concern which has been designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

All classes of categorical exemptions are qualified. These exemptions are inapplicable if any of the following circumstances exist:

(1) The cumulative impact of successive projects of the same type in the same place over time is significant;

(2) There is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(3) The project may result in damage to a scenic or a substantial adverse change to a historical resource; or

(4) The project is located on a site which is included on any hazardous waste site or list compiled pursuant to Government Code Section 65962.5.

With the foregoing limitations in mind, the following classes of activity are generally exempt:

Class 1: Existing Facilities. Activities involving the operation, repair, maintenance, permitting, leasing, licensing, minor alteration of, or legislative activities to regulate, existing public or private structures, facilities, mechanical equipment or other property, or topographical features, provided the activity involves negligible or no expansion of use beyond that existing at the time of the District's determination. The types of "existing facilities" itemized in Class 1 are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use. (State Guidelines Section 15301.)

Class 2: Replacement or Reconstruction. Replacement or reconstruction of existing facilities, structures, or other property where the new facility or structure will be located on the same site as the replaced or reconstructed facility or structure and will have substantially the same purpose and capacity as the replaced or reconstructed facility or structure. (State Guidelines Section 15302.)

Class 3: New Construction or Conversion of Small Structures. Construction of limited numbers of small new facilities or structures; installation of small new equipment or facilities in small structures; and the conversion of existing small structures from one use to another, when only minor modifications are made in the exterior of the structure. This exemption includes structures built for both residential and commercial uses. (The maximum number of structures allowable under this exemption is set forth in State Guidelines Section 15303.)

Class 4: Minor Alterations to Land. Minor alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees, except for forestry or agricultural purposes. (State Guidelines Section 15304.)

Class 5: Minor Alterations in Land Use Limitations. Minor alterations in land use limitations in areas with an average slope of less than 20% which do not result in any changes in land use or density. (State Guidelines Section 15305.)

Class 6: Information Collection. Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource. (State Guidelines Section 15306.)

Class 7: Actions by Regulatory Agencies for Protection of Natural Resources. Actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. (State Guidelines Section 15307.)

Class 8: Actions By Regulatory Agencies for Protection of the Environment. Actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement or protection of the environment where the regulatory process involves procedures for protection of the environment. (State Guidelines Section 15308.)

Class 9: Inspection. Inspection activities, including, but not limited to, inquiries into the performance of an operation and examinations of the quality, health or safety of a project. (State Guidelines Section 15309.)

Class 10: Loans. Loans made by the Department of Veterans Affairs under the Veterans Farm and Home Purchase Act of 1943, mortgages for the purchase of existing structures where the loan will not be used for new construction and the purchase of such mortgages by financial institutions. (State Guidelines Section 15310.)

Class 11: Accessory Structures. Construction or replacement of minor structures accessory or appurtenant to existing commercial, industrial, or institutional facilities, including,

but not limited to, on-premise signs; small parking lots; and placement of seasonal or temporary use items, such as lifeguard towers, mobile food units, portable restrooms or similar items in generally the same locations from time to time in publicly owned parks, stadiums or other facilities designed for public use. (State Guidelines Section 15311.)

Class 12: Surplus Government Property Sales. Sales of surplus government property, except for certain parcels of land located in an area of statewide, regional or areawide concern as that term is defined in State Guidelines Section 15206(b)(4). However, even if the surplus property to be sold is located in any of those areas, its sale is exempt if:

(a) The property does not have significant values for wildlife or other environmental purposes, and
(b) Any one of the following three conditions is met:
    1. The property is of such size, shape, or inaccessibility that it is incapable of independent development or use;
    2. The property to be sold would qualify for an exemption under any other class of categorical exemption in the State Guidelines; or
    3. The use of the property and adjacent property has not changed since the time of purchase by the public agency. (State Guidelines Section 15312.)

Class 13: Acquisition of Lands for Wildlife Conservation Purposes. Acquisition of lands for fish and wildlife conservation purposes, including preservation of fish and wildlife habitat, establishment of ecological preserves under Fish and Game Code Section 1580, and preservation of access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition. (State Guidelines Section 15313.)

Class 14: Minor Additions to Schools. Minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more 25% or ten (10) classrooms, whichever is less. The addition of portable classrooms is included in this exemption. (State Guidelines Section 15314.)

Class 15: Minor Land Divisions. Division(s) of property in urbanized areas zoned for residential, commercial or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20%. (State Guidelines Section 15315.)

Class 16: Transfer of Ownership of Land in Order to Create Parks. Acquisition, sale, or other transfer of land in order to establish a park where the land is in a natural condition or contains historical or archaeological resources and either:

(a) The management plan for the park has not been prepared, or
(b) The management plan proposes to keep the area in a natural condition or preserve the historic or archaeological resources.

CEQA will apply when a management plan is proposed that will change the area from its natural condition or cause substantial adverse change in the significance of the historic or archaeological resource. (State Guidelines Section 15316.)

Class 17: Open Space Contracts or Easements. Establishment of agricultural preserves, making and renewing of open space contracts under the Williamson Act or acceptance of easements or fee interests in order to maintain the open space character of the area. (The cancellation of such preserves, contracts, interests or easements is not included in this exemption.) (State Guidelines Section 15317.)

Class 18: Designation of Wilderness Areas. Designation of wilderness areas under the California Wilderness System. (State Guidelines Section 15318.)

Class 19: Annexations of Existing Facilities and Lots for Exempt Facilities. Annexations:

(a) To a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or prezoning of either the gaining or losing governmental agency, whichever is more restrictive; provided, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities; and
(b) Of individual small parcels of the minimum size for facilities exempted by Class 3, New Construction or Conversion of Small Structures. (State Guidelines Section 15319.)

Class 20: Changes in Organization of Local Agencies. Changes in the organization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised. Examples include but are not limited to:

(a) Establishment of a subsidiary district;
(b) Consolidation of two or more districts having identical powers;
(c) Merger with a city of a district lying entirely within the boundaries of the city.

(State Guidelines Section 15320.)

Class 21: Enforcement Actions by Regulatory Agencies. Actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate or other entitlement for use issued, adopted or prescribed by the regulatory agency or a law, general rule, standard or objective administered or adopted by the regulatory agency; or law enforcement activities by peace officers acting under any law that provides a criminal sanction. The direct referral of a violation of lease, permit, license certificate, or entitlement to the City Attorney is exempt under this Class. (Construction activities undertaken by the District taking the enforcement or revocation action are not included in this exemption.) (State Guidelines Section 15321.)

Class 22: Educational or Training Programs Involving No Physical Changes. The adoption, alteration or termination of educational or training programs which involve no

physical alteration in the area affected or which involve physical changes only in the interior of existing school or training structures. Examples include but are not limited to:

(a) Development of or changes in curriculum or training methods; or
(b) Changes in the trade structure in a school which do not result in changes in student transportation.

(State Guidelines Section 15322.)

Class 23: Normal Operations of Facilities for Public Gatherings. Continued or repeated normal operations of existing facilities for public gatherings for which the facilities were designed, where there is past history, of at least three years, of the facility being used for the same or similar purposes. Facilities included within this exemption include, but are not limited to race tracks, stadiums, convention centers, auditoriums, amphitheaters, planetariums, swimming pools and amusement parks. (State Guidelines Section 15323.)

Class 24: Regulation of Working Conditions. Actions taken by the District to regulate employee wages, hours of work or working conditions where there will be no demonstrable physical changes outside the place of work. (State Guidelines Section 15324.)

Class 25: Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources. Transfers of ownership of interest in land in order to preserve open space, habitat, or historical resources. Examples include, but are not limited to, acquisition, sale, or other transfer of areas to: preserve existing natural conditions, including plant or animal habitats; allow continued agricultural use of the areas; allow restoration of natural conditions; preserve open space or lands for natural park purposes; or prevent encroachment of development into floodplains. This exemption does not apply to the development of parks or park uses. (State Guidelines Section 15325.)

Class 26: Acquisition of Housing for Housing Assistance Programs. Actions by a redevelopment agency, housing authority or other public agency to implement an adopted Housing Assistance Plan by acquiring an interest in housing units, provided the housing units are either in existence or possessing all required permits for construction when the agency makes its final decision to acquire the units. (State Guidelines Section 15326.)

Class 27: Leasing New Facilities. Leasing of a newly constructed or previously unoccupied privately owned facility by a local or state agency when the District determines that the proposed use of the facility:

(a) Conforms with existing state plans and policies and with general, community, and specific plans for which an EIR or Negative Declaration has been prepared;
(b) Is substantially the same as that originally proposed at the time the building permit was issued;
(c) Does not result in a traffic increase of greater than 10% of front access road capacity; and

(d) Includes the provision of adequate employee and visitor parking facilities.

(State Guidelines Section 15327.)

Class 28: Small Hydroelectric Projects as Existing Facilities. Installation of certain small hydroelectric-generating facilities in connection with existing dams, canals and pipelines, subject to the conditions in State Guidelines Section 15328. (State Guidelines Section 15328.)

Class 29: Cogeneration Projects at Existing Facilities. Installation of cogeneration equipment with a capacity of 50 megawatts or less at existing facilities meeting certain conditions listed in State Guidelines Section 15329. (State Guidelines Section 15329.)

Class 30: Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances. Any minor cleanup actions taken to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of a hazardous waste or substance which are small or medium removal actions costing $1 million or less. (State Guidelines Section 15330.)

(a) No cleanup action shall be subject to this Class 30 exemption if the action requires the onsite use of a hazardous waste incinerator or thermal treatment unit or the relocation of residences or businesses, or the action involves the potential release into the air of volatile organic compounds as defined in Health and Safety Code Section 25123.6, except for small scale in situ soil vapor extraction and treatment systems which have been permitted by the local Air Pollution Control District or Air Quality Management District. All actions must be consistent with applicable state and local environmental permitting requirements including, but not limited to, off-site disposal, air quality rules such as those governing volatile organic compounds and water quality standards, and approved by the regulatory body with jurisdiction over the site.

(b) Examples of such minor cleanup actions include but are not limited to:

1. Removal of sealed, non-leaking drums of hazardous waste or substances that have been stabilized, containerized and are designated for a lawfully permitted destination;
2. Maintenance or stabilization of berms, dikes, or surface impoundments;
3. Construction or maintenance or interim of temporary surface caps;
4. Onsite treatment of contaminated soils or sludges provided treatment system meets Title 22 requirements and local air district requirements;
5. Excavation and/or offsite disposal of contaminated soils or sludges in regulated units;

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6. Application of dust suppressants or dust binders to surface soils;
7. Controls for surface water run-on and run-off that meets seismic safety standards;
8. Pumping of leaking ponds into an enclosed container;
9. Construction of interim or emergency ground water treatment systems; or
10. Posting of warning signs and fencing for a hazardous waste or substance site that meets legal requirements for protection of wildlife.

Class 31: Historical Resource Restoration/Rehabilitation. Maintenance, repairs, stabilization, rehabilitation, restoration, preservation, conservation, or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer. (State Guidelines Section 15331.)

Class 32: Infill Development Projects. Infill development meeting the following conditions:

(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations;
(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;
(c) The project site has no value as habitat for endangered, rare or threatened species;
(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and
(e) The site can be adequately served by all required utilities and public services. (State Guidelines Section 15332.)

Class 33: Small Habitat Restoration Projects. Examples of small habitat restoration projects include, but are not limited to: revegetation of disturbed areas with native plant species; wetland restoration, the primary purpose of which is to improve conditions for waterfowl or other species that rely on wetland habitat; stream or river bank revegetation, the primary purpose of which is to improve habitat for amphibians or native fish; projects to restore or enhance habitat that are carried out principally with hand labor and not mechanized equipment; stream or river bank stabilization with native vegetation or other bioengineering techniques, the primary purpose of which is to reduce or eliminate erosion and sedimentation; culvert replacement conducted in accordance with published guidelines of the Department of Fish and Game or NOAA Fisheries, the primary purpose of which is to improve habitat or reduce sedimentation, and other similar projects to assure the maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife.

This exemption only applies to projects that are five acres or less in size and that meet the following criteria:

(a) There would be no significant adverse impact on endangered, rare or threatened species or their habitat pursuant to Section 15065 of the State Guidelines;

(b) There are no hazardous materials at or around the project site that may be disturbed or removed; and

(c) The project will not result in impacts that are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. (State CEQA Guidelines Section 15333.)

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4. TIME LIMITATIONS

4.01 REVIEW OF PRIVATE PROJECT APPLICATIONS.

Staff shall determine whether the application for a private project is complete within thirty (30) days of receipt of the application. No application may be deemed incomplete for lack of a waiver of the time limitations in Local Guidelines Sections 4.03 and 4.04. Accepting an application as complete does not limit the authority of the District, acting as the Lead Agency, to require the applicant to submit additional information needed for environmental evaluation of the project. Requiring such additional information after the application is complete does not change the status of the application.

4.02 DETERMINATION OF TYPE OF ENVIRONMENTAL DOCUMENT.

Except as provided in Local Guidelines Sections 4.05 and 4.06, Staff's initial determination as to whether a Negative Declaration, Mitigated Negative Declaration or an EIR should be prepared shall be made within thirty (30) days from the date on which an application for a project is accepted as complete by the District. This period may be extended fifteen (15) days with consent of the applicant and the District.

4.03 COMPLETION AND ADOPTION OF NEGATIVE DECLARATION.

For private projects involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the Negative Declaration/Mitigated Negative Declaration shall be completed and approved within one hundred eighty (180) days from the date when the District accepted the application as complete. In the event that compelling circumstances justify additional time and the project applicant consents thereto, Staff may provide for a reasonable extension of the time limit for completing and adopting the Negative Declaration/Mitigated Negative Declaration.

4.04 COMPLETION AND CERTIFICATION OF FINAL EIR.

For private projects, the Final EIR shall be completed and certified by the District within one year after the date when the District accepted the application as complete. In the event that compelling circumstances justify additional time and the project applicant consents thereto, the District may provide a one-time extension up to ninety (90) days for completing and certifying the EIR.

4.05 PROJECTS SUBJECT TO THE PERMIT STREAMLINING ACT.

The Permit Streamlining Act requires agencies to make decisions on certain development project approvals within specified time limits. If a project is subject to the Act, the District cannot require the project applicant to submit the informational equivalent of an EIR or prove compliance with CEQA as a prerequisite to determining whether the project application is complete. In addition, if requested by the project applicant, the District must begin processing the project application prior to final CEQA action, provided the information necessary to begin the process is available.

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Under the Permit Streamlining Act, the Lead Agency must approve or disapprove the development project application within one hundred eighty (180) days from the date on which it certifies the EIR, or within ninety (90) days of certification if an extension for completing and certifying the EIR was granted. If the Lead Agency adopts a Negative Declaration/Mitigated Negative Declaration or determines the development project is exempt from CEQA, it shall approve or disapprove the project application within sixty (60) days from the date on which it adopts the Negative Declaration/Mitigated Negative Declaration or determines that the project is exempt from CEQA.

Except for waivers of the time periods for preparing a joint Environmental Impact Report/Environmental Impact Statement (as outlined in Government Code Sections 65951 and 65957), the District cannot require a waiver of the time limits specified in the Permit Streamlining Act as a condition of accepting or processing a development project application. In addition, the District cannot disapprove a development project application in order to comply with the time limits specified in the Permit Streamlining Act.

4.06 PROJECTS, OTHER THAN THOSE SUBJECT TO THE PERMIT STREAMLINING ACT, WITH SHORT TIME PERIODS FOR APPROVAL.

A few statutes require agencies to make decisions on project applications within time limits that are so short that review of the project under CEQA would be difficult. To enable the District as Lead Agency to comply with both the enabling statute and CEQA, the District shall deem a project application as not received for filing under the enabling statute until such time as the environmental documentation required by CEQA is complete. This section applies where all of the following conditions are met:

(a) The enabling statute for a program, other than development projects under Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, requires the District to take action on an application within a specified period of time of six (6) months or less;
(b) The enabling statute provides that the project is approved by operation of law if the District fails to take any action within the specified time period; and
(c) The project application involves the District's issuance of a lease, permit, license, certificate or other entitlement for use.

In any case, the environmental document shall be completed or certified and the decision on the application shall be made within the period established by the Permit Streamlining Act (Government Code Sections 65920, et seq.).

4.07 WAIVER OR SUSPENSION OF TIME PERIODS.

These deadlines may be waived by the applicant if the project is subject to both CEQA and NEPA. (State Guidelines Sections 15110 and 15224; see Section 5.04 of these Local Guidelines for information about projects that are subject to both CEQA and NEPA.)

An unreasonable delay by an applicant in meeting District requests necessary for the preparation of a Negative Declaration or an EIR shall suspend the running of the time periods described in Local Guidelines Sections 4.03 and 4.04 for the period of the unreasonable delay.

Alternatively, the District may disapprove a project application where there is unreasonable delay in meeting requests. The District may also allow a renewed application to start at the same point in the process where the prior application was when it was disapproved.

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5. INITIAL STUDY

5.01 PREPARATION OF INITIAL STUDY.

If the District determines that it is the Lead Agency for a project which is not exempt, the District shall prepare an Initial Study to ascertain whether the project may have a substantial adverse effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial. All phases of project planning, implementation and operation must be considered in the Initial Study. An Initial Study may rely on expert opinion supported by facts, technical studies or other substantial evidence. However, an Initial Study is neither intended nor required to include the level of detail included in an EIR.

(a) For District projects, the Initial Study shall be prepared by Staff or by private experts pursuant to contract with the District.

(b) For private projects, the person or entity proposing to carry out the project shall submit all data and information as may be required by the District to determine whether the proposed project may have a significant effect on the environment. All costs incurred by the District in reviewing the data and information submitted, or in conducting its own investigation based upon such data and information, or in preparing an Initial Study for the project shall be borne by the person or entity proposing to carry out the project.

5.02 INFORMAL CONSULTATION WITH OTHER AGENCIES.

When more than one public agency will be involved in undertaking or approving a project, the District as Lead Agency shall consult with all Responsible and any Trustee Agencies. Such consultation shall be undertaken in compliance with the notice procedures applicable to the type of CEQA document being prepared. See Section 6.04, Negative Declarations, and Section 7.03, EIRs.

The District may choose to engage in early consultation with Responsible and Trustee Agencies before the District begins to prepare the Initial Study. This early consultation may be done quickly and informally and is intended to ensure that the EIR, Negative Declaration or Mitigated Negative Declaration reflects the concerns of all Responsible Agencies that will issue approvals for the project and all Trustee Agencies responsible for natural resources affected by the project. The District's early consultation process may include consultation with other individuals or organizations with an interest in the project, if the District so desires. The Office of Planning and Research, upon request of the District or a private project applicant, shall assist in identifying the various Responsible Agencies for a proposed project and ensure that the Responsible Agencies are notified regarding any early consultation. In the case of a project undertaken by a public agency, the Office of Planning and Research, upon request of the District, shall ensure that any Responsible Agency or public agency that has jurisdiction by law with respect to the project is notified regarding any early consultation.

If, during the early consultation process it is determined that the project will clearly have a significant effect on the environment, the District may immediately dispense with the Initial Study and determine that an EIR is required.

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5.03 CONSULTATION WITH PRIVATE PROJECT APPLICANT.

During or immediately after preparation of an Initial Study for a private project, the District may consult with the applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the Initial Study. If the project can be revised to avoid or mitigate effects to a level of insignificance and there is no substantial evidence before the District that the project, as revised, may have a significant effect on the environment, the District may prepare and adopt a Negative Declaration. If any significant effect may still occur despite alterations of the project, an EIR must be prepared.

5.04 PROJECTS SUBJECT TO NEPA

Projects that are carried out, financed, or approved in whole or in part by a federal agency are subject to the provisions of the National Environmental Protection Act ("NEPA") in addition to CEQA. To the extent possible, the State Guidelines encourage the District to use the federally-prepared Environmental Impact Statement ("EIS") or Finding of No Significant Impact ("FONSI") or to prepare joint CEQA/NEPA documents instead of preparing a separate NEPA and CEQA documents for a project that is subject to both NEPA and CEQA. (State Guidelines Section 15220.) For example, the District should attempt to work in conjunction with the federal agency involved in the project to prepare a combined EIR-EIS or Negative Declaration-FONSI. (State Guidelines Section 15222.) The District is required to cooperate with the federal agency and to utilize joint planning processes, environmental research and studies, public hearings, and environmental documents to the fullest extent possible. (State Guidelines Section 15226.) However, since NEPA does not require an examination of mitigation measures or growth-inducing impacts, analysis of mitigation measures and growth-inducing impacts will need to be added before NEPA documents may be used to satisfy CEQA. (State Guidelines Section 15221.)

For projects that are subject to NEPA, a scoping meeting held pursuant to NEPA satisfies the CEQA scoping requirement as long as notice is provided to the agencies and individuals listed in Local Guidelines Section 7.06, and provided in accordance with these Local Guidelines.

If the federal agency refuses to cooperate with the District with regard to the preparation of joint documents, the District should attempt to involve a state agency in the preparation of the EIR, Negative Declaration, or Mitigated Negative Declaration. Since federal agencies are explicitly permitted to utilize environmental documents prepared by agencies of statewide jurisdiction, it is possible that the federal agency will reuse the state-prepared CEQA documents instead of requiring the applicant to fund a redundant set of federal environmental documents. (State Guidelines Section 15228.)

Where the federal agency has circulated the EIS or FONSI and the circulation satisfied the requirements of CEQA and any other applicable laws, the District may use the EIS or FONSI in place of an EIR or Negative Declaration without having to recirculate the federal documents. The District's intention to adopt the previously circulated EIS or FONSI must be publicly noticed in the same way as a Notice of Availability of a Draft EIR.

Special rules may apply when the environmental documents are prepared for projects involving the reuse of military bases. See State Guidelines Section 15225.

5.05 AN INITIAL STUDY.

The Initial Study shall be used to determine whether a Negative Declaration, Mitigated Negative Declaration or an EIR shall be prepared for a project. It provides written documentation of whether the District found evidence of significant adverse impacts which might occur. The purposes of an Initial Study are to:

(a) Identify environmental impacts;
(b) Enable an applicant or Lead Agency to modify a project, mitigating adverse impacts before an EIR is written;
(c) Focus an EIR, if one is required, on potentially significant environmental effects;
(d) Facilitate environmental assessment early in the design of a project;
(e) Provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment;
(f) Eliminate unnecessary EIRs; and
(g) Determine whether a previously prepared EIR could be used for the project.

5.06 CONTENTS OF INITIAL STUDY.

An Initial Study shall contain in brief form:

(a) A description of the project, including the location of the project. The project description must be consistent throughout the environmental review process;
(b) An identification of the environmental setting;
(c) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries are briefly explained to show the evidence supporting the entries. The brief explanation may be through either a narrative or a reference to other information such as attached maps, photographs, or an earlier EIR or Negative Declaration. A reference to another document should include a citation to the page or pages where the information is found;
(d) A discussion of ways to mitigate any significant effects identified;
(e) An examination of whether the project is consistent with existing zoning and local land use plans and other applicable land use controls;
(f) The name of the person or persons who prepared or participated in the Initial Study; and
(g) Identification of prior EIRs or environmental documents which could be used with the project.

5.07 USE OF A CHECKLIST INITIAL STUDY.

When properly completed, the Environmental Checklist (Form "J") will meet the requirements of Local Guidelines Section 5.05 provided that the entries on the checklist are explained. Either the Environmental Checklist (Form "J") should be expanded or a separate attachment should be prepared to describe the project, including its location, and to identify the environmental setting.

California courts have rejected the use of a bare, unsupported Initial Study checklist. An Initial Study must contain more than mere conclusions. It must disclose supporting data or evidence upon which the District relied in conducting the Study. The District shall augment

checklists with supporting factual data and reference information sources when completing the forms. Explanation of all "potential impact" answers should be provided on attached sheets. For controversial projects, it is advisable to state briefly why "no" answers were checked. If practicable, attach a list of reference materials, such as prior EIRs, plans, traffic studies, air quality data, or other supporting studies.

5.08 EVALUATING SIGNIFICANT ENVIRONMENTAL EFFECTS.

In evaluating the environmental significance of effects disclosed by the Initial Study, the District shall consider:

(a) Whether the Initial Study and/or any comments received informally during consultations indicate that a fair argument can be made that the project may have a significant adverse environmental impact which cannot be mitigated to a level of insignificance. Even if a fair argument can be made to the contrary, an EIR should be prepared.

(b) Whether both primary (direct) and secondary (indirect) consequences of the project were evaluated. Primary consequences are immediately related to the project, while secondary consequences are related more to the primary consequences than to the project itself. For example, secondary impacts upon the resources base, including land, air, water and energy use of an area, may result from population growth, a primary impact.

(c) Whether adverse social and economic changes will result from a physical change caused by the project. Adverse economic and social changes resulting from a project are not, in themselves, significant environmental effects. However, if such adverse changes cause physical changes in the environment, those consequences may be used as the basis for finding that the physical change is significant.

(d) Whether there is serious public controversy or disagreement among experts over the environmental effects of the project. However, the existence of public controversy or disagreement among experts does not, without more, require preparation of an EIR in the absence of substantial evidence of significant effects.

(e) Whether the cumulative impact of the project is significant and whether the incremental effects of the project are "cumulatively considerable" (as defined in Local Guidelines Section 10.11) when viewed in connection with the effects of past projects, current projects, and probable future projects.

(f) Whether the project may cause a substantial adverse change in the significance of an archaeological or historical resource.

5.09 MANDATORY FINDINGS OF SIGNIFICANT EFFECT.

Whenever there is substantial evidence, in light of the whole record, that any of the conditions set forth below may occur, the District shall find that the project may have a significant effect on the environment and thereby shall require preparation of an EIR:

(a) The project has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered

plant or animal, or eliminate important examples of major periods of California history or prehistory;

(b) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals;

(c) The project has possible environmental effects which are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past, current, and probable future projects. That is, the District is required to determine whether the incremental impacts of a project are cumulatively considerable by evaluating them against the back-drop of the environmental effects of the other projects; or

(d) The environmental effects of a project will cause substantial adverse effects on humans either directly or indirectly.

If, before the release of the CEQA document for public review, the potential for triggering one of the mandatory findings of significance is avoided or mitigation measures or project modifications reduce the potentially significant impacts to a point where clearly the mandatory finding of significance is not triggered, preparation of an EIR is not mandated. If the project's potential for triggering one of the mandatory findings of significance cannot be avoided or mitigated to a point where the criterion is clearly not triggered, an EIR shall be prepared, and the relevant mandatory findings of significance shall be used: (1) as thresholds of significance for purposes of preparing the EIR's impact analysis, (2) in making findings on the feasibility of alternatives or mitigation measures, (3) when found to be feasible, in making changes in the project to lessen or avoid the adverse environmental impacts, and (4) when necessary, in adopting a statement of overriding considerations.

Although an EIR prepared for a project that triggers one of the mandatory findings of significance must use the relevant mandatory findings as thresholds of significance, the EIR need not conclude that the impact itself is significant. Rather, the District must exercise its discretion and determine, on a case-by-case basis after evaluating all of the relevant evidence, whether the project's environmental impacts are avoided or mitigated below a level of significance or whether a statement of overriding considerations is required.

With regard to a project that has the potential to substantially reduce the number or restrict the range of a protected species, the District does not have to prepare an EIR solely due to that impact, provided the project meets the following three criteria:

(a) The project proponent must be bound to implement mitigation requirements relating to such species and habitat pursuant to an approved habitat conservation plan and/or natural communities conservation plan;

(b) The state or federal agency must have approved the habitat conservation plan and/or natural community conservation plan in reliance on an EIR and/or EIS; and

(c) The mitigation requirements must either avoid any net loss of habitat and net reduction in number of the affected species, or preserve, restore, or enhance sufficient habitat to mitigate the reduction in habitat and number of the affected species below a level of significance.

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5.10 MANDATORY PREPARATION OF AN EIR FOR WASTE-BURNING PROJECTS.

The District, as Lead Agency, shall prepare or cause to be prepared and certify the completion of an EIR, or, if appropriate, an Addendum, Supplemental EIR, or Subsequent EIR, for any project involving the burning of municipal wastes, hazardous waste or refuse-derived fuel, including, but not limited to, tires, if the project consists of any of the following:

(a) The construction of a new facility.
(b) The expansion of an existing hazardous waste burning facility which would increase its permitted capacity by more than 10%.
(c) The issuance of a hazardous waste facilities permit to a land disposal facility, as defined in Local Guidelines Section 10.29; or.
(d) The issuance of a hazardous waste facilities permit to an offsite large treatment facility, as defined in Local Guidelines Sections 10.30 and 10.50.

This section does not apply to projects listed in subsections (c) and (d), immediately above, if the facility only manages hazardous waste that is identified or listed pursuant to Health and Safety Code Section 25140 or 25141 or only conducts activities which are regulated pursuant to Health and Safety Code Section 25100, et seq.

The District shall calculate the percentage of expansion for an existing facility by comparing the proposed facility's capacity with either of the following, as applicable:

(a) The facility capacity authorized in the facility's hazardous waste facilities permit pursuant to Health and Safety Code Section 25200, or its grant of interim status pursuant to Health and Safety Code Section 25200.5, or the facility capacity authorized in any state or local agency permit allowing the construction or operation of the facility for the burning of hazardous waste granted before January 1, 1990; or
(b) The facility capacity authorized in the facility's original hazardous facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

This section does not apply to any project over which the State Energy Resources Conservation and Development Commission has assumed jurisdiction per Health and Safety Code Section 25500, et seq.

The EIR requirement is also subject to a number of exceptions for specific types of waste-burning projects. (Public Resources Code Section 21151.1 and State Guidelines Section 15081.5.) Even if preparation of an EIR is not mandatory for a particular type of waste-burning project, those projects are not exempt from the other requirements of CEQA, the State Guidelines, or these Local Guidelines. In addition, waste-burning projects are subject to special notice requirements under Public Resources Code Section 21092. Specifically, in addition to the standard public notices required by CEQA, notice must be provided to all owners and occupants of property located within one-fourth mile of any parcel or parcels on which the waste-burning project will be located. (Public Resources Code Section 21092(c).) See Local Guidelines Sections 6.09, 7.19 and 7.21.

5.11 DEVELOPMENT PURSUANT TO AN EXISTING COMMUNITY PLAN AND EIR.

Before preparing a CEQA document, Staff should determine whether the proposed project involves development consistent with an earlier zoning or community plan to accommodate a particular density for which an EIR has been certified. If an earlier EIR for the zoning or planning action has been certified, and if the proposed project is approval of a subdivision map or development, CEQA applies only to the extent the project raises environmental effects peculiar to the parcel which were not addressed in the earlier EIR. Off-site and cumulative effects not discussed in the general plan EIR must still be considered. Mitigation measures set out in the earlier EIR should be implemented at this stage.

Environmental effects shall not be considered peculiar to the parcel if uniformly applied development policies or standards have been previously adopted by a city or county with a finding based on substantial evidence that the policy or standard will substantially mitigate the environmental effect when applied to future projects. Any rezoning action consistent with the Community Plan shall be subject to exemption from CEQA in accordance with this section. "Community Plan" means part of a city's general plan which: (1) applies to a defined geographic portion of the total area included in the general plan; (2) complies with Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code by referencing each of the mandatory elements specified in Government Code Section 65302; and (3) contains specific development policies adopted for the area in the Community Plan and identifies measures to implement those policies, so that the policies which will apply to each parcel can be determined.

5.12 LAND USE POLICIES.

When a project will amend a general plan or another land use policy, the Initial Study must address how the change in policy and its expected direct and indirect effects will affect the environment. When the amendments constitute substantial changes in policies that result in a significant impact on the environment, an EIR may be required.

5.13 EVALUATING IMPACTS ON HISTORICAL RESOURCES.

Projects that may cause a substantial adverse change in the significance of a historical resource, as defined in Local Guidelines Section 10.25, are projects that may have a significant effect on the environment, thus requiring consideration under CEQA. Particular attention and care should be given when considering such projects, especially projects involving the demolition of a historical resource, since such demolitions have been determined to cause a significant effect on the environment.

Substantial adverse change in the significance of a historical resource means physical demolition, destruction, relocation or alteration of the resource or its immediate surroundings, such that the significance of a historical resource would be materially impaired.

The significance of a historical resource is materially impaired when a project:

(a) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its inclusion in, or eligibility for inclusion in, the California Register of Historical Resources;
(b) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources or its identification in a historical resources survey, unless the Lead Agency establishes by a preponderance of evidence that the resource is not historically or culturally significant; or
(c) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by the Lead Agency for purposes of CEQA.

Generally, a project that follows either one of the following sets of standards and guidelines will be considered mitigated to a level of less than significant: (a) the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings; or (b) the Secretary of the Interior's Standards for Rehabilitation and Local Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer.

In the event of an accidental discovery of a possible historical resource during construction of the project, the District may provide for the evaluation of the find by a qualified archaeologist or other professional. If the find is determined to be a historical resource, the District should take appropriate steps to implement appropriate avoidance or mitigation measures. Work on non-affected portions of the project, as determined by the District, may continue during the process. Curation may be an appropriate mitigation measure for an artifact that must be removed during project excavation or testing.

5.14 EVALUATING IMPACTS ON ARCHAEOLOGICAL SITES.

When a project will impact an archaeological site, the District shall first determine whether the site is a historical resource, as defined in Local Guidelines Section 10.25. If the archaeological site is a historical resource, it shall be treated and evaluated as such, and not as an archaeological resource. If the archaeological site does not meet the definition of a historical resource, but does meet the definition of a unique archaeological resource set forth in Public Resources Code Section 21083.2, the site shall be treated in accordance with said provisions of the Public Resources Code. The time and cost limitations described in Section 21083.2(c-f) do not apply to surveys and site evaluation activities intended to determine whether the project site contains unique archaeological resources.

If the archaeological resource is neither a unique archaeological resource nor a historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

In the event of an accidental discovery of a possible unique archaeological resource during construction of the project, the District may provide for the evaluation of the find by a

qualified archaeologist. If the find is determined to be a unique archaeological resource, the District should take appropriate steps to implement appropriate avoidance or mitigation measures. Work on non-affected portions of the project, as determined by the District, may continue during the process. Curation may be an appropriate mitigation measure for an artifact that must be removed during project excavation or testing.

When an Initial Study identifies the existence of, or the probable likelihood of, Native American human remains within the Project, the District shall comply with the provisions of State Guidelines Section 15064.5(d). In the event of an accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the District shall comply with the provisions of State Guidelines Section 15064.5(e).

5.15 CONSULTATION WITH WATER AGENCIES REGARDING LARGE DEVELOPMENT PROJECTS.

(a) Projects Subject to Consultation Requirements.

For certain development projects, cities and counties must consult with water agencies. If the District is a municipal water provider for a project, the city or county may request that the District prepare a assessment to be included in the environmental documents prepared for the project. This section applies only to water demand projects as defined by Guideline 10.74. Program level environmental review may not need to be as extensive as project level environmental review. See Local Guidelines Sections 8.03 and 8.08.

(b) Water Supply Assessment.

When a city or county acting as Lead Agency determines the type of environmental document that will be prepared for a water demand project or any project that includes a water demand project, the city or county must identify any public water system (as defined in Local Guidelines Sections 10.55 and 10.74) that may supply water for the project. The city or county must also request that the public water system determine whether the projected demand associated with the project was included in the most recently adopted Urban Water Management Plan. The city or county must also request that the public water system prepare a specified water supply assessment for approval at a regular or special meeting of the public water system governing body.

If no public water system is identified that may supply water for the water demand project, the city or county shall prepare the water supply assessment. The city or county shall consult with any entity serving domestic water supplies whose service area includes the site of the water demand project, the local agency formation commission, and the governing body of any public water system adjacent to the site of the water demand project. The city council or county board of supervisors must approve the water assessment prepared pursuant to this paragraph at a regular or special meeting.

As per Water Code section 10910, the water assessment must include identification of existing water supply entitlements, water rights, or water service contracts relevant to the water supply for the proposed project and water received in prior years pursuant to those entitlements, rights, and contracts, and further information is required if water supplies include groundwater.

The water assessment must determine the ability of the public water system to meet existing and future demands along with the demands of the proposed water demand project in light of existing and future water supplies. This supply demand analysis is to be conducted via a twenty-year projection, and must assess water supply sufficiency during normal year, single dry year, and multiple dry year hydrology scenarios. If the public water agency concludes that the water supply is, or will be, insufficient, it must submit plans for acquiring additional water supplies.

The city or county shall grant the public water agency a 30 day extension of time to prepare the assessment if the public water agency requests an extension within 90 days of being asked to prepare the assessment. If the governing body of the public water system fails to request and receive an extension of time, or fails to submit the water assessment notwithstanding the 30 day extension, the city or county may seek a writ of mandamus to compel the governing body of the public water system to comply.

The city or county shall include the water assessment, and any water acquisition plan in the EIR, negative declaration, or mitigated negative declaration, or any supplement thereto, prepared for the project, and may include an evaluation of the water assessment and water acquisition plan information within such environmental document. A discussion of water supply availability should be included in the main text of the environmental document. Normally, this discussion should be based on the data and information included in the water supply assessment. In making its required findings under CEQA, the city or county shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If a city or county determines that water supplies will not be sufficient, the city or county shall include that determination in its findings for the project.

If a water-demand project has been the subject of a water assessment, no additional water assessment shall be required for subsequent water-demand projects that were included in the larger water-demand project if all of the following criteria are met:

(1) The entity completing the water assessment concluded that its water supplies are sufficient to meet the projected water demand associated with the larger water-demand project, in addition to the existing and planned future uses, including, but not limited to, agricultural and industrial uses; and

(2) None of the following changes has occurred since the completion of the water assessment for the larger water-demand project:

(A) Changes in the larger water-demand project that result in a substantial increase in water demand for the water-demand project.

(B) Changes in the circumstances or conditions substantially affecting the ability of the public water system identified in the water assessment to provide a sufficient supply of water for the water demand project.

(C) Significant new information becomes available which was not known and could not have been known at the time when the entity had reached its assessment conclusions.

For complete information on these requirements, consult Water Code Sections 10910, et seq. For other CEQA provisions applicable to these types of projects, see Local Guidelines Sections 7.03 and 7.19.

5.16 SUBDIVISIONS WITH MORE THAN 500 DWELLING UNITS.

Cities and counties must obtain written verification (Form "O") from the applicable public water system(s) that a sufficient water supply is available before approving certain development projects. If the District is a municipal water provider for a project, a city or county may request such a verification from the District.

Cities and counties are prohibited from approving a tentative map, parcel map for which a tentative map was not required, or a development agreement for a subdivision of property of more than 500 dwellings units, unless:

(1) The applicable City Council, Board of Supervisors, or the advisory agency receives written verification from the applicable public water system that a sufficient water supply is available; or

(2) Under certain circumstances, the City Council, Board of Supervisors or the advisory agency makes a specified finding that sufficient water supplies are, or will be, available prior to completion of the project.

For complete information on these requirements, consult Government Code Section 66473.7.

5.17 IMPACTS TO OAK WOODLANDS.

When a county prepares an Initial Study to determine what type of environmental document will be prepared for a project within its jurisdiction, the county must determine whether the project may result in a conversion of oak woodlands that will have a significant effect on the environment. Normally, this rule does not apply to projects undertaken by the District. However, if the District is a Responsible Agency on such a project, the District should endeavor to ensure that the county, as Lead Agency, analyzes these impacts in accordance with CEQA.

5.18 CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS

Neither the Public Resources Code nor the State Guidelines specifically require analysis of climate change, global warming or greenhouse gas ("GHG") emissions and thus, these Local Guidelines do not mandate a discussion of climate change, global warming or GHG in all environmental documents. However, recent cases, legislation and information suggest that an analysis of potential global warming and GHG impacts should be included in every environmental document where feasible and appropriate. In the absence of State Guidelines and

case precedent, the District, as Lead Agency, is responsible for determining how global warming is analyzed in its CEQA documents.

The failure to adequately analyze greenhouse gas emissions will not create a cause of action for a violation of CEQA if the challenged environmental impact report, negative declaration, or mitigated negative declaration was prepared for either: (1) a transportation project funded under the Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006; or (2) a project funded under the Disaster Preparedness and Flood Prevention Bond Act of 2006. This limitation on litigation applies retroactively for any of the above documents that are not final and shall be repealed on January 1, 2010. This limitation on litigation, however, does not excuse the Lead Agency from including a discussion of greenhouse gas emissions in the CEQA document.

Thresholds of Significance: The Governor's Office of Planning and Research issued a technical advisory on addressing climate change through CEQA. (Available at http://www.opr.ca.gov/.) The technical advisory discusses recommended approaches for analyzing greenhouse gases, and identifies factors the Lead Agency may consider in establishing thresholds of significance. In addition, the advisory lists examples of greenhouse gas reduction measures, which may be used as possible mitigation measures, if appropriate and necessary.

Streamlined Analysis of Greenhouse Gases: Under certain limited circumstances, the legislature has specifically declared that the analysis of greenhouse gas or climate change impacts may be limited. Public Resources Code Sections 21155, 21155.2, and 21159.28 provide that a transit priority project meeting specified ratios and densities that is located within one-half mile of a major transit stop or high-quality transit corridor identified in the regional transportation plan may be exempt from environmental review or subject only to limited review if a detailed list of requirements is met.

Mitigation Measures: OPR is required, by July 1, 2009, to prepare, develop, and transmit to the Resources Agency Guidelines for the feasible mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions. The Resources Agency is required to certify and adopt those Local Guidelines by January 1, 2010.

5.19 ENVIRONMENTAL IMPACT ASSESSMENT.

The job of the Initial Study is to identify which environmental impacts may be significant. Based upon the Initial Study, Staff shall determine whether a proposed project may or will have a significant effect on the environment. Such determination shall be made in writing on the Environmental Impact Assessment Form (Form "C"). If Staff finds that a project will not have a significant effect on the environment, it shall recommend that a Negative Declaration be prepared and adopted by the decisionmaking body. If Staff finds that a project may have a significant effect on the environment, but the effects can be mitigated to a level of insignificance, it shall recommend that a Mitigated Negative Declaration be prepared and adopted by the decisionmaking body. If Staff finds that a project may have a significant effect on the environment, it shall recommend that an EIR be prepared and certified by the decisionmaking body.

5.20 FINAL DETERMINATION.

The Board of Directors shall have the final responsibility for determining whether an EIR, Negative Declaration or Mitigated Negative Declaration shall be required for any project. The Board of Directors' determination shall be final and conclusive on all persons, including Responsible Agencies and Trustee Agencies, except as provided in Section 15050(c) of the State Guidelines.

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6. NEGATIVE DECLARATION

6.01 DECISION TO PREPARE A NEGATIVE DECLARATION.

A Negative Declaration (Form "E") shall be prepared for a project subject to CEQA when the Initial Study shows that there is no substantial evidence in light of the whole record that the project may have a significant or potentially significant adverse effect on the environment. (See Local Guidelines Sections 10.59 and 10.64.)

6.02 DECISION TO PREPARE A MITIGATED NEGATIVE DECLARATION.

A Mitigated Negative Declaration (Form "E") shall be prepared for a project subject to CEQA when the Initial Study identifies potentially significant effects on the environment, but:

(a) The project applicant has agreed to revise the project or the District can revise the project to avoid these significant effects or to mitigate the effects to a point where it is clear that no significant effects would occur; and
(b) There is no substantial evidence in light of the whole record before the District that the revised project may have a significant effect.

If an applicant proposes mitigation measures, the project plans must be revised to incorporate these mitigation measures before the proposed Negative Declaration is released for public review. It is insufficient to require an applicant to adopt mitigation measures after final adoption of the Negative Declaration or to state that mitigation measures will be recommended on the basis of a future study. The District must know the measures at the time the Negative Declaration is adopted in order for them to be evaluated and accepted as adequate mitigation. Evidence of agreement by the applicant to such mitigation should be in the record prior to public review. Except where noted, the procedural requirements for the preparation and approval of a Negative Declaration and Mitigated Negative Declaration are the same.

6.03 CONTRACTING FOR PREPARATION OF NEGATIVE DECLARATION.

The District, when acting as Lead Agency, is responsible for preparing all documents required pursuant to CEQA. The documents may be prepared by Staff or by private consultants pursuant to a contract with the District, but they must be the District's product and reflect the independent judgment of the District.

6.04 NOTICE OF INTENT TO ADOPT A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

When, based upon the Initial Study, it is recommended to the decisionmaking body that a Negative Declaration or Mitigated Negative Declaration be adopted, a Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration (Form "D") shall be prepared. In addition to being provided to the public through the means set forth in Local Guidelines Section 6.07, this Notice shall also be provided to:

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(a) Each Responsible and Trustee Agency,

(b) Any other federal, state, or local agency which has jurisdiction by law or exercises authority over resources affected by the project, including:

(1) Any water supply agency consulted under Local Guidelines Section 5.15;

(2) Any city or county bordering on the project area;

(3) For a project of statewide, regional, or areawide significance, to any transportation agencies or public agencies which have major local arterials or public transit facilities within five (5) miles of the project site or freeways, highways, or rail transit service within ten (10) miles of the project site which could be affected by the project; and

(4) For a subdivision project located within one mile of a facility of the State Water Resources Development System, to the California Department of Water Resources.

(c) The last known name and address of all organizations and individuals who have previously filed a written request with the District to receive these Notices;

(d) For certain projects that may impact a low-level flight path, military impact zone, or special use airspace and that meet the other criteria of Local Guidelines Section 6.05, to the specified military services contact.

(e) For certain projects that involve the construction or alteration of a facility anticipated to emit hazardous air emissions or handle hazardous substances within one-quarter mile of a school and that meet the other requirements of Local Guidelines Section 7.30, to any potentially affected school district.

(f) For certain waste-burning projects that meet the requirements of Local Guidelines Section 5.10 (See also Local Guidelines Section 7.21), to the owners and occupants of property within one-fourth mile of any parcel on which the project will be located.

(g) For a project that establishes or amends a redevelopment plan that contains land in agricultural use, notice shall be provided to the agricultural and farm agencies and organizations specified in Health and Safety Code Section 33333.3.

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 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.

The Notice of Intent to Adopt a Negative Declaration (Form "D") must be filed and posted with the County Clerk at least twenty (20) days, or, in cases subject to review by the State Clearinghouse, posted by the County Clerk and the State Office and Planning and Research at least thirty (30) days before the final adoption of the Negative Declaration or Mitigated Negative Declaration by the decisionmaking body. See Local Guidelines Section 6.07.

The District may require requests for notices to be renewed annually. The District may charge a fee for providing notices pursuant to written requests, unless the request is made by another public agency.

If the Negative Declaration has been submitted to the State Clearinghouse for circulation, the public review period shall be at least as long as the period of review by the State Clearinghouse. (See Local Guidelines Section 6.07.) Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies. If the Lead Agency is submitting a Negative Declaration or Mitigated Negative Declaration to the State Clearinghouse, the Notice of Completion form may be used.

The Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration shall contain the following information:

(a) The period during which comments shall be received;
(b) The date, time and place of any public meetings or hearings on the proposed project;
(c) A brief description of the proposed project and its location;
(d) The address where copies of the proposed Negative Declaration or Mitigated Negative Declaration and all documents referenced in the proposed Negative Declaration or Mitigated Negative Declaration are available for review;
(e) The Environmental Protection Agency ("EPA") list on which the proposed project site is located, if applicable, and the corresponding information from the applicant's statement. (See Local Guidelines Section 2.04.); and
(f) The significant effects on the environment, if any, anticipated as a result of the proposed project.

6.05 PROJECTS AFFECTING MILITARY SERVICES; DEPARTMENT OF DEFENSE NOTIFICATION.

CEQA imposes additional requirements to provide notice to potentially affected military agencies when:

(a) The project meets one of the following three criteria:

(1) The project includes a general plan amendment;

(2) The project is of statewide, regional, or areawide significance;

(3) The project relates to a public use airport or certain lands surrounding a public use airport; and

(b) A "military service" (defined in Section 10.39 of these Local Guidelines) has provided the District with its contact office and address and notified the District of the specific boundaries of a "low-level flight path" (defined in Section 10.35 of these Local Guidelines), "military impact zone" (defined in Section 10.38 of these Local Guidelines), or "special use airspace" (defined in Section 10.60 of these Local Guidelines)

When a project meets these requirements, the District must provide the military service's designated contact with a copy of the Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration that has been prepared for the project, unless the project involves the remediation of lands contaminated with hazardous wastes and meets certain other

requirements. See Public Resources Code Sections 21080.4 and 21092 and Health and Safety Code Sections 25300, et seq.; 25396; and 25187.

The District must provide the military service with sufficient notice of its intent to adopt a Negative Declaration or Mitigated Negative Declaration to ensure that the military service has no fewer than twenty (20) days to review the documents before they are approved, provided that the military service shall have a minimum of thirty (30) days to review the environmental documents if the documents have been submitted to the State Clearinghouse. See State Guidelines Sections 15105(b) and 15190.5(c).

6.06 SPECIAL FINDINGS REQUIRED FOR FACILITIES WHICH MAY EMIT HAZARDOUS AIR EMISSIONS NEAR SCHOOLS.

Special procedural rules apply to projects involving the construction or alteration of a facility within one-quarter mile of a school/schools when: (1) the facility might reasonably be anticipated to emit hazardous air emissions or to handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the threshold specified in Health and Safety Code Section 25532(j), and (2) the emissions or substances may pose a health or safety hazard to persons who would attend or would be employed at the school. If the project meets both of those criteria, the District may not approve a Negative Declaration unless both of the following have occurred:

(a) The District, as Lead Agency, consulted with the affected school district or districts having jurisdiction over the school regarding the potential impact of the project on the school; and
(b) The school district(s) was given written notification of the project not less than thirty (30) days prior to the proposed approval of the Negative Declaration.

When the District is considering the adoption of a Negative Declaration for a project that meets these criteria, it can satisfy this requirement by providing the Notice of Intent to Adopt a Negative Declaration and the proposed Negative Declaration and Initial Study to the potentially affected school district at least thirty (30) days before the decision-making body will consider the adoption of the Negative Declaration. See also Local Guidelines Section 6.04.

Implementation of this Guideline shall be consistent with the definitions and terms utilized in State Guidelines Section 15186.

6.07 POSTING AND PUBLICATION OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

The District shall have a copy of the Notice of Intent to Adopt, the Negative Declaration or Mitigated Negative Declaration and the Initial Study posted at the District's offices and made available for public inspection. The Notice must be provided either twenty (20) or thirty (30) days prior to final adoption of the Negative Declaration or Mitigated Negative Declaration. The public review period for Negative Declarations prepared for projects subject to State Clearinghouse review must be circulated for at least as long as the review period established by the State Clearinghouse, usually no less than thirty (30) days. A shortened review period of at least twenty (20) days may be approved by the State Clearinghouse as provided for in State

Guidelines Section 15105. The state review period will commence on the date the State Clearinghouse distributes the document to state agencies. The State Clearinghouse will distribute the document within three (3) days of receipt if the Negative Declaration or Mitigated Negative Declaration is deemed complete.

The Notice must also be posted in the office of the Clerk in each county in which the Project is located and must remain posted throughout the public review period. The County Clerk is required to post the Notice within twenty-four (24) hours of receiving it.

Notice shall be provided as stated in Local Guidelines Section 6.04. In addition, it must be given by at least one of the following procedures:

(a) Publication at least once in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas;
(b) Posting of notice on and off site in the area where the project is to be located; or
(c) Direct mailing to owners and occupants of property contiguous to the project, as shown on the latest equalized assessment roll.

The District shall consider all comments received during the public review period for the Negative Declaration or Mitigated Negative Declaration. For a Negative Declaration or Mitigated Negative Declaration, the District is not required to respond in writing to comments it receives either during or after the public review period. However, the District may want to provide a written response to all comments if it will not delay action on the Negative Declaration or Mitigated Negative Declaration, since any comment received prior to final action on the Negative Declaration or Mitigated Negative Declaration can form the basis of a legal challenge. A written response which refutes the comment or adequately explains the District's action in light of the comment will assist the District in defending against a legal challenge. The District shall notify any public agency which comments on a Negative Declaration or Mitigated Negative Declaration of the public hearing or hearings, if any, on the project for which the Negative Declaration or Mitigated Negative Declaration was prepared.

6.08 SUBMISSION OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION TO STATE CLEARINGHOUSE.

A Negative Declaration or Mitigated Negative Declaration must be submitted to the State Clearinghouse for circulation in the following situations:

(a) The Negative Declaration or Mitigated Negative Declaration is prepared by a Lead Agency that is a state agency;
(b) The Negative Declaration or Mitigated Negative Declaration is prepared by a public agency where a state agency is a Responsible Agency, Trustee Agency, or otherwise has jurisdiction by law with respect to the project; or
(c) The Negative Declaration or Mitigated Negative Declaration is for a project identified in State Guidelines Section 15206 as being of statewide, regional, or areawide significance.

State Guidelines Section 15206 identifies the following types of projects as being examples of projects of statewide, regional, or areawide significance which require submission to the State Clearinghouse for circulation:

(1) Projects which have the potential for causing significant environmental effects beyond the city or county where the project would be located, such as:

(a) Residential development of more than 500 units;
(b) Commercial projects employing more than 1,000 persons or covering more than 500,000 square feet of floor space;
(c) Office building projects employing more than 1,000 persons or covering more than 250,000 square feet of floor space;
(d) Hotel or motel development of more than 500 rooms; or
(e) Industrial projects housing more than 1,000 persons, occupying more than 40 acres of land, or covering more than 650,000 square feet of floor area.

(2) Projects for the cancellation of a Williamson Act contract covering more than 100 acres.

(3) Projects in one of the following Environmentally Sensitive Areas:

(a) Lake Tahoe Basin.
(b) Santa Monica Mountains Zone.
(c) Sacramento-San Joaquin River Delta.
(d) Suisun Marsh.
(e) Coastal Zone, as defined by the California Coastal Act.
(f) Areas within one-quarter mile of a river designated as wild and scenic.
(g) Areas within the jurisdiction of the San Francisco Bay Conservation and Development Commission.

(4) Projects which would affect sensitive wildlife habitats or the habitats of any rare, threatened, or endangered species.

(5) Projects which would interfere with water quality standards.

(6) Projects which would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

A Negative Declaration or Mitigated Negative Declaration may also be submitted to the State Clearinghouse for circulation if a state agency has special expertise with regard to the environmental impacts involved.

When the Negative Declaration or Mitigated Negative Declaration is submitted to the State Clearinghouse for review, the review period shall be at least thirty (30) days. The review period begins (day one) on the date that the State Clearinghouse distributes the Negative

Declaration or Mitigated Negative Declaration to state agencies. The State Clearinghouse is required to distribute the Negative Declaration or Mitigated Negative Declaration to state agencies within three (3) working days from the date the State Clearinghouse receives the document, as long as the Negative Declaration or Mitigated Negative Declaration is complete when submitted to the State Clearinghouse. If the document submitted to the State Clearinghouse is not complete, the State Clearinghouse must notify the Lead Agency. The review period for the public and all other agencies may run concurrently with the state agency review period established by the State Clearinghouse, but the public review period cannot conclude before the state agency review period does. The review period for the public shall be at least as long as the review period established by the State Clearinghouse.

When a Negative Declaration or Mitigated Negative Declaration is submitted to the State Clearinghouse, a Notice of Completion (Form "H") should be included as a cover sheet. A sufficient number of copies of the documents must be sent to the State Clearinghouse for circulation. Staff should contact the State Clearinghouse to find out the correct number of printed copies required for circulation. In addition to the printed copies, a copy of the documents in electronic format shall be submitted on a diskette or by electronic mail transmission if available.

Alternatively, the District may provide copies of draft environmental documents to the State Clearinghouse for state agency review in an electronic format. The document must be on a CD-ROM in a common file format such as Word or Acrobat. Lead Agencies must provide fifteen (15) copies of the CD-ROM to the State Clearinghouse along with a hard copy version of the Notice of Completion (Form "H"). In addition, each CD-ROM must be accompanied by 15 printed copies of the introduction section of a Negative Declaration or Mitigated Negative Declaration. The printed summary allows both the State Clearinghouse and agency CEQA coordinators to distribute the documents quickly without the use of a computer.

A shorter review period by the State Clearinghouse for a Negative Declaration or Mitigated Negative Declaration can be requested by the decisionmaking body. The shortened review period shall not be less than twenty (20) days. Such a request must be made in writing by the Lead Agency to the Office of Planning and Research. The decisionmaking body may designate by resolution or ordinance an individual authorized to request a shorter review period. Any approval of a shortened review period must be given prior to, and reflected in, the public notice. However, a shortened review period shall not be approved by the Office of Planning and Research for any proposed project of statewide, regional or areawide environmental significance, as defined by State Guidelines Section 15206.

6.09 SPECIAL NOTICE REQUIREMENTS FOR WASTE- AND FUEL-BURNING PROJECTS.

For any waste-burning project not requiring an EIR, as defined in Local Guidelines Section 5.10, Notice of Intent to Adopt a Negative Declaration shall be given to all organizations and individuals who have previously requested it and shall also be given by all three of the procedures listed in Local Guidelines Section 6.07. In addition, Notice shall be given by direct mailing to the owners and occupants of property within one-quarter mile of any parcel or parcels on which such a project is located. (Public Resources Code Section 21092(c).)

These notice requirements apply only to those projects described in Local Guidelines Section 5.10. These notice requirements do not preclude the District from providing additional notice by other means if desired.

6.10 CONSULTATION WITH WATER AGENCIES REGARDING LARGE DEVELOPMENT PROJECTS.

Under specific circumstances a city or county acting as Lead Agency must consult with the public water system which will supply the project to determine whether it can adequately supply the water needed for the project. As a potential Responsible Agency, the District should be aware of these requirements. See Local Guidelines Section 5.15 for more information on these requirements.

6.11 CONTENT OF NEGATIVE DECLARATION.

A Negative Declaration must be prepared directly by or under contract to the District and should generally resemble Form "E." It shall contain the following information:

(a) A brief description of the project proposed, including any commonly used name for the project;.
(b) The location of the project and the name of the project proponent;
(c) A finding that the project as proposed 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) For a Mitigated Negative Declaration, feasible mitigation measures included in the project to substantially lessen or avoid potentially significant effects, which must be fully enforceable through permit conditions, agreements, or other measures. Such permit conditions, agreements, and measures must be consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law.

The proposed Negative Declaration or Mitigated Negative Declaration must reflect the independent judgment of the District.

6.12 ADOPTION OF NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

Following the publication, posting or mailing of the Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration, but in no event sooner than the expiration of the applicable twenty (20) or thirty (30) day public review period, the Negative Declaration or Mitigated Negative Declaration may be presented to the decisionmaking body at a regular or special meeting. Prior to adoption, the District shall independently review and analyze the Negative Declaration or Mitigated Negative Declaration and find that the Negative Declaration or Mitigated Negative Declaration reflects the independent judgment of the District.

If new information is added to the Negative Declaration after public review, the District should determine whether recirculation is warranted. (See Local Guidelines Section 6.15). If the decisionmaking body finds that the project will not have a significant effect on the environment, it shall adopt the Negative Declaration or Mitigated Negative Declaration. If the decisionmaking

body finds that the proposed project may have a significant effect on the environment that cannot be mitigated or avoided, it shall order the preparation of a Draft EIR and the filing of a Notice of Preparation of a Draft EIR.

When adopting a Negative Declaration or Mitigated Negative Declaration, the District shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which it based its decision. If adopting a Negative Declaration for a project that may emit hazardous air emissions within one-quarter mile of a school and that meets the other requirements of Local Guidelines Section 6.06, the decisionmaking body must also make the findings required by Local Guidelines Section 6.06.

As Lead Agency, the District may charge a non-elected official or body with the responsibility of independently reviewing the adequacy of and adopting a Negative Declaration; however, when a non-elected decisionmaking body adopts a Negative Declaration or Mitigated Negative Declaration, the District must have a procedure allowing for the appeal of that decision to the Board of Directors.

6.13 MITIGATION REPORTING OR MONITORING PROGRAM FOR MITIGATED NEGATIVE DECLARATION.

When adopting a Mitigated Negative Declaration pursuant to Local Guidelines Section 6.12, the District shall adopt a reporting or monitoring program to assure that mitigation measures which are required to mitigate or avoid significant effects on the environment will be fully enforceable through permit conditions, agreements, or other measures and implemented by the project proponent or other responsible party in a timely manner, in accordance with conditions of project approval. The District shall also specify the location and the custodian of the documents which constitute the record of proceedings upon which it based its decision. There is no requirement that the reporting or monitoring program be circulated for public review; however, the District may choose to circulate it for public comments along with the Negative Declaration. The mitigation measures required to mitigate or avoid significant effects on the environment must be adopted as conditions of project approval.

This reporting or monitoring program shall be designed to assure compliance during the implementation or construction of a project and shall otherwise comply with the requirements described in Local Guidelines Section 7.32. If a Responsible Agency or Trustee Agency has required that certain conditions be incorporated into the project, the District may request that agency to prepare and submit a proposed reporting or monitoring program. The District shall also require that prior to the close of the public review period for a Mitigated Negative Declaration (see Guidelines Section 6.04), the Responsible or Trustee Agency submit detailed performance objectives for mitigation measures, or refer the District to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to the District by a Responsible or Trustee Agency shall be limited to measures which mitigate impacts to resources which are within the Responsible or Trustee Agency's authority.

Local agencies have the authority to levy fees sufficient to pay for this program. Therefore, the District can charge the project proponent a fee to cover actual costs of program processing and implementation.

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Transportation information resulting from the reporting or monitoring program required to be adopted by the District shall be submitted to the regional transportation planning agency where the project is located and to the Department of Transportation for a project of statewide, regional or areawide significance according to State Guidelines Section 15206. The transportation planning agency and the Department of Transportation are required by law to adopt guidelines for the submittal of these reporting or monitoring programs, so the District may wish to tailor its submittal to such guidelines.

6.14 APPROVAL OR DISAPPROVAL OF PROJECT.

At the time of adoption of a Negative Declaration or Mitigated Negative Declaration, the decisionmaking body may consider the project for purposes of approval or disapproval. Prior to approving the project, the decisionmaking body shall consider the Negative Declaration or Mitigated Negative Declaration, together with any written comments received and considered during the public review period, and shall approve or disapprove the Negative Declaration or Mitigated Negative Declaration. In making a finding as to whether there is any substantial evidence that the project will have a significant effect on the environment, the factors listed in Local Guidelines Section 5.08 should be considered. (See Local Guidelines Section 7.30 for approval requirements for facilities which may emit hazardous pollutants or which may handle extremely hazardous substances within one-quarter mile of a school site.)

6.15 RECIRCULATION OF A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION.

A Negative Declaration or Mitigated Negative Declaration must be recirculated when the document must be substantially revised after the public review period but prior to its adoption. A "substantial revision" occurs when the District has identified a new and avoidable significant effect for which mitigation measures or project revisions must be added in order to reduce the effect to a level of insignificance, or the District determines that the proposed mitigation measures or project revisions will not reduce the potential effects to less than significant and new measures or revisions must be required.

Recirculation is not required under the following circumstances:

(a) Mitigation measures are replaced with equal or more effective measures, and the District makes a finding to that effect;
(b) New project revisions are added after circulation of the Negative Declaration or Mitigated Negative Declaration or in response to written or oral comments on the project's effects, but the revisions do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect;
(c) Measures or conditions of project approval are added after circulation of the Negative Declaration or Mitigated Negative Declaration, but the measures or conditions are not required by CEQA, do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect; or
(d) New information is added to the Negative Declaration or Mitigated Declaration which merely clarifies, amplifies, or makes insignificant modifications to the Negative Declaration or Mitigated Negative Declaration.

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If, after preparation of a Negative Declaration or Mitigated Negative Declaration, the District determines that the project requires an EIR, it shall prepare and circulate the Draft EIR for consultation and review and advise reviewers in writing that a proposed Negative Declaration or Mitigated Declaration had previously been circulated for the project.

6.16 NOTICE OF DETERMINATION ON A PROJECT FOR WHICH A PROPOSED NEGATIVE OR MITIGATED NEGATIVE DECLARATION HAS BEEN APPROVED.

After final approval of a project for which a Negative Declaration has been prepared, Staff shall cause to be prepared, filed and posted a Notice of Determination (Form "F"). The Notice of Determination shall contain the following information:

(a) An identification of the project, including the project title as identified on the proposed Negative Declaration, location, and the State Clearinghouse identification number for the proposed Negative Declaration if the Notice of Determination is filed with the State Clearinghouse;
(b) A brief description of the project;
(c) The name of the District and the date on which the District approved the project;
(d) The determination of the District that the project will not have a significant effect on the environment;
(e) A statement that a Negative Declaration or Mitigated Negative Declaration was adopted pursuant to the provisions of CEQA;
(f) 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; and
(g) The address where a copy of the Negative Declaration or Mitigated Negative Declaration may be examined.

The Notice of Determination shall be filed with the Clerk of each county in which the project will be located within five (5) working days of project approval. The District is encouraged to make copies of filed notices available in electronic format on the Internet. Such electronic notices are in addition to the posting requirements of the CEQA Guidelines and the Public Resources Code. The Clerk must post the Notice of Determination within twenty-four (24) hours of receipt. The Notice must be posted in the office of the Clerk for a minimum of thirty (30) days. Thereafter, the Clerk shall return the notice to the District with a notation of the period it was posted. The District shall retain the notice for not less than twelve (12) months. If the project requires discretionary approval from any State agency, the Notice of Determination shall also be filed with the Office of Planning and Research within five (5) working days of project approval along with proof of payment of the California Department of Fish and Game fee or a no effect determination form from the Department of Fish and Game (see Local Guidelines Section 6.20). Simultaneously with the filing of the Notice of Determination with the Clerk, Staff shall cause a copy of the Notice of Determination to be posted at District Offices.

If a written request has been made for a copy of the Notice prior to the date on which the District adopts the Negative Declaration, the copy must be mailed, first class postage prepaid, within five (5) days of the District's determination. If such a request is made following the District's determination, then the copy should be mailed in the same manner as soon as possible.

The recipients of such documents may be charged a fee reasonably related to the cost of providing the service.

For projects with more than one phase, Staff shall file a Notice of Determination for each phase requiring a discretionary approval.

The filing and posting of the Notice of Determination with the County Clerk, and, if necessary, with the Office of Planning and Research, usually starts a thirty (30) day statute of limitations on court challenges to the approval under CEQA. When separate notices are filed for successive phases of the same overall project, the thirty (30) day statute of limitation to challenge the subsequent phase begins to run when the second notice is filed. Failure to file the Notice may result in a one hundred eighty (180) day statute of limitations.

6.17 ADDENDUM TO NEGATIVE DECLARATION.

The District may prepare an addendum to an adopted Negative Declaration if only minor technical changes or additions are necessary. The District may also prepare an addendum to an adopted Negative Declaration when none of the conditions calling for a subsequent Negative Declaration have occurred. (See Local Guidelines Section 6.18 below.) An addendum need not be circulated for public review but can be attached to the adopted Negative Declaration. The District shall consider the addendum with the adopted Negative Declaration prior to project approval.

6.18 SUBSEQUENT NEGATIVE DECLARATION.

When a Negative Declaration has been adopted for a project, or when an EIR has been certified, a subsequent Negative Declaration or EIR must be prepared in the following instances:

(a) Substantial changes are proposed in the project which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(b) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(c) New information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified or the Negative Declaration was adopted which shows any of the following:

(1) The project will have one or more significant effects not discussed in the previous EIR or Negative Declaration;

(2) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(3) Mitigation measure(s) or alternative(s) previously found not to be feasible would in fact be feasible and would substantially reduce one or more

significant effects of the project, but the project proponents declined to adopt the mitigation measure(s) or alternative(s); or

(4) Mitigation measure(s) or alternative(s) which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure(s) or alternative(s).

The District as Lead Agency would then determine whether a Subsequent EIR, Supplemental EIR, Negative Declaration or Addendum would be applicable. Subsequent Negative Declarations must be given the same notice and public review period as other Negative Declarations. The Subsequent Negative Declaration shall state where the previous document is available and can be reviewed.

6.19 PRIVATE PROJECT COSTS.

For private projects, the person or entity proposing to carry out the project shall bear all costs incurred by the District in preparing the Initial Study and in preparing and filing the Negative Declaration and Notice of Determination.

6.20 FILING FEES FOR PROJECTS WHICH AFFECT WILDLIFE RESOURCES.

At the time a Notice of Determination for a Negative Declaration is filed with the County or Counties in which the project is located, a fee of $1,993.00 shall be paid to the Clerk for projects which will adversely affect fish or wildlife resources. These fees are collected by the Clerk on behalf of the California Department of Fish and Game ("DFG") pursuant to Fish and Game Code Section 711.4.

Only one filing fee is required for each project unless the project is tiered or phased and separate environmental documents are prepared. (Fish & Game Code Section 711.4(g).) For projects where Responsible Agencies file separate Notices of Determination, only the Lead Agency is required to pay the fee.

Note: County Clerks are authorized to charge a documentary handling fee of up to $50.00 for each project in addition to the Fish and Game fees specified above. Refer to the Index in the Staff Summary to help determine the correct total amount of fees applicable to the project.

For private projects, the District may pass these costs on to the project applicant.

Fish and Game Code fees may be waived for projects with "no effect" on fish or wildlife resources or for certain projects undertaken by the DFG and implemented through a contract with a non-profit entity or local government agency; however, the Lead Agency must obtain a form showing that the DFG has determined that the project will have "no effect" on fish and wildlife. (Fish and Game Code Section 711.4(c)(2)(A)). Projects that are statutorily or categorically exempt from CEQA are also not subject to the filing fee, and do not require a no effect determination (CEQA Local Guidelines Sections 15260 through 15333; Fish and Game Code Section 711.4(d)(1)). Regional Department environmental review and permitting staff are

responsible for determining whether a project within their region will qualify for a no effect determination and if the CEQA filing fee will be waived.

The request should be submitted when the CEQA document is released for public review, or as early as possible in the public comment period. Documents submitted in digital format are preferred (e.g. compact disk). If insufficient documentation is submitted to the Department for the proposed project, a no effect determination will not be issued.

If the District believes that a project will have "no effect" on fish or wildlife resources, it should contact the Department Regional Office. The project's CEQA document may need to be provided to the Department Regional Office along with a written request. Documentation submitted to the Department Regional Office should set forth facts in support of the fee exemption. It is important to note that the fee exemption requirement that the project have "no" impact on fish or wildlife resources is more stringent than the former requirement that a project have only "de minimis" effects on fish or wildlife resources.

Any request for fee exemption should include the following information:

(1) the name and address of the project proponent and applicant contact information;

(2) a brief description of the project and its location;

(3) site description and aerial and/or topographic map of the project site;

(4) State Clearinghouse number or county filing number;

(5) a statement that an Initial Study has been prepared by the District to evaluate the project's effects on fish and wildlife resources, if any; and

(6) a declaration that, based on the District's evaluation of potential adverse effects on fish and wildlife resources, the District believes the project will have no effect on fish or wildlife.

If insufficient documentation is submitted to the Department for the proposed project, a no effect determination will not be issued. (A sample Request for Fee Exemption is attached as Form "L".) The Department of Fish and Game will review the District's finding, and if DFG agrees with the Lead Agency's conclusions, DFG will provide the District with written confirmation. Retain DFG's determination as part of the administrative record; the District is required to file a copy of this determination with the County after project approval and at the time of filing of the CEQA Lead Agency's Notice of Determination (NOD).

The District must have written confirmation of DFG's finding of "no impact" at the time the Lead Agency files its Notice of Determination with the County. The County cannot accept the Notice of Determination unless it is accompanied by the appropriate fee or a completed exemption form from DFG.

7. ENVIRONMENTAL IMPACT REPORT

7.01 DECISION TO PREPARE AN EIR.

An EIR shall be prepared whenever there is substantial evidence in light of the whole record which supports a fair argument that the project may have a significant effect on the environment. (See Local Guidelines Sections 10.53, 10.59 and 10.64.) The record may include the Initial Study or other documents or studies prepared to assess the project's environmental impacts.

7.02 CONTRACTING FOR PREPARATION OF EIRS.

If an EIR is prepared under a contract to the District, the contract must be executed within forty-five (45) days from the date on which the District sends a Notice of Preparation. The District may take longer to execute the contract if the project applicant and the District mutually agree to an extension of the 45-day time limit.

The EIR prepared under contract must be the District's product. Staff, together with such consultant help as may be required, shall independently review and analyze the EIR to verify its accuracy, objectivity and completeness prior to presenting it to the decisionmaking body. The EIR made available for public review must reflect the independent judgment of the District. Staff may require such information and data from the person or entity proposing to carry out the project as it deems necessary for completion of the EIR.

7.03 NOTICE OF PREPARATION OF DRAFT EIR.

After determining that an EIR will be required for a proposed project, the District as Lead Agency shall prepare and send a Notice of Preparation (Form "G") to the Office of Planning and Research and to each of the following:

(a) Each Responsible Agency and Trustee Agency involved with the project;

(b) Any other federal, state, or local agency which has jurisdiction by law or exercises authority over resources affected by the project, including:

(1) Any water supply agency consulted under Local Guidelines Section 5.15;

(2) Any city or county bordering on the project area;

(3) For a project of statewide, regional, or areawide significance, to any transportation agencies or public agencies which have major local arterials or public transit facilities within five (5) miles of the project site or freeways, highways, or rail transit service within ten (10) miles of the project site which could be affected by the project; and

(4) For a subdivision project located within one mile of a facility of the State Water Resources Development System, to the California Department of Water Resources.

(c) The last known name and address of all organizations and individuals who have previously filed a written request with the District to receive these Notices;
(d) For certain projects that may impact a low-level flight path, military impact zone, or special use airspace and that meet the other criteria in Local Guidelines Section 7.04 (See also Local Guidelines Section 7.20), to the specified military services contact.
(e) For certain projects that involve the construction or alteration of a facility anticipated to emit hazardous air emissions or handle hazardous substances within one-quarter mile of a school and that meet the other requirements of Local Guidelines Section 7.30, to any potentially affected school district.
(f) For certain waste-burning projects that meet the requirements of Local Guidelines Section 5.10 (See also Local Guidelines Section 7.21), to the owners and occupants of property within one-fourth mile of any parcel on which the project will be located.
(g) For a project that establishes or amends a redevelopment plan that contains land in agricultural use, notice of preparation shall be provided to the agricultural and farm agencies and organizations specified in Health and Safety Code Section 33333.3.

The Notice of Preparation must also be filed and posted in the office of the Clerk in each county in which the project is located for thirty (30) days. The County Clerk must post the Notice within twenty-four (24) hours of receipt.

When submitting the Notice of Preparation to the Office of Planning and Research, a Notice of Completion (Form "H") should be used as a cover sheet. Responsible and Trustee Agencies, the State Clearinghouse, and the state agencies contacted by the State Clearinghouse have thirty (30) days to respond to the Notice of Preparation. Agencies that do not respond within thirty (30) days shall be deemed not to have any comments on the Notice of Preparation.

The District shall send copies of the Notice of Preparation by certified mail or any other method of transmittal which provides it with a record that the Notice was received.

At a minimum, the Notice of Preparation shall include:

(a) A description of the project;
(b) The location of the project indicated either on an attached map (preferably a copy of the USGS 15' or 7½' topographical map identified by quadrangle name) or by a street address and cross street in an urbanized area;
(c) The probable environmental effects of the project;
(d) The name and address of the consulting firm retained to prepare the Draft EIR, if applicable; and
(e) The Environmental Protection Agency ("EPA") list on which the proposed site is located, if applicable, and the corresponding information from the applicant's statement. (See Local Guidelines Section 2.04.)

7.04 SPECIAL NOTICE REQUIREMENTS FOR AFFECTED MILITARY AGENCIES

CEQA imposes additional requirements to provide notice to potentially affected military agencies when:

(a) A "military service" (defined in Section 10.39 of these Local Guidelines) has provided the District with its contact office and address and notified the District of the specific boundaries of a "low-level flight path" (defined in Section 10.35 of these Local Guidelines), "military impact zone" (defined in Section 10.38 of these Local Guidelines), or "special use airspace" (defined in Section 10.60 of these Local Guidelines); and

(b) The project meets one of the following criteria:

(1) The project is within the boundaries specified pursuant to subsection (a) of this guideline;

(2) The project includes a general plan amendment;

(3) The project is of statewide, regional, or areawide significance; or

(4) The project relates to a public use airport or certain lands surrounding a public use airport.

When a project meets these requirements, the District must provide the military service's designated contact with any Notice of Preparation, and/or Notice of Availability of Draft EIRs that have been prepared for a project, unless the project involves the remediation of lands contaminated with hazardous wastes and meets certain other requirements. See Public Resources Code Sections 21080.4 and 21092 and Health and Safety Code Sections 25300, et seq.; 25396; and 25187.

The District must provide the military service with sufficient notice of its intent to certify an EIR to ensure that the military service has no fewer than thirty (30) days to review the document; or forty-five (45) days to review the environmental documents before they are approved if the documents have been submitted to the State Clearinghouse.

It should be noted that the effect, or potential effect, a project may have on military activities does not itself constitute an adverse effect on the environment pursuant to CEQA.

7.05 PREPARATION OF DRAFT EIR.

The District as Lead Agency is responsible for preparing a Draft EIR and may begin preparation immediately without awaiting responses to the Notice of Preparation. However, information communicated to the District not later than thirty (30) days after receipt of the District's Notice of Preparation shall be included in the Draft EIR.

7.06 CONSULTATION WITH OTHER AGENCIES AND PERSONS.

To expedite consultation in response to the Notice of Preparation, the District as Lead Agency, a Responsible Agency, or a project applicant may request a meeting among the agencies involved to assist the District in determining the scope and content of the environmental information that agencies may require. For any project that may affect highways or other facilities under the jurisdiction of the State Department of Transportation, the Department of Transportation can request a scoping meeting. The District must convene the meeting as soon as possible but no later than 30 days after the request.

Prior to completion of the Draft EIR, the District shall consult with each Responsible Agency and any public agency which has jurisdiction by law over the project. The District may fulfill this obligation by distributing the Notice of Preparation in compliance with Local Guidelines Section 7.03 and soliciting the comments of Responsible Agencies, Trustee Agencies, and other affected agencies. The District may also consult with any individual who has special expertise with respect to any environmental impacts involved with a project. The District may also consult directly with any person or organization it believes will be concerned with the environmental effects of the project, including any interested individuals and organizations of which the District is reasonably aware. The purpose of this consultation is to "scope" the EIR's range of analysis. When a Negative Declaration or Mitigated Negative Declaration will be prepared for a project, no scoping meeting need be held, although the District may hold one if it so chooses. The District as Lead Agency may charge and collect from the applicant a fee not to exceed the actual cost of the consultations.

In addition to soliciting comments on the Notice of Preparation, the District may be required to conduct a scoping meeting to take additional input regarding the impacts to be analyzed in the EIR. The District is required to conduct a scoping meeting when:

(a) The meeting is requested by a Responsible Agency, a Trustee Agency, the Office of Planning and Research, or a project applicant;
(b) The project is one of "statewide, regional or areawide significance" as defined in State Guidelines Section 15206; or
(c) The project may affect highways or other facilities under the jurisdiction of the State Department of Transportation and the Department of Transportation has requested a scoping meeting.

The District shall provide notice of the scoping meeting to all of the following:

(a) Any county or city that borders on a county or city within which the project is located, unless the District has a specific agreement to the contrary with that county or city;
(b) Any Responsible Agency;
(c) Any public agency that has jurisdiction by law over the project;
(d) A transportation planning agency, or any public agency that has transportation facilities within its jurisdiction, that could be affected by the project; and
(e) Any organization or individual who has filed a written request for the notice.

The requirement for providing notice of a scoping meeting may be met by including the notice of the public scoping meeting in the public meeting notice.

For projects that are also subject to NEPA, a scoping meeting held pursuant to NEPA satisfies the CEQA scoping requirement as long as notice is provided to the agencies and individuals listed above, and in accordance with these Local Guidelines. (See Local Guideline 5.04 for a discussion of NEPA).

The District shall call the scoping meeting as soon as possible but not later than 30 days after the meeting was requested.

A Responsible Agency or other public agency shall only make comments regarding those activities within its area of expertise or which are required to be carried out or approved by it. These comments must be supported by specific documentation. Any mitigation measures submitted to the District by a Responsible or Trustee Agency shall be limited to measures which mitigate impacts to resources which are within the Responsible or Trustee Agency's authority.

For projects of statewide, areawide, or regional significance, consultation with transportation planning agencies or with public agencies that have transportation facilities within their jurisdictions shall be for the purpose of obtaining information concerning the project's effect on major local arterials, public transit, freeways, highways, overpasses, on-ramps, off-ramps, and rail transit services. Any transportation planning agency or public agency that provides information to the Lead Agency must be notified of, and provided with, copies of any environmental documents relating to the project.

7.07 EARLY CONSULTATION ON PROJECTS INVOLVING PERMIT ISSUANCE.

When the project involves the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the District, upon request of the applicant, shall meet with the applicant regarding the range of actions, potential alternatives, mitigation measures and significant effects to be analyzed in depth in the EIR. The District may also consult with concerned persons identified by the applicant and persons who have made written requests to be consulted. Such requests for early consultation must be made not later than thirty (30) days after the District's decision to prepare an EIR.

7.08 CONSULTATION WITH WATER AGENCIES REGARDING LARGE DEVELOPMENT PROJECTS.

For certain development projects, cities and counties must consult with water agencies. If the District is a municipal water provider for a project, the city or county may request consultation with the District. See Local Guidelines Section 5.15 for more information on these requirements.

7.09 AIRPORT LAND USE PLAN.

When the District prepares an EIR for a project within the boundaries of a comprehensive airport land use plan or, if such a plan has not been adopted for a project within two (2) nautical miles of a public airport or public use airport, the District shall utilize the Airport Land Use Planning Handbook published by CalTrans' Division of Aeronautics to assist in the preparation of the EIR relative to potential airport or related safety hazards and noise problems.

7.10 GENERAL ASPECTS OF AN EIR.

Both a Draft and Final EIR must contain the information outlined in Local Guidelines Section 7.14. Each element must be covered, and when elements are not separated into distinct sections, the document must state where in the document each element is covered.

The body of the EIR shall include summarized technical data, maps, diagrams and similar relevant information. Highly technical and specialized analyses and data should be included in

appendices. Appendices may be prepared in separate volumes, but must be equally available to the public for examination. All documents used in preparation of the EIR must be referenced. An EIR shall not include "trade secrets," locations of archaeological sites and sacred lands, or any other information subject to the disclosure restrictions of the Public Records Act (Government Code Section 6250, et seq.).

The EIR should discuss environmental effects in proportion to their severity and probability of occurrence. Effects dismissed in the Initial Study as clearly insignificant and unlikely to occur need not be discussed.

The Initial Study should be used to focus the EIR so that the EIR identifies and discusses only the specific environmental problems or aspects of the project which have been identified as potentially significant or important. A copy of the Initial Study should be attached to the EIR or included in the administrative record to provide a basis for limiting the impacts discussed.

The EIR shall contain a statement briefly indicating the reason for determining that various effects of a project that could possibly be considered significant were not found to be significant and consequently were not discussed in detail in the EIR. The District should also note any conclusion by it that a particular impact is too speculative for evaluation.

The EIR should omit unnecessary descriptions of projects and emphasize feasible mitigation measures and alternatives to projects.

7.11 USE OF REGISTERED CONSULTANTS IN PREPARING EIRS.

An EIR is not a technical document that can be prepared only by a registered consultant or professional. However, state statutes may provide that only registered professionals can prepare certain technical studies which will be used in or which will control the detailed design, construction, or operation of the proposed project and which will be prepared in support of an EIR.

7.12 INCORPORATION BY REFERENCE.

An EIR may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Any incorporated document shall be considered to be set forth in full as part of the text of the EIR. When all or part of another document is incorporated by reference, that document shall be made available to the public for inspection at the District's offices. The EIR shall state where incorporated documents will be available for inspection.

When an EIR uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized, if possible, or briefly described if the data or information cannot be summarized. The relationship between the incorporated document and the EIR shall be described. When information from an EIR that has previously been reviewed through the state review system ("State Clearinghouse") is incorporated by the District, the state identification number of the incorporated document should be included in the summary or text of the EIR.

7.13 STANDARDS FOR ADEQUACY OF AN EIR.

An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which takes into account the environmental consequences of the project. The evaluation of environmental effects need not be exhaustive, but must be within the scope of what is reasonably feasible. The EIR should be written and presented in such a way that it can be understood by governmental decision makers and members of the public. A good faith effort at completeness is necessary. The adequacy of an EIR is assessed in terms of what is reasonable in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a Lead Agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters, but CEQA does require the Lead Agency to make a good faith, reasoned response to timely comments raising significant environmental issues.

There is no need to unreasonably delay adoption of an EIR in order to include results of studies in progress, even if those studies will shed some additional light on subjects related to the project.

7.14 FORM AND CONTENT OF EIR.

The text of the EIR should normally be less than 150 pages. For proposals of unusual scope or complexity, the EIR may be longer than 150 pages but should normally be less than 300 pages. The required contents of an EIR are set forth in Sections 15122 through 15132 of the State Guidelines. In brief, the EIR must contain:

(a) A table of contents or an index.

(b) A brief summary of the proposed project, including each significant effect with proposed mitigation measures and alternatives, areas of known controversy and issues to be resolved including the choice among alternatives, how to mitigate the significant effects and whether there are any significant and unavoidable impacts. (Generally, the summary should be less than fifteen (15) pages.)

(c) A description of the proposed project, including its underlying purpose and a list of permit and other approvals required to implement the project. (See Local Guidelines Section 7.18 regarding analysis of future project expansion.)

(d) A description of the project's physical environmental conditions from both a local and regional perspective at the time the Notice of Preparation is published, or if no Notice of Preparation is published, at the time environmental analysis begins. (State Guidelines Section 15125.) This environmental setting will normally constitute the baseline physical conditions by which the District determines whether an impact is significant. However, the District may choose any baseline that is appropriate as long as the District's choice of baseline is supported by substantial evidence.

(e) A discussion of any inconsistencies between the proposed project and applicable general and regional plans.

(f) A description of the direct and indirect significant environmental impacts of the proposed project explaining which, if any, can be avoided or mitigated to a level of insignificance, indicating reasons that various possible significant effects were determined not to be

significant and denoting any significant effects which are unavoidable or could not be mitigated to a level of insignificance. Direct and indirect significant effects shall be clearly identified and described, giving due consideration to both short-term and long-term effects.

(g) An analysis of a range of alternatives to the proposed project which could feasibly attain the project's objectives as discussed in Local Guidelines Section 7.17.

(h) A description of any significant irreversible environmental changes which would be involved in the proposed action should it be implemented if, and only if, the EIR is being prepared in connection with:

(1) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency;

(2) The adoption by a Local Agency Formation Commission of a resolution making determinations; or

(3) A project which will be subject to the requirement for preparing an Environmental Impact Statement pursuant to the National Environmental Policy Act.

(i) An analysis of the growth-inducing impacts of the proposed action. The discussion should include ways in which the project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.

(j) A discussion of any significant, reasonably anticipated future developments and the cumulative effects of all proposed and anticipated action as discussed in Local Guidelines Section 7.18.

(k) In certain situations, a regional analysis should be completed for certain impacts, such as air quality.

(l) A discussion of any economic or social effects, to the extent that they cause or may be used to determine significant environmental impacts.

(m) A statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and, therefore, were not discussed in the EIR.

(n) The identity of all federal, state or local agencies or other organizations and private individuals consulted in preparing the EIR, and the identity of the persons, firm or agency preparing the EIR, by contract or other authorization. To the fullest extent possible, the District should integrate CEQA review with these related environmental review and consultation requirements.

(o) A discussion of those potential effects of the proposed project on the environment which the District has determined are or may be significant. The discussion on other effects may be limited to a brief explanation as to why those effects are not potentially significant.

(p) A description of feasible measures, as set forth in Local Guidelines Section 7.16, which could minimize significant adverse impacts.

7.15 ANALYSIS OF CUMULATIVE IMPACTS.

An EIR must discuss cumulative impacts when the project's incremental effect is "cumulatively considerable" as defined in Local Guidelines Section 10.11. When the District is examining a project with an incremental effect that is not "cumulatively considerable," it need not consider that effect significant, but must briefly describe the basis for this conclusion. A project's contribution is less than cumulatively considerable if the project is required to implement or fund its fair share of a mitigation measure designed to alleviate the cumulative impact. The District must identify facts and analysis supporting its conclusion that the cumulative impact is less than significant.

A cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR.

The discussion of cumulative impacts in an EIR must focus on the cumulative impact to which the identified other projects contribute, rather than the attributes of other projects which do not contribute to the cumulative impact. The discussion of significant cumulative impacts must meet either of the following elements:

(1) A list of past, present, and probable future projects causing related or cumulative impacts including, if necessary, those projects outside the control of the District; or

(2) A summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document that was adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact.

When utilizing a list, as suggested above, factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined and the location and type of project. Location may be important, for example, when water quality impacts are involved since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

The District should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

7.16 ANALYSIS OF MITIGATION MEASURES.

The discussion of mitigation measures in an EIR must distinguish between measures proposed by project proponents and other measures proposed by Lead, Responsible or Trust Agencies. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

Where several measures are available to mitigate an impact, each should be disclosed and the basis for selecting a particular measure should be identified. Formulation of mitigation

measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effects of the project and which may be accomplished in more than one specified way.

If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be disclosed but in less detail than the significant effects of the project itself.

If a project includes a housing development, the District may not reduce the project's proposed number of housing units as a mitigation measure or project alternative if the District determines that there is another feasible specific mitigation measure or project alternative that would provide a comparable level of mitigation without reducing the number of housing units.

Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments. In the case of the adoption of a plan, policy, regulating, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design. Mitigation measures must also be consistent with all applicable constitutional requirements such as the "nexus" and "rough proportionality" standards.

Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted in a manner consistent with the Secretary of the Interior's "Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings" (1995), Weeks and Grimmer, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus not significant.

The District should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors must be considered and discussed in an EIR for a project involving an archaeological site:

(a) Preservation in place is the preferred manner of mitigating impacts to archaeological sites.

(b) Preservation in place may be accomplished by, but is not limited to, the following:

(1) Planning construction to avoid archaeological sites;

(2) Incorporation of sites within parks, green space, or other open spaces;

(3) Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site;

(4) Deeding the site into a permanent conservation easement.

When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to excavation. Such studies must be deposited with the California Historical Resources Regional Information Center.

Data recovery shall not be required for a historical resource if the District determines that existing testing or studies have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

7.17 ANALYSIS OF ALTERNATIVES IN AN EIR.

The alternatives analysis must describe and evaluate the comparative merits of a range of reasonable alternatives to the project or to the location of the project which would feasibly attain most of the basic objectives of the project, but which would avoid or substantially lessen any of the significant effects of the project. An EIR need not consider every conceivable alternative to a project, and it need not consider alternatives which are infeasible. Rather, it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation.

Purpose of the Alternatives Analysis: An EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment. For this reason, a discussion of alternatives must focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effect of the project, even if these alternatives would impede to some degree the attainment of the project objectives or would be more costly.

Selection of a Range of Reasonable Alternatives: The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic purposes of the project and could avoid or substantially lessen one or more of the significant effects, even if those alternatives would be more costly or would impede to some degree the attainment of the project's objectives. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the District and rejected as infeasible during the scoping process, and it should briefly explain the reasons for rejecting those alternatives. Additional information explaining the choice of alternatives should be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (a) failure to meet most of the basic project objectives; (b) infeasibility; or (c) inability to avoid significant environmental impacts.

Evaluation of Alternatives: The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed but in less detail than the significant effects of the project as proposed.

The Rule of Reason: The range of alternatives required in an EIR is governed by a "rule of reason" which courts have held means that an alternatives discussion must be reasonable in scope and content. Therefore, the EIR must set forth only those alternatives necessary to permit public participation, informed decisionmaking, and a reasoned choice. The alternatives shall be

limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones the District determines could feasibly attain most of the basic objectives of the project. An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.

Feasibility of Alternatives: The factors that may be taken into account when addressing the feasibility of alternatives include: site suitability; economic viability; availability of infrastructure; general plan consistency; other plans or regulatory limitations; jurisdictional boundaries (projects with a regionally significant impact should consider the regional context); and whether the proponent already owns the alternative site or can reasonably acquire, control or otherwise have access to the site. No one factor establishes a fixed limit on the scope of reasonable alternatives.

Alternative Locations: The first step in the alternative location analysis is to determine whether any of the significant effects of the project could be avoided or substantially lessened by putting the project in another location. This is the key question in this analysis. Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered for inclusion in the EIR.

The second step in this analysis is to determine whether any of the alternative locations are feasible. If the District concludes that no feasible alternative locations exist, it must disclose its reasons, and it should include them in the EIR. When a previous document has sufficiently analyzed a range of reasonable alternative locations and environmental impacts for a project with the same basic purpose, the District should review the previous document. To the extent the circumstances have remained substantially the same with respect to an alternative, the EIR may rely on the previous document to help it assess the feasibility of the potential project alternative.

The "No Project" Alternative: The specific alternative of "no project" must be evaluated along with its impacts. The purpose of describing and analyzing the no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative may be different from the baseline environmental conditions. The no project alternative will be the same as the baseline only if it is identical to the existing environmental setting and the District has chosen the existing environmental setting as the baseline.

A discussion of the "no project" alternative should proceed along one of two lines:

(a) When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the "no project" alternative will be the continuation of the existing plan, policy or operation into the future. Typically, this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan; or

(b) If the project is other than a land use or regulatory plan, for example a development project on identifiable property, the "no project" alternative is the circumstance under which the project does not proceed. This discussion would compare the environmental

effects of the property remaining in its existing state against environmental effects which would occur if the project is approved. If disapproval of the project would result in predictable actions by others, such as the proposal of some other project, this "no project" consequence should be discussed.

After defining the "no project" alternative, the District should proceed to analyze the impacts of the "no project" alternative by projecting what would reasonably be expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services. If the "no project" alternative is the environmentally superior alternative, the EIR must also identify another environmentally superior alternative among the remaining alternatives.

Remote or Speculative Alternatives: An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.

7.18 ANALYSIS OF FUTURE EXPANSION.

An EIR must include an analysis of the environmental effects of future expansion (or other similar future modifications) if there is credible and substantial evidence that:

(a) The future expansion or action is a reasonably foreseeable consequence of the initial project; and
(b) The future expansion or action is likely to change the scope or nature of the initial project or its environmental effects.

Absent these two circumstances, future expansion of a project need not be discussed. CEQA does not require speculative discussion of future development which is unspecific or uncertain. However, if future action is not considered now, it must be considered and environmentally evaluated before it is actually implemented.

7.19 NOTICE OF COMPLETION OF DRAFT EIR; NOTICE OF AVAILABILITY OF DRAFT EIR.

Notice of Completion. When the Draft EIR is completed, a Notice of Completion (Form "H") must be filed with the Office of Planning and Research in a printed hard copy or in electronic form on a diskette or by electronic mail transmission. The Notice shall contain:

(a) A brief description of the proposed project,
(b) The location of the proposed project including the proposed project's latitude and longitude;
(c) An address where copies of the Draft EIR are available; and
(d) The review period during which comments will be received on the Draft EIR.

The Office of Planning and Research has developed a model form Notice of Completion. Form H follows OPR's model. To ensure that the documents are accepted by OPR staff, this form should be used when documents are transmitted to OPR.

Notice of Availability. At the same time it sends a Notice of Completion to the Office of Planning and Research, the District shall provide public notice of the availability of the Draft

EIR by distributing a Notice of Availability of Draft EIR (Form "K"). The Notice of Availability shall include at least the following information:

(a) A brief description of the proposed project and its location;
(b) The starting and ending dates for the review period, and whether the review period has been shortened;
(c) The date, time, and place of any scheduled public meetings or hearings to be held by the District on the proposed project, if the District knows this information when it prepares the Notice;
(d) A list of the significant environmental effects anticipated as a result of the project;
(e) The address where copies of the EIR and all documents referenced in the EIR will be available for public review. This location shall be readily accessible to the public during the District's normal working hours; and
(f) A statement indicating whether the project site is included on any list of hazardous waste facilities, land designated as hazardous waste property, or hazardous waste disposal site, and, if so, the information required in the Hazardous Waste and Substances Statement pursuant to Government Code Section 65962.5.

The Notice of Availability shall be provided to:

(a) Each Responsible and Trustee Agency;
(b) Any other federal, state, or local agency which has jurisdiction by law or exercises authority over resources affected by the project, including:

(1) Any water supply agency consulted under Local Guidelines Section 5.15;

(2) Any city or county bordering on the project area;

(3) For a project of statewide, regional, or areawide significance, to any transportation agencies or public agencies which have major local arterials or public transit facilities within five (5) miles of the project site or freeways, highways, or rail transit service within ten (10) miles of the project site which could be affected by the project;

(4) For a subdivision project located within one mile of a facility of the State Water Resources Development System, to the California Department of Water Resources; and

(5) For a general plan amendment, a project of statewide, regional, or areawide significance, or a project that relates to a public use airport, to any "military service" (defined in Section 10.39 of these Local Guidelines) that has provided the District with its contact office and address and notified the District of the specific boundaries of a "low-level flight path" (defined in Section 10.35 of these Local Guidelines), "military impact zone" (defined in Section 10.38 of these Local Guidelines), or "special use airspace" (defined in Section 10.60 of these Local Guidelines).

(c) The last known name and address of all organizations and individuals who have previously filed a written request with the District to receive these Notices;
(d) For certain projects that may impact a low-level flight path, military impact zone, or special use airspace and that meet the other criteria of Local Guidelines Section 7.04 to the specified military services contact;
(e) For certain projects that involve the construction or alteration of a facility anticipated to emit hazardous air emissions or handle hazardous substances within one-quarter mile of a school and that meet the other requirements of Local Guidelines Section 7.30, to any potentially affected school district;
(f) For certain waste-burning projects that meet the requirements of Local Guidelines Section 5.10 (See also Local Guidelines Section 7.21), to the owners and occupants of property within one-fourth mile of any parcel on which the project will be located; and
(g) For a project that establishes or amends a redevelopment plan that contains land in agricultural use, notice and a copy of the Draft EIR shall be provided to the agricultural and farm agencies and organizations specified in Health and Safety Code Section 33333.3.

The District may require requests for copies of these Notices to be renewed annually and may charge a fee for the reasonable cost of providing this service. A project will not be invalidated due to a failure to send a requested Notice provided there has been substantial compliance with these notice provisions.

Staff may also consult with and obtain comments from any person known to have special expertise or any other person or organization whose comments relative to the Draft EIR would be desirable.

In addition, notice shall be given to the public by at least one of the following procedures:

(a) Publication of the Notice of Completion and/or the Notice of Availability at least once in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas;
(b) Posting of the Notice of Completion and/or the Notice of Availability on and off site in the area where the project is to be located; or
(c) Direct mailing of the Notice of Completion and/or the Notice of Availability to owners and occupants of property contiguous to the project, as identified on the latest equalized assessment roll.

The Notice of Completion and Notice of Availability shall be posted in the office of the Clerk in each county in which the project is located for at least thirty (30) days. If the public review period for the Draft EIR is longer than thirty (30) days, the District may wish to leave the Notice posted until the public review period for the Draft EIR has expired.

Copies of the Draft EIR shall also be made available at the District office for review by members of the general public. The District may require any person obtaining a copy of the Draft EIR to reimburse the District for the actual cost of its reproduction. Copies of the Draft EIR should also be furnished to appropriate public library systems.

The District is encouraged to make copies of filed notices available in electronic format on the Internet. Such electronic postings are in addition to the procedures required by the CEQA Guidelines and the Public Resources Code.

7.20 SUBMISSION OF DRAFT EIR TO STATE CLEARINGHOUSE.

A Draft EIR must be submitted to the State Clearinghouse for review by state agencies in the following situations:

(a) A state agency is the Lead Agency for the Draft EIR;.
(b) A state agency is a Responsible Agency, Trustee Agency, or otherwise has jurisdiction by law over resources potentially affected by the project; or
(c) The Draft EIR is for a project identified in State Guidelines Section 15206 as being a project of statewide, regional, or areawide significance.

State Guidelines Section 15206 identifies the following types of projects as being examples of projects of statewide, regional, or areawide significance which require submission to the State Clearinghouse for circulation:

(1) General plans, elements, or amendments for which an EIR was prepared.

(2) Projects which have the potential for causing significant environmental effects beyond the city or county where the project would be located, such as:

(a) Residential development of more than 500 units.
(b) Commercial projects employing more than 1,000 persons or covering more than 500,000 square feet of floor space.
(c) Office building projects employing more than 1,000 persons or covering more than 250,000 square feet of floor space.
(d) Hotel or motel development of more than 500 rooms.
(e) Industrial projects housing more than 1,000 persons, occupying more than 40 acres of land, or covering more than 650,000 square feet of floor area.

(3) Projects for the cancellation of a Williamson Act contract covering more than 100 acres.

(4) Projects in one of the following Environmentally Sensitive Areas:

(a) Lake Tahoe Basin.
(b) Santa Monica Mountains Zone.
(c) Sacramento-San Joaquin River Delta.
(d) Suisun Marsh.
(e) Coastal Zone, as defined by the California Coastal Act.
(f) Areas within one-quarter mile of a river designated as wild and scenic.

(g) Areas within the jurisdiction of the San Francisco Bay Conservation and Development Commission.

(5) Projects which would affect sensitive wildlife habitats or the habitats of any rare, threatened, or endangered species.

(6) Projects which would interfere with water quality standards.

(7) Projects which would provide housing, jobs, or occupancy for 500 or more people within 10 miles of a nuclear power plant.

A Draft EIR may be submitted to the State Clearinghouse when a state agency has special expertise with regard to the environmental impacts involved.

When the Draft EIR will be reviewed through the State review process handled by the State Clearinghouse, a Notice of Completion (Form "H") should be used as a cover sheet. If the District uses the State Clearinghouse's online process to submit the Notice of Completion form, the form generated on the Internet site satisfies the State Clearinghouse's requirements.

A sufficient number of copies of the documents must be sent to the State Clearinghouse for circulation. Staff should contact the State Clearinghouse to find out the correct number of printed copies required for circulation. In addition to the printed copies, a copy of the documents in electronic format shall be submitted on a diskette or by electronic mail transmission if available.

Alternatively, the District may provide copies of draft environmental documents to the State Clearinghouse for state agency review in an electronic format. The document must be on a CD-ROM in a common file format such as Word or Acrobat. Lead Agencies must provide fifteen (15) copies of the CD-ROM to the State Clearinghouse. In addition, each CD-ROM must be accompanied by 15 printed copies of the DEIR summary, executive summary, or introduction section. The printed summary allows both the State Clearinghouse and agency CEQA coordinators to distribute the documents quickly without the use of a computer.

Submission of the Draft EIR to the State Clearinghouse affects the timing of the public review period as set forth in Local Guidelines Section 7.22.

7.21 SPECIAL NOTICE REQUIREMENTS FOR WASTE- AND FUEL-BURNING PROJECTS.

For any waste-burning project, as defined in Local Guidelines Section 5.10, in addition to the notice requirements specified in Local Guidelines Sections 7.19 and 7.20, Notice of Availability of the Draft EIR shall be given by direct mailing or any other method calculated to provide delivery of the notice to the owners and occupants of property within one-fourth mile of any parcel or parcels on which the project is located.

7.22 TIME FOR REVIEW OF DRAFT EIR; FAILURE TO COMMENT.

A period of between thirty (30) and sixty (60) days from the filing of the Notice of Completion of the Draft EIR shall be allowed for review of and comment on the Draft EIR,

except in unusual situations. When a draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall be at least forty-five (45) days, unless a shorter period is approved by the State Clearinghouse as discussed below.

If a state agency is a Responsible Agency, or if the Draft EIR is submitted to the State Clearinghouse, the public review period shall be at least as long as the review period established by the State Clearinghouse. The public review period and the state agency review period may, but are not required to, begin and end at the same time. The state agency review period begins (day one) on the date that the State Clearinghouse distributes the Draft EIR to state agencies. The State Clearinghouse is required to distribute the Draft EIR to state agencies within three (3) working days from the date the State Clearinghouse receives the document, as long as the Draft EIR is complete when submitted to the State Clearinghouse. If the document submitted to the State Clearinghouse is not complete, the State Clearinghouse must notify the Lead Agency. The review period for the public and all other agencies may run concurrently with the state agency review period established by the State Clearinghouse.

A shorter review period of the Draft EIR by the State Clearinghouse can be requested by the District; however, a shortened review period shall not be less than thirty (30) days for a Draft EIR. Any request for a shortened review period must be made in writing by the District to the Office of Planning and Research. The District may designate a person to make these requests.. The District must contact all responsible and trustee agencies and obtain their agreement prior to obtaining a shortened review period.

A shortened review period is not available for any proposed project of statewide, regional or areawide environmental significance as determined pursuant to State Guidelines Section 15206. Any approval of a shortened review period shall be given prior to, and reflected in, the public notices.

In the event a public agency, group, or person whose comments on a Draft EIR are solicited fails to comment within the required time period, it shall be presumed that such agency, group, or person has no comment to make, unless the Lead Agency has received a written request for a specific extension of time for review and comment and a statement of reasons for the request.

Continued planning activities concerning the proposed project, short of formal approval, may continue during the period set aside for review and comment on the Draft EIR.

7.23 PUBLIC HEARING ON DRAFT EIR.

CEQA does not require formal public hearings for certification of an EIR; public comments may be restricted to written communications. (However, a hearing is required to utilize the limited exemption for Transit Priority Projects as explained in Local Guidelines Section 3.15.) However, if the District provides a public hearing on its consideration of a project, the District should include the project's environmental review documents as one of the subjects of the hearing. Notice of the time and place of the hearing shall be given in a timely manner in accordance with any legal requirements applicable to the proposed project. Generally, the requirements of the Ralph M. Brown Act will provide the minimum requirements for the

inclusion of CEQA matters on agendas and at hearings. (Gov. Code, § 54950 et seq.) At a minimum, agendas for meetings and hearings before commissions, boards, councils, and other agencies must be posted in a location that is freely accessible to members of the public at least seventy-two (72) hours prior to a regular meeting. The agenda must contain a brief general description of each item to be discussed and the time and location of the meeting. (Gov. Code, § 54954.2.)

7.24 RESPONSE TO COMMENTS ON DRAFT EIR.

The District as Lead Agency shall evaluate any comments on environmental issues received during the public review period for the Draft EIR and shall prepare a written response to those comments that raise significant environmental issues. As stated below, the District should also consider evaluating and responding to any comments received after the public review period. The written responses shall describe the disposition of any significant environmental issues that are raised in the comments. The responses may take the form of a revision of the Draft EIR, an attachment to the Draft EIR, or some other oral or written response which is adequate under the circumstances. If the District's position is at variance with specific recommendations or suggestions raised in the comment, the District's response must detail the reasons why such recommendations or suggestions were not accepted. Moreover, the District shall respond to any specific suggestions for project alternatives or mitigation measures for significant impacts, unless such alternatives or mitigation measures are facially infeasible. The response shall contain recommendations, when appropriate, to alter the project as described in the Draft EIR as a result of an analysis of the comments received.

At least ten (10) days prior to certifying a Final EIR, the District shall provide its proposed written response to any public agency which has made comments on the Draft EIR during the public review period. The District is not required to respond to comments received after the public review period. However, the District should consider responding to all comments if it will not delay action on the Final EIR, since any comment received before final action on the EIR can form the basis of a legal challenge. A written response that addresses the comment or adequately explains the District's action in light of the comment may assist the District in defending against a legal challenge.

7.25 PREPARATION AND CONTENTS OF FINAL EIR.

Following the receipt of any comments on the Draft EIR as required herein, such comments shall be evaluated by Staff and a Final EIR shall be prepared.

The Final EIR shall meet all requirements of Local Guidelines Section 7.14 and shall consist of the Draft EIR or a revision of the Draft, a section containing either verbatim or in summary the comments and recommendations received through the review and consultation process, a list of persons, organizations and public agencies commenting on the Draft, and a section containing the responses of the District to the significant environmental points raised in the review and consultation process.

7.26 RECIRCULATION WHEN NEW INFORMATION IS ADDED TO EIR.

When significant new information is added to the EIR after notice and consultation but before certification, the District must recirculate the Draft EIR for another public review period. The term "information" can include changes in the project or environmental setting as well as additional data or other information.

New information is significant only when the EIR is changed in a way that would deprive the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of a project or a feasible way to mitigate or avoid such an effect, including a feasible project alternative, that the project proponents decline to implement. Recirculation is required, for example, when:

(1) New information added to an EIR discloses:

(a) A new significant environmental impact resulting from the project or from a new mitigation measure proposed to be implemented;

(b) A significant increase in the severity of an environmental impact (unless mitigation measures are also adopted that reduce the impact to a level of insignificance); or

(c) A feasible project alternative or mitigation measure that clearly would lessen the significant environmental impacts of the project, but which the project proponents decline to adopt; or

(2) The Draft EIR is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

Recirculation is not required when the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. If the revision is limited to a few chapters or portions of the EIR, the District as Lead Agency need only recirculate the chapters or portions that have been modified. A decision to not recirculate an EIR must be supported by substantial evidence in the record.

When the District determines to recirculate a Draft EIR, it shall give Notice of Recirculation (Form "M") to every agency, person, or organization that commented on the prior Draft EIR. The Notice of Recirculation must indicate whether new comments must be submitted and whether the District has exercised its discretion to require reviewers to limit their comments to the revised chapters or portions of the recirculated EIR. The District shall also consult again with those persons contacted pursuant to Local Guidelines Section 7.19 before certifying the EIR. When the EIR is substantially revised and the entire EIR is recirculated, the District may require that reviewers submit new comments and need not respond to those comments received during the earlier circulation period. In those cases, the District should advise reviewers that, although their previous comments remain part of the administrative record, the final EIR will not provide a written response to those comments, and new comments on the revised EIR must be submitted. The District need only respond to those comments submitted in response to the revised EIR.

When the EIR is revised only in part and the District is recirculating only the revised chapters or portions of the EIR, the District may request that reviewers limit their comments to the revised chapters or portions. The District need only respond to: (1) comments received during the initial circulation period that relate to chapters or portions of the document that were not revised and recirculated, and (2) comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated.

When recirculating a revised EIR, either in whole or in part, the District must, in the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft EIR.

7.27 CERTIFICATION OF FINAL EIR.

Following the preparation of the Final EIR, Staff shall review the Final EIR and make a recommendation to the decisionmaking body regarding whether the Final EIR has been completed in compliance with CEQA, the State Guidelines and the District's Guidelines. The Final EIR and Staff recommendation shall then be presented to the decisionmaking body. The decisionmaking body shall independently review and consider the information contained in the Final EIR and determine whether the Final EIR reflects its independent judgment. Before it approves the project, the decisionmaking body must certify and find that: (1) the Final EIR has been completed in compliance with CEQA, the State Guidelines and the District's Guidelines; (2) the Final EIR was presented to the decisionmaking body and the decisionmaking body reviewed and considered the information contained in the Final EIR before approving the project; and (3) the Final EIR reflects the District's independent judgment and analysis.

Except in those cases in which the Board of Directors is the final decisionmaking body for the project, any interested person may appeal the certification or denial of certification of a Final EIR to the Board of Directors. See Local Guidelines Section 2.03. Appeals must follow the procedures prescribed by the District.

7.28 CONSIDERATION OF EIR BEFORE APPROVAL OR DISAPPROVAL OF PROJECT.

Once the decisionmaking body has certified the EIR, it may then proceed to consider the proposed project for purposes of approval or disapproval.

7.29 FINDINGS.

The decisionmaking body shall not approve or carry out a project if a completed EIR identifies one or more significant environmental effects of the project unless it makes one or more of the following written findings for each such significant effect, accompanied by a brief explanation of the rationale supporting each finding. For impacts that have been identified as potentially significant, the possible findings are:

(a) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment as identified in the Final EIR, such that the impact has been reduced to a less-than-significant level.

(b) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the District. Such changes have been, or can and should be, adopted by that other agency.

(c) Specific economic, legal, social, technological or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the Final EIR. The decisionmaking body must make specific written findings stating why it has rejected an alternative to the project as infeasible.

The findings required by this Section shall be supported by substantial evidence in the record. Measures identified and relied on to mitigate environmental impacts identified in the EIR to below a level of significance should be expressly adopted or rejected in the findings. The findings should include a description of the specific reasons for rejecting any mitigation measures or project alternatives identified in the EIR that would reduce the significant impacts of the project. Any mitigation measures that are adopted must be fully enforceable through permit conditions, agreements, or other measures.

If any of the proposed alternatives could avoid or lessen an adverse impact for which no mitigation measures are proposed, the District shall analyze the feasibility of such alternative(s). If the project is to be approved without including such alternative(s), the District shall find that specific economic, legal, social, technological or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the alternatives identified in the Final EIR and shall list such considerations before such approval.

The decisionmaking body shall not approve or carry out a project as proposed unless: (1) the project as approved will not have a significant effect on the environment; or (2) its significant environmental effects have been eliminated or substantially lessened (as determined through one or more of the findings indicated above), and any remaining unavoidable significant effects have been found acceptable because of facts and circumstances described in a Statement of Overriding Considerations (see Local Guidelines Section 7.31). Statements in the Draft EIR or comments on the Draft EIR are not determinative of whether the project will have significant effects.

When making the findings required by this Section, the District as Lead Agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which it based its decision.

7.30 SPECIAL FINDINGS REQUIRED FOR FACILITIES WHICH MAY EMIT HAZARDOUS AIR EMISSIONS NEAR SCHOOLS.

Special procedural rules apply to projects involving the construction or alteration of a facility within one-quarter mile of a school when: (1) the facility might reasonably be anticipated to emit hazardous air emissions or to handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the threshold specified in Health and Safety Code Section 25532(j); and (2) the emissions or substances may pose a health or safety hazard to persons who would attend or would be employed at the school. If the project meets both of those criteria, the District may not certify an EIR or approve a Negative Declaration unless it makes a finding that:

(a) The Lead Agency consulted with the affected school district or districts having jurisdiction over the school regarding the potential impact of the project on the school; and

(b) The school district was given written notification of the project not less than thirty (30) days prior to the proposed certification of the EIR or approval of the Negative Declaration.

Implementation of this Local Guideline shall be consistent with the definitions and terms utilized in State Guidelines section 15186.

Additionally, in its role as a Responsible Agency, the District should be aware that for projects involving the acquisition of a school site or the construction of a secondary or elementary school by a school district, the negative declaration or EIR prepared for the project may not be adopted or certified unless there is sufficient information in the entire record to determine whether any boundary of the school site is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

If it is determined that the project involves the acquisition of a school site that is within 500 feet of the edge of the closest traffic lane of a freeway, or other busy traffic corridor, the Negative Declaration or EIR may not be adopted or certified unless the school board determines, through a health risk assessment pursuant to Section 44360(b)(2) of the Health and Safety Code and after considering any potential mitigation measures, that the air quality at the proposed project site does not present a significant health risk to pupils.

7.31 STATEMENT OF OVERRIDING CONSIDERATIONS.

Whenever a project approved by the decisionmaking body will cause unmitigated significant environmental effects, the decisionmaking body must adopt a Statement of Overriding Considerations. A Statement of Overriding Considerations allows the decisionmaking body to approve a project despite one or more unmitigated significant environmental impacts identified in the Final EIR. A Statement of Overriding Considerations can be made only if feasible project alternatives or mitigation measures do not exist to reduce the environmental impact(s) to a level of insignificance and the benefits of the project outweigh the adverse environmental effect(s). The feasibility of project alternatives or mitigation measures is determined by whether the project alternative or mitigation measure can be accomplished within a reasonable period of time, taking into account economic, environmental, social, legal and technological factors. Project benefits which are appropriate to consider include the economic, environmental, technological and social value of the project.

Substantial evidence in the entire record must justify the decisionmaking body's findings and its use of the Statement of Overriding Considerations. If the decisionmaking body makes a Statement of Overriding Considerations, the Statement must be included in the record of the project approval and it should be referenced in the Notice of Determination.

7.32 MITIGATION MONITORING OR REPORTING PROGRAM FOR EIR.

When making findings regarding an EIR, the District must do all of the following:

(a) Adopt a reporting or monitoring program to assure that mitigation measures which are required to mitigate or avoid significant effects on the environment will be implemented by the project proponent or other responsible party in a timely manner, in accordance with conditions of project approval;

(b) Make sure all conditions and mitigation measures are feasible and fully enforceable through permit conditions, agreements, or other measures. Such permit conditions, agreements, and measures must be consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by caselaw; and

(c) Specify the location and the custodian of the documents which constitute the record of proceedings upon which the District based its decision in the resolution certifying the EIR.

There is no requirement that the reporting or monitoring program be circulated for public review; however, the District may choose to circulate it for public comments along with the Draft EIR. Any mitigation measures required to mitigate or avoid significant effects on the environment shall be adopted and made fully enforceable, such as by being imposed as conditions of project approval.

The adequacy of a mitigation monitoring program is determined by the "rule of reason." This means that a mitigation monitoring program does not need to provide every imaginable measure. It needs only to provide measures that are reasonably feasible and that are necessary to avoid significant impacts or to reduce the severity of impacts to a less-than-significant level.

The mitigation monitoring or reporting program shall be designed to assure compliance with the mitigation measures during the implementation and construction of the project. If a Responsible Agency or Trustee Agency has required that certain conditions be incorporated into the project, the District may request that agency to prepare and submit a proposed reporting or monitoring program. The District shall also require that, prior to the close of the public review period for a Draft EIR, the Responsible or Trustee Agency submit detailed performance objectives for mitigation measures, or refer the District to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to the District by a Responsible or Trustee Agency shall be limited to measures that mitigate impacts to resources that are within the Responsible or Trustee Agency's authority.

When a project is of statewide, regional, or areawide significance, any transportation information resulting from the reporting or monitoring program required to be adopted by the District shall be submitted to the regional transportation planning agency where the project is located and to the Department of Transportation. The transportation planning agency and the Department of Transportation are required by law to adopt guidelines for the submittal of these reporting or monitoring programs, so the District may wish to tailor its submittal to such guidelines.

Local agencies have the authority to levy fees sufficient to pay for this program. Therefore, the District may impose a program to charge project proponents fees to cover actual costs of program processing and implementation.

The District may delegate reporting or monitoring responsibilities to an agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed, the District remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

The District may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" is defined as a written compliance review that is presented to the Council or an authorized staff person. A report may be required at various stages during project implementation or upon completion of the mitigation measure. Reporting is suited to projects which have readily measurable or quantitative mitigation measures or which already involve regular review. "Monitoring" is generally an ongoing or periodic process of project oversight. Monitoring is suited to projects with complex mitigation measures which may exceed the expertise of the District to oversee, are expected to be implemented over a period of time, or require careful implementation to assure compliance.

At its discretion, the District may adopt standardized policies and requirements to guide individually adopted programs.

Standardized policies or requirements for monitoring and reporting may describe, but are not limited to:

(a) The relative responsibilities of various departments within the District for various aspects of the program;
(b) The responsibilities of the project proponent;
(c) Guidelines adopted by the District to govern preparation of programs;
(d) General standards for determining project compliance with the mitigation measures and related conditions of approval;
(e) Enforcement procedures for noncompliance, including provisions for administrative appeal;
(f) Process for informing the Council and staff of the relative success of mitigation measures and using those results to improve future mitigation measures;

When a project is of statewide, regional, or areawide importance, any transportation information generated by a mitigation monitoring or reporting program must be submitted to the transportation planning agency in the region where the project is located, as well as to the Department of Transportation.

7.33 NOTICE OF DETERMINATION.

After approval of a project for which the District is the Lead Agency, Staff shall cause a Notice of Determination (Form "F") to be prepared, filed, and posted. The Notice of Determination shall include the following information:

(a) An identification of the project, including its common name, where possible, and its location;
(b) A brief description of the project;
(c) The date when the District approved the project;

(d) Whether the project in its approved form with mitigation will have a significant effect on the environment;
(e) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA;
(f) Whether mitigation measures were made a condition of the approval of the project;
(g) Whether findings and/or a Statement of Overriding Considerations was adopted for the project; and
(h) The address where a copy of the EIR (with comments and responses) and the record of project approval may be examined by the general public.

The Notice of Determination shall be filed with the Clerk of each county in which the project will be located within five (5) working days of project approval. (To determine the fees that must be paid with the filing of the Notice of Determination, see Local Guidelines Section 7.36 and the Staff Summary of the CEQA Process.) The County Clerk is required to post the Notice of Determination within twenty-four (24) hours of receipt. The Notice must be posted in the office of the Clerk for a minimum of thirty (30) days. Thereafter, the Clerk shall return the notice to the District with a notation of the period it was posted. The District shall retain the notice for not less than twelve (12) months.

Simultaneously with the filing of the Notice of Determination with the Clerk, Staff shall cause a copy of such Notice to be posted at District Offices. If the project requires discretionary approval from a state agency, the Notice of Determination shall also be filed with the Office of Planning and Research within five (5) working days of project approval, along with proof that the District has paid the County Clerk the California Department of Fish and Game fee or a completed form from DFG documenting DFG's determination that the project will have no effect on fish and wildlife.

When a request is made for a copy of the Notice prior to the date on which the District approves the project, the copy must be mailed, first class postage prepaid, within five (5) days of the District's approval. If such a request is made following the District's approval of the project, then the copy should be mailed in the same manner as soon as possible. The recipients of such documents may be charged a fee reasonably related to the cost of providing the service.

The District is also encouraged to make copies of filed notices available in electronic format on the Internet. Such electronic notices are in addition to the posting requirements of the CEQA Guidelines and the Public Resources Code.

For projects with more than one phase, Staff shall file a Notice of Determination for each phase requiring a discretionary approval. The filing and posting of a Notice of Determination with the Clerk, and, if necessary, with the Office of Planning and Research, usually starts a thirty (30) day statute of limitations on court challenges to the approval under CEQA. When separate notices are filed for successive phases of the same overall project, the thirty (30) day statute of limitation to challenge the subsequent phase begins to run when the second notice is filed. Failure to file the Notice may result in a one hundred eighty (180) day statute of limitations.

7.34 DISPOSITION OF A FINAL EIR.

The District shall file a copy of the Final EIR with the appropriate planning agency of any city or county where significant effects on the environment may occur. The District shall also retain one or more copies of the Final EIR as a public record for a reasonable period of time. Finally, for private projects, the District may require that the project applicant provide a copy of the certified Final EIR to each Responsible Agency.

7.35 PRIVATE PROJECT COSTS.

For private projects, the person or entity proposing to carry out the project shall be charged a reasonable fee to recover the estimated costs incurred by the District in preparing, circulating, and filing the Draft and Final EIRs, as well as all publication costs incident thereto.

7.36 FILING FEES FOR PROJECTS WHICH AFFECT WILDLIFE RESOURCES.

At the time a Notice of Determination for an EIR is filed with the County or Counties in which the project is located, a fee of $2,768.25 shall be paid to the Clerk for projects which will adversely affect fish or wildlife resources. These fees are collected by the Clerk on behalf of the California Department of Fish and Game ("DFG").

Only one filing fee is required for each project unless the project is tiered or phased and separate environmental documents are prepared. For projects where Responsible Agencies file separate Notices of Determination, only the Lead Agency is required to pay the fee.

Note: County Clerks are authorized to charge a documentary handling fee of up to $50.00 for each project in addition to the Fish and Game fees specified above. Refer to the Index in the Staff Summary to help determine the correct total amount of fees applicable to the project.

For private projects, the District should pass these costs on to the project applicant.

No fees are required for projects with "no effect" on fish or wildlife resources or for certain projects undertaken by the DFG and implemented through a contract with a non-profit entity or local government agency. See Local Guidelines Section 6.20 for more information regarding a "no effect" determination.

8. TYPES OF EIRS

8.01 EIRS GENERALLY.

This chapter describes a number of examples of various EIRs tailored to different situations. All of these types of EIRs must meet the applicable requirements of Chapter 7 of these Local Guidelines.

8.02 TIERING.

"Tiering" refers to using the analysis of general matters contained in a previously certified broader EIR in later EIRs or Negative Declarations prepared for narrower projects. The later EIR or Negative Declaration may incorporate by reference the general discussions from the broader EIR and may concentrate solely on the issues specific to the later project.

An Initial Study shall be prepared for the later project and used to determine whether a previously certified EIR may be used and whether new significant effects should be examined. Tiering does not excuse the District from adequately analyzing reasonably foreseeable significant environmental effects of a project, nor does it justify deferring analysis to a later tier EIR or Negative Declaration. However, the level of detail contained in a first-tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed. When the District is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof (e.g., an area plan, specific plan or community plan), the development of detailed, site-specific information may not be feasible. Such site-specific information can be deferred, in many instances, until such time as the District prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.

When assessing whether there is a new significant cumulative effect for purposes of a subsequent tier environmental document, the District shall consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and probable future projects.

The District may use only a valid CEQA document as a first-tier document. Accordingly, the District should carefully review the first-tier environmental document to determine whether or not the statute of limitations for challenging the document has run. If the statute of limitations has not expired, the District should use the first-tier document with caution and pay careful attention to the legal status of the document. If the first-tier document is subsequently invalidated, any later environmental document may also be defective.

8.03 PROJECT EIR.

The most common type of EIR examines the environmental impacts of a specific development project and focuses primarily on the changes in the environment that would result from the development project.

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If the EIR for a redevelopment plan is a Project EIR, all public and private activities or undertakings pursuant to or in furtherance of the Redevelopment Plan shall constitute a single project, which shall be deemed approved at the time of the adoption of the Redevelopment Plan. Although the District will probably not act as Lead Agency for a Redevelopment Plan, the District may act as a Responsible Agency. (State Guideline Section 15180.)

8.04 SUBSEQUENT EIR.

A Subsequent EIR is required when a previous EIR has been prepared and certified or a Negative Declaration has been adopted for a project and at least one of the three following situations occur:

(a) Substantial changes are proposed in the project which will require major revisions of a previous EIR due to the identification of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(b) Substantial changes occur with respect to the circumstances under which the project is to be undertaken which will require major revisions of a previous EIR due to the identification of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(c) New information, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, becomes available and shows any of the following:

(1) the project will have one or more significant effects not discussed in a previous EIR or Negative Declaration;

(2) significant effects previously examined will be substantially more severe than shown in a previous EIR;

(3) mitigation measures or alternatives previously found not to be feasible are in fact feasible and would substantially reduce one or more significant effects, but the project proponent declines to adopt the mitigation measures or alternatives; or

(4) mitigation measures or alternatives which were not considered in a previous EIR would substantially lessen one or more significant effects on the environment, but the project proponent declines to adopt the mitigation measures or alternatives.

A Subsequent EIR must receive the same circulation and review as the previous EIR received.

In instances where the District is evaluating a modification or revision to an existing use permit, the District may consider only those environmental impacts related to the changes between what was allowed under the old permit and what is requested under the new permit. Only if these differential impacts fall within the categories described above may the District require additional environmental review.

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When the District is considering approval of a development project which is consistent with a general plan for which an EIR was completed, another EIR is required only if the project causes environmental effects peculiar to the parcel which were not addressed in the prior EIR or substantial new information shows the effects peculiar to the parcel will be more significant than described in the prior EIR.

8.05 SUPPLEMENTAL EIR.

The District may choose to prepare a Supplemental EIR, rather than a Subsequent EIR, if any of the conditions described in Local Guidelines Section 8.04 have occurred but only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation. To assist the District in making this determination, the decisionmaking body should request an Initial Study and/or a recommendation by Staff. The Supplemental EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.

A Supplemental EIR shall be given the same kind of notice and public review as is given to a Draft EIR but may be circulated by itself without recirculating the previous EIR.

When the decisionmaking body decides whether to approve the project, it shall consider the previous EIR as revised by the Supplemental EIR. Findings shall be made for each significant effect identified in the Supplemental EIR.

8.06 ADDENDUM TO AN EIR.

The District may choose to prepare an Addendum to an EIR, rather than a Subsequent or Supplemental EIR, only if none of the conditions described in Local Guidelines Section 8.04 or 8.05 calling for preparation of a Subsequent or Supplemental EIR have occurred and only minor technical changes or additions to the previous environmental document are necessary. Since significant effects on the environment were addressed by findings in the original EIR, no new findings are required in the Addendum.

An Addendum to an EIR need not be circulated for public review but should be included in or attached to the Final EIR. The decisionmaking body shall consider the Addendum with the Final EIR prior to making a decision on a project. A brief explanation of the decision not to prepare a Subsequent EIR or a Supplemental EIR should be included in the Addendum, the Lead Agency's findings on the project, or elsewhere in the record. This explanation must be supported by substantial evidence.

8.07 STAGED EIR.

When a large capital project will require a number of discretionary approvals from governmental agencies and one of the approvals will occur more than two years before construction will begin, a Staged EIR may be prepared. The Staged EIR covers the entire project in a general form or manner. A Staged EIR should evaluate a proposal in light of current and contemplated plans and produce an informed estimate of the environmental consequences of an entire project. The particular aspect of the project before the District for approval shall be discussed with a greater degree of specificity.

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When a Staged EIR has been prepared, a Supplemental EIR shall be prepared when a later approval is required for the project and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the project.

8.08 PROGRAM EIR.

A Program EIR is an EIR which may be prepared on an integrated series of actions that are related either:

(a) Geographically;
(b) As logical parts in a chain of contemplated actions;
(c) In connection with the issuance of rules, regulations, plans or other general criteria to govern the conduct of a continuing program; or
(d) As individual projects carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways. (State CEQA Guidelines, § 15168.)

An advantage of using a Program EIR is that it can "[a]llow the Lead Agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts." (State Guidelines, § 15168(b)(4).) A Program EIR is distinct from a Project EIR, as a Project EIR is prepared for a specific project and must examine in detail site-specific considerations. Program EIRs are commonly used in conjunction with the process of tiering.

Tiering is the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs. (State Guidelines, § 15385; see also Local Guidelines, §§ 8.02 and 10.66.) Tiering is proper "when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous environmental impact reports." (Pub. Res. Code, § 21093(a).) For example, the California Supreme Court recently ruled that a Program EIR is consistent with CEQA if it identifies potential sources of water and analyzes the associated environmental effects in general terms. Rather, identification of specific sources and environmental effects is required only at the second-tier stage when specific projects are considered. (*In re Bay-Delta etc*. (2008) 43 Cal. 4th 1143.)

Subsequent activities in the program must be examined in light of the Program EIR to determine whether additional environmental documents must be prepared. Additional environmental review documents must be prepared if the proposed later project may arguably cause significant adverse effects on the environment.

8.09 USE OF A PROGRAM EIR WITH SUBSEQUENT EIRS AND NEGATIVE DECLARATIONS.

A Program EIR can be used to simplify the task of preparing environmental documents in later parts of the program. The Program EIR can:

(a) Provide the basis for determining whether the later activity may have any significant effects;

(b) Be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts, broad alternatives and other factors that apply to the program as a whole; or
(c) Focus an EIR on a subsequent project to permit discussion solely of new effects which had not been considered before.

If a Program EIR is prepared for a redevelopment plan, subsequent activities in the redevelopment program will be subject to review if they would have effects that were not examined in the Program EIR. The District should use a written checklist or similar device to document the evaluation of the site and the proposed activity to determine whether the environmental effects of the operation were indeed covered in the Program EIR. If the District finds that no new effects could occur or no new mitigation measures would be required, the District can approve the activity as being within the scope of the project covered by the Program EIR, and no new environmental document is required. (See Local Guideline Section 8.04.)

8.10 USE OF AN EIR FROM AN EARLIER PROJECT.

A single EIR may be used to describe more than one project when the projects involve substantially identical environmental impacts. Any environmental impacts peculiar to one of the projects must be separately set forth and explained.

8.11 MASTER EIR.

A Master EIR is an EIR which may be prepared for:

(a) A general plan (including elements and amendments);
(b) A specific plan;
(c) A project consisting of smaller individual projects to be phased;
(d) A regulation to be implemented by subsequent projects;
(e) A project to be carried out pursuant to a development agreement;
(f) A project pursuant to or furthering a redevelopment plan;
(g) A state highway or mass transit project subject to multiple reviews or approvals; or
(h) A regional transportation plan or congestion management plan.

A Master EIR must do both of the following:

(a) Describe and present sufficient information about anticipated subsequent projects within its scope, including their size, location, intensity, and scheduling; and
(b) Preliminarily describe potential impacts of anticipated subsequent projects for which insufficient information is available to support a full impact assessment.

The District and Responsible Agencies identified in the Master EIR may use the Master EIR to limit environmental review of subsequent projects. However, the Lead Agency for the subsequent project must prepare an Initial Study to determine whether the subsequent project and its significant environmental effects were included in the Master EIR. If the Lead Agency for the subsequent project finds that the subsequent project will have no additional significant environmental effect and that no new mitigation measures or alternatives may be required, it may prepare written findings to that effect without preparing a new environmental document. When

the Lead Agency makes this finding, it must provide public notice of the availability of its proposed finding for public review and comment in the same manner as if it were providing public notice of the availability of a draft EIR. (See Sections 15177(d) and 15087 of the State Guidelines and Section 7.19 of these Local Guidelines.)

A previously certified Master EIR cannot be relied upon to limit review of a subsequent project if:

(a) A project not identified in the certified Master EIR has been approved and that project may affect the adequacy of the Master EIR for the subsequent project now under consideration; or

(b) The Master EIR was certified more than five (5) years before the filing of an application for the subsequent project, unless the District reviews the adequacy of the Master EIR and:

(1) Finds that, since the Master EIR was certified, no substantial changes have occurred that would cause the subsequent project to have significant environmental impacts, and there is no new information that the subsequent project would have significant environmental impacts; or

(2) Prepares an Initial Study and either certifies a Subsequent or Supplement EIR or adopts a Mitigated Negative Declaration that addresses any substantial changes or new information that would cause the subsequent project to have potentially significant environmental impacts. The certified subsequent or supplemental EIR must either be incorporated into the previously certified Master EIR or the District must identify any deletions, additions or other modifications to the previously certified Master EIR in the new document. The District may include a section in the subsequent or supplemental EIR that identifies these changes to the previously certified Master EIR.

When the Lead Agency cannot find that the subsequent project will have no additional significant environmental effect and no new mitigation measures or alternatives will be required, it must prepare either a Mitigated Negative Declaration or an EIR for the subsequent project.

The District may develop a fee program to fund the costs of a Master EIR.

8.12 FOCUSED EIR.

A Focused EIR is an EIR for a subsequent project identified in a Master EIR. It may be used only if the District finds that the Master EIR's analysis of cumulative, growth-inducing, and irreversible significant environmental effects is adequate for the subsequent project. The Focused EIR must incorporate by reference the Master EIR.

The Focused EIR must analyze additional significant environmental effects not addressed in the Master EIR and any new mitigation measures or alternatives not included in the Master EIR. "Additional significant effects on the environment" means those project-specific effects on

the environment which were not addressed as significant effects on the environment in the Master EIR.

The Focused EIR must also examine the following:

(a) Significant effects discussed in the Master EIR for which substantial new information exists that shows those effects may be more significant than described in the Master EIR;
(b) Those mitigation measures found to be infeasible in the Master EIR for which substantial new information exists that shows the effects may be more significant than described in the Master EIR; and
(c) Those mitigation measures found to be infeasible in the Master EIR for which substantial new information exists that shows those measures may now be feasible.

The Focused EIR need not examine the following effects:

(a) Those that were mitigated through Master EIR mitigation measures; or
(b) Those that were examined in the Master EIR in sufficient detail to allow project-specific mitigation or for which mitigation was found to be the responsibility of another agency.

A Focused EIR may be prepared for a multifamily residential project not exceeding 100 units or a mixed use residential project not exceeding 100,000 square feet even though the project was not identified in a Master EIR, if the following conditions are met:

(a) The project is consistent with a general plan, specific plan, community plan, or zoning ordinance for which an EIR was prepared within five (5) years of the Focused EIR's certification;
(b) The project does not require the preparation of a Subsequent or Supplemental EIR; and
(c) The parcel is surrounded by immediately contiguous urban development, was previously developed with urban uses, or is within one-half mile of a rail transit station.

A Focused EIR for these projects should be limited to potentially significant effects that are project-specific and/or which substantial new information shows will be more significant than described in the Master EIR. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth-inducing impacts of the project. (See State Guidelines Section 15179.5.)

8.13 SPECIAL REQUIREMENTS FOR REDEVELOPMENT PROJECTS

An EIR for a redevelopment plan may be a Master EIR, Program EIR or Project EIR. An EIR for a redevelopment plan must specify whether it is a Master EIR, a Program EIR or a Project EIR. Normally, the District will not be Lead Agency for a redevelopment plan. However, if the District is a Responsible Agency on such a project, the District should endeavor to ensure that the county, as Lead Agency, analyzes these impacts in accordance with CEQA.

If a Program EIR is prepared for a redevelopment plan, subsequent activities in the redevelopment program will be subject to review if they would have effects that were not examined in the Program EIR. If the EIR for a redevelopment plan is a Project EIR, all public and private activities or undertakings pursuant to or in furtherance of the Redevelopment Plan

shall constitute a single project, which shall be deemed approved at the time of the adoption of the Redevelopment Plan. Once certified, no subsequent EIRs will be needed unless required by State Guidelines sections 15162 or 15163. (State Guideline Section 15180.) If a Master EIR is prepared for a redevelopment plan, subsequent projects will be subject to review if they would have effects that were not examined in the Master EIR. If no new effects could occur or no new mitigation measures would be required, it can approve the activity as being within the scope of the project covered by the Master EIR, and no new environmental document is required.

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9. CEQA LITIGATION

9.01 TIMELINES.

When a CEQA lawsuit is filed, there are numerous and complex time requirements that must be met. Pressing deadlines begin to run in the days immediately after a CEQA lawsuit has been filed with the Court. For example, within ten (10) business days of the public agency being served with a petition or complaint alleging a violation of CEQA, the District, if it was the Lead Agency, must provide the petitioner with a list of Responsible Agencies and public agencies with jurisdiction by law over any natural resource affected by the project at issue.

There are a variety of other deadlines that apply in CEQA litigation. If a CEQA lawsuit is filed, CEQA counsel should be contacted immediately in order to ensure that all the applicable deadlines are met.

9.02 ADMINISTRATIVE RECORD.

When the Lead Agency's CEQA finding(s) and/or action is challenged in a lawsuit, the Lead Agency must certify the administrative record that formed the basis of the Lead Agency's decision. To the extent the documents listed below exist and are not subject to a privilege that exempts them from disclosure, the following items should be included in the administrative record:

(1) All project application materials;

(2) All staff reports and related documents prepared by the public agency with respect to its compliance with the substantive and procedural requirements of CEQA and with respect to the action on the project;

(3) All staff reports and related documents prepared by the public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the public agency pursuant to this division;

(4) Any transcript or minutes of the proceedings at which the decisionmaking body of the public agency heard testimony on or considered any environmental document on the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decisionmaking body prior to action on the environmental documents or on the project;

(5) All notices issued by the public agency to comply with CEQA or with any other law governing the processing and approval of the project;

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation;

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(7) All written evidence or correspondence submitted to, or transferred from, the public agency with respect to compliance with CEQA or with respect to the project;

(8) Any proposed decisions or findings submitted to the decisionmaking body of the public agency by its staff or the project proponent, project opponents, or other persons, to the extent such documents are subject to public disclosure;

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3) above, cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to CEQA;

(10) Any other written materials relevant to the respondent public agency's compliance with CEQA or to its decision on the merits of the project, including the initial study; any drafts of any environmental document, or portions thereof, that were released for public review; copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the public agency's files on the project; and internal agency communications related to the project or to compliance with CEQA, to the extent such documents are subject to public disclosure; and

(11) The full written record before any inferior administrative decisionmaking body whose decision was appealed prior to the filing of the lawsuit

The administrative record can be prepared: (1) by the petitioner, if the petitioner elects to do so, or (2) by the Lead Agency. The petitioner and the Lead Agency can also agree on any alternative method of preparing the record. However, when a third party such as the project applicant prepares or assists with the preparation of the administrative record, the Lead Agency may not be able to recover fees incurred by the third party unless petitioner has agreed to this method of preparation.

The administrative record should be organized either chronologically or by topic area. The administrative record should include a master index of documents. The documents generated by the Lead Agency during the CEQA process should be properly labeled for ease of identification.

10. DEFINITIONS

Whenever the following terms are used in these Local Guidelines, they shall have the following meaning unless otherwise expressly defined:

10.01 **"Applicant"** means a person who proposes to carry out a project which requires a lease, permit, license, certificate, or other entitlement for use, or requires financial aid from one or more public agencies when applying for governmental approval or assistance.

10.02 **"Approval"** means a decision by the decisionmaking body or other authorized body or officer of the District which commits the District to a definite course of action with regard to a particular project. With regard to any project to be undertaken directly by the District, approval shall be deemed to occur on the date when the decisionmaking body adopts a motion or resolution determining to proceed with the project, which in no event shall be later than the date of adoption of plans and specifications. As to private projects, approval shall be deemed to have occurred upon the earliest commitment to provide service or the issuance by the District of a discretionary contract, subsidy, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project. The mere acquisition of land by the District shall not, in and of itself, be deemed to constitute approval of a project.

For purposes of these Local Guidelines, all environmental documents must be completed as of the time of project approval.

10.03 **"Agricultural Employee"** means a person engaged in agriculture, including farming in all its branches, and, among other things, includes: (1) the cultivation and tillage of the soil, (2) dairying, (3) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, (4) the raising of livestock, bees, furbearing animals, or poultry, and (5) any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market.

This definition does not include any person covered by the National Labor Relations Act as agricultural employees pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code) and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code). This definition does not apply to employees who perform work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management Relations Act, 29 United States Code Section 158(e)) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above. As used in this definition, "land leveling" shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage or preparation of land for cultivation. (State Guidelines Section 15191(a).)

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10.04 **"Baseline"** refers to the pre-project environmental conditions. By comparing the project's potential impacts to the baseline, the Lead Agency determines whether the project's impacts are substantial enough to be significant under the relevant thresholds of significance. Generally, the baseline is the environmental conditions existing on the date the environmental analysis begins, such as the date of the Notice of Preparation is published for an EIR or the date of the Notice of Intent to Adopt a Negative Declaration. However, in certain circumstances, an earlier or later date may provide a more accurate environmental analysis. The District may establish any baseline that is appropriate, including an earlier or later date, as long as the choice of baseline can be supported by substantial evidence.

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

10.06 **"Categorical Exemption"** means an exception from the requirement of preparing a Negative Declaration or an EIR, based on a finding by the Secretary of the Resources Agency that the class of projects does not have a significant effect on the environment.

10.07 **"Census-Defined Place"** means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

10.08 **"Clerk"** means either the "Clerk of the Board" or the "County Clerk" depending upon the county. Please refer to the "Index to Environmental Filing by County" in the Staff Summary to determine which applies.

10.09 **"Community-Level Environmental Review"** means either (1) or (2) below:

(1) An EIR certified for 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) A Negative Declaration or Mitigated Negative Declaration adopted as a subsequent environmental review document, following and based upon an EIR on a general plan, an applicable community plan or specific plan, provided that the subsequent environmental review document is allowed by CEQA following a Master EIR or a Program EIR or is required pursuant to Public Resource Section 21166.

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10.10 **"Cumulative Impacts"** means two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. The individual effects may be changes resulting from a single project or a number of separate projects, whether past, present or future.

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

10.11 **"Cumulatively Considerable"** means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

10.12 **"Decisionmaking Body"** means the body within the District, e.g., the Board of Directors which has final approval authority over the particular project.

10.13 **"Developed Open Space"** means land that meets each of the following three criteria:

(1) Is publicly owned, or financed in whole or in part by public funds;

(2) Is generally open to, and available for use by, the public;

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

Developed Open Space may include land that has been designated for acquisition by a public agency for developed open space purposes, but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

10.14 **"Development Project"** means any project undertaken for the purpose of development, including any project involving the issuance of a permit for construction or reconstruction but not a permit to operate. It does not include any ministerial projects proposed to be carried out or approved by public agencies. (Government Code Section 65928.)

10.15 **"Discretionary Project"** means a project for which approval requires the exercise of independent judgment, deliberation, or decisionmaking on the part of the District.

10.16 **"District"** means the San Diego Metropolitan Transit District.

10.17 **"Draft EIR"** means an uncertified EIR containing the information summarized in Local Guidelines Section 7.14.

10.18 **"Emergency"** means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or

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damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, landslide or other natural disaster, as well as such occurrences as riot, war, terrorist incident, accident or sabotage.

10.19 **"Endangered, Rare or Threatened Species"** means certain species or subspecies of animals or plants. A species or subspecies of animal or plant is "Endangered" when its survival and reproduction in the wild are in immediate jeopardy from one or more cause, including loss of habitat, change in habitat, overexploitation, predation, competition, disease, or other factors. A species or subspecies of animal or plant is "Threatened" when it is listed as a threatened species pursuant to the California Endangered Species Act or the federal Endangered Species Act. A species or subspecies of animal or plant is "Rare" when either:

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

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

For purposes of analyzing impacts to biological resources, a species of animal or plant shall be presumed to be endangered, rare or threatened if it is listed under the California Endangered Species Act or the federal Endangered Species Act.

This definition shall not include any species of the Class Insecta which is a pest whose protection under the provisions of CEQA would present an overwhelming and overriding risk to man as determined by the Director of Food and Agriculture (with regard to economic pests) or the Director of Health Services (with regard to health risks).

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

10.21 **"EIR"** (Environmental Impact Report) means a detailed written statement setting forth the environmental effects and considerations pertaining to a project. EIR may mean a Draft or a Final version of an EIR, a Project EIR, a Subsequent EIR, a Supplemental EIR, a Tiered EIR, a Staged EIR, a Program EIR, a Redevelopment EIR, a Master EIR, or a Focused EIR.

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

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10.23 **"Final EIR"** means an EIR containing the information contained in the Draft EIR, comments either verbatim or in summary received in the review process, a list of persons commenting, and the response of the District to the comments received.

10.24 **"Local Guidelines"** means the District's Local Guidelines for implementing the California Environmental Quality Act.

10.25 **"Historical Resources"** include:

Resources listed in, or eligible for listing in, the California Register of Historical Resources shall be considered historical resources.

A resource may be listed in the California Register if it meets any of the following National Register of Historic Places criteria:

(a) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
(b) Is associated with the lives of persons important in our past;
(c) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
(d) Has yielded, or may be likely to yield, information important in prehistory or history.

A resource may also be listed in the California Register if it is identified as significant in an historical resource survey that meets all of the following criteria:

(a) The survey has been or will be included in the State Historic Resources Inventory;
(b) The survey and the survey documentation were prepared in accordance with office procedures and requirements; and
(c) The resource is evaluated and determined by the office to have a significance rating of Category 1 to 5 on DPR Form 523.

Resources included on a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution, or identified as significant in a historical resource survey (as described above) are presumed to be historically or culturally significant, unless a preponderance of evidence demonstrates that they are not historically or culturally significant.

Any of the following may be considered historically significant: any object, building, structure, site, area, place, record or manuscript which a Lead Agency determines, based upon substantial evidence in light of the whole record, to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military or cultural annals of California.

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The Lead Agency is not precluded from determining that a resource is a historical resource, as defined in Public Resources Code Sections 5020.1(j) or 5024.1, even if it is: (a) not listed in, or determined to be eligible for listing in, the California Register of Historical Resources; (b) not included in a local register of historical resources; or (c) not identified in a historical resources survey.

10.26 **"Infill Site"** means a site in an urbanized area that meets either of the following criteria:

(1) The site has been previously developed for qualified urban uses; or

(2) The site has not been previously developed for qualified urban uses and both (a) and (b) are met :

(a) the site is immediately adjacent to parcels that are developed with qualified urban uses, or

1. at least 75 percent of the perimeter of the site is adjacent to parcels that are developed with existing qualified urban uses at the time the Lead Agency receives an application for an approval; and
2. the remaining 25 percent of the perimeter of the site adjoins parcels that had been previously developed for qualified urban uses.

(b) 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.

(Public Resources Code Section 21061.3.)

10.27 **"Initial Study"** means a preliminary analysis conducted by the District to determine whether an EIR or a Negative Declaration must be prepared or to identify the significant environmental effects to be analyzed in an EIR.

10.28 **"Jurisdiction by Law"** means the authority of any public agency to grant a permit or other entitlement for use, to provide funding for the project in question or to exercise authority over resources which may be affected by the project.

The District will have jurisdiction by law over a project when the District, having primary and exclusive jurisdiction over the area involved, is the site of the project, the area in which the major environmental effects will occur, or the area in which reside those citizens most directly concerned by any such environmental effects.

10.29 **"Land Disposal Facility"** means a hazardous waste facility where hazardous waste is disposed in, on, or under land. (Health and Safety Code Section 25199.1(d).)

10.30 **"Large Treatment Facility"** means a treatment facility which treats or recycles one thousand (1,000) or more tons of hazardous waste during any one month of the

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current reporting period commencing on or after July 1, 1991. (Health and Safety Code Section 25205.1(d).)

10.31 **"Lead Agency"** means the public agency which has the principal responsibility for preparing environmental documents and for carrying out or approving a project when more than one public agency is involved with the same underlying activity.

10.32 **"Low-Income Households"** means households of persons and families of very low and low income. Low-income persons or families are those eligible for financial assistance from governmental agencies for occupants of state-funded housing. Very low income persons are those whose incomes do not exceed the qualifying limits for very low income families as established and amended pursuant to Section 8 of the United States Housing Act of 1937. Such limits are published and updated in the California Code of Regulations. (Public Resources Code Section 21159.20(c); Health and Safety Code Sections 50105 and 50106; State Guidelines Section 15191(g).)

10.33 **"Low- and Moderate-Income Households"** means persons and families of low or moderate income" as defined in Section 50093 of the Health and Safety Code to mean persons and families whose income does not exceed 120% of area median income, adjusted for family size by the Department of Housing and Community Development, in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. (Public Resources Code Section 21159.20(d); State Guidelines Section 15191(f).)

10.34 **"Lower Income Households"** is defined in Health and Safety Code Section 50079.5 to mean any of the following:

(1) "Lower income households" means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(2) "Very low income households" means persons and families whose incomes do not exceed the qualifying limits for very low income families as defined in Health and Safety Code 50105.

(3) "Extremely low income households" means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as defined in Health and Safety Code Section 50106.

10.35 **"Low-Level Flight Path"** means any flight path for any aircraft owned, maintained, or under the jurisdiction of the United States Department of Defense that flies lower than 1,500 feet above ground level, as indicated in the United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)" published by the United States National Imagery and Mapping Agency or its successor.

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10.36 **"Major Transit Stop"** means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of fifteen (15) minutes or less during the morning and afternoon peak commute periods. (State Guidelines Section 15191(i).)

10.37 **"Metropolitan Planning Organization"** means a federally-designated agency that provides transportation planning and programming in metropolitan areas. A MPO is designated for each urban area that has been defined in the most recent federal census as having a population of more than 50,000 people. The Census Bureau issued its list of qualifying Urbanized Areas based on population counts from the 2000 decennial Census. There are 18 federally-designated MPOs in California. Non-urbanized (rural) areas do not have a designated MPO.

10.38 **"Military Impact Zone"** means any area, including airspace, that meets both of the following criteria:

(1) Is located within two miles of a military installation, including, but not limited to, any base, military airport, camp, post, station, yard, center, homeport facility for a ship, or any other military activity center that is under the jurisdiction of the United States Department of Defense; and

(2) Covers greater than 500 acres of unincorporated land, or greater than 100 acres of city incorporated land.

10.39 **"Military Service"** means the United States Department of Defense or any branch of the United States Armed Forces.

10.40 **"Ministerial"** describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested locations, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee. (Public Resources Code Section 21080(b)(1).)

10.41 **"Mitigated Negative Declaration"** means a Negative Declaration prepared for a Project when the Initial Study has identified potentially significant effects on the environment, but: (1) revisions in the project plans or proposals made , or agreed to, by the applicant before the proposed Negative Declaration and Initial Study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is

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no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

10.42 **"Mitigation"** means avoiding the environmental impact altogether by not taking a certain action or parts of an action, minimizing impacts by limiting the degree or magnitude of the action and its implementation, rectifying the impact by repairing, rehabilitating or restoring the impacted environment, reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, or compensating for the impact by replacing or providing substitute resources or environments.

10.43 **"Negative Declaration"** means a written statement by the District briefly describing the reasons that a proposed project, not exempt from CEQA, will not have a significant effect on the environment and, therefore, does not require the preparation of an EIR.

10.44 **"Notice of Completion"** means a brief report filed with the Office of Planning and Research by the District when it is the Lead Agency as soon as it has completed a Draft EIR and is prepared to send out copies for review.

10.45 **"Notice of Determination"** means a brief notice to be filed by the District when it approves or determines to carry out a project which is subject to the requirements of CEQA.

10.46 **"Notice of Exemption"** means a brief notice which may be filed by the District when it has approved or determined to carry out a project, and it has determined that the project is exempt from the requirements of CEQA. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project.

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

10.48 **"Oak"** means a native tree species in the genus Quercus, not designated as Group A or Group B commercial species pursuant to regulations adopted by the State Board of Forestry and Fire Protection pursuant to Public Resources Code Section 4526, and that is five (5) inches or more in diameter at breast height. (Public Resources Code Section 21083.4(a).)

10.49 **"Oak Woodlands"** means an oak stand with a greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover. (Fish & Game Code Section 1361(h).)

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10.50 **"Offsite Facility"** means a facility that serves more than one generator of hazardous waste. (Public Resources Code Section 21151.1(h).)

10.51 **"Person"** includes any person, firm, association, organization, partnership, business, trust, corporation, company, city, county, city and county, town, the state, and any of the agencies which may be political subdivisions of such entities, and, to the extent permitted by federal law, the United States, or any of its agencies or political subdivisions.

10.52 **"Private Project"** means a project which will be carried out by a person other than a governmental agency, but which will need a discretionary approval from the District. Private projects will normally be those listed in subsections (2) and (3) of Local Guidelines Section 10.53.

10.53 **"Project"** means the whole of an action or activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment, and is any of the following:

(1) A discretionary activity directly undertaken by the District including but not limited to public works construction and related activities, clearing or grading of land, or improvements to existing public structures.

(2) A discretionary activity which involves a public agency's issuance to a person of a lease, permit, license, certificate, or other entitlement for use, or which is supported, in whole or in part, through contracts, grants, subsidies, loans or other forms of assistance by the District.

(3) A discretionary project proposed to be carried out or approved by public agencies, including but not limited to the enactment and amendment of local General Plans or elements thereof, the enactment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps.

The presence of any real degree of control over the manner in which a project is completed makes it a discretionary project.

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

10.54 **"Project-Specific Effects"** means all the direct or indirect environmental effects of a project other than cumulative effects and growth-inducing effects. (Public Resources Code Section 21065.3; State Guidelines Section 15191(j).)

10.55 **"Public Water System"** means a system for the provision of piped water to the public for human consumption that has 3000 or more service connections. A public water system includes all of the following: (A) Any collection, treatment, storage, and distribution facility under control of the operator of the system which is used

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primarily in connection with the system; (B) Any collection or pretreatment storage facility not under the control of the operator that is used primarily in connection with the system; (C) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption. (State Guideline Section 15155.)

10.56 **"Qualified Urban Use"** means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses. (Public Resources Code Section 21072; State Guidelines Section 15191(k).)

10.57 **"Residential"** means a use consisting of either residential units only or residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15% of the total floor area of the project. (State Guidelines Section 15191(l).)

10.58 **"Responsible Agency"** means a public agency which proposes to carry out or approve a project for which a Lead Agency has prepared the environmental documents. For the purposes of CEQA, the term "Responsible Agency" includes all federal, state, regional and local public agencies other than the Lead Agency which have discretionary approval power over the project.

10.59 **"Significant Effect"** means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the activity including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

10.60 **"Special Use Airspace"** means the land area underlying the airspace that is designated for training, research, development, or evaluation for a military service, as that land area is established by he United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)" published by the United States National Imagery and Mapping Agency or its successor.

10.61 **"Staff"** means the General Manager or his or her designee.

10.62 **"Standard"** means a standard of general application that is all of the following:

(1) A quantitative, qualitative or performance requirement found in a statute, ordinance, resolution, rule, regulation, order, or other standard of general application;

(2) Adopted for the purpose of environmental protection;

(3) Adopted by a public agency through a public review process;

(4) Governs the same environmental effect which the change in the environment is impacting; and

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(5) Governs the jurisdiction where the project is located.

The definition of "standard" includes any thresholds of significance adopted by the District which meet the requirements of this Section.

If there is a conflict between standards, the District shall determine which standard is appropriate based upon substantial evidence in light of the whole record.

10.63 **"State Guidelines" or "State CEQA Guidelines"** means the Guidelines for Implementation of the California Environmental Quality Act as adopted by the Secretary of the California Resources Agency as they now exist or hereafter may be amended. (California Administrative Code, Title 14, Sections 15000, et seq.)

10.64 **"Substantial Evidence"** means reliable information on which a fair argument can be based to support an inference or conclusion, even though another conclusion could be drawn from that information. "Substantial evidence" includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. "Substantial evidence" does not include argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment.

10.65 **"Sustainable Communities Strategy"** is an element of a Regional Transportation Plan, which must be adopted by the Metropolitan Planning Organization for the region. (See Local Guidelines Section 10.37.) The Sustainable Communities Strategy is an integrated land use and transportation plan intended to reduce greenhouse gases. The Sustainable Communities Strategy includes various components such as: consideration of existing densities and uses within the region, identification of areas within the region that can accommodate an eight-year projection of the region's housing needs, development of projections for growth in the region, identification of existing transportation networks, and preparation of a forecast for development pattern for the region that can be integrated with transportation networks.

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

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

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

(Public Resources Code Sections 21003, 21061 and 21100.)

10.67 **"Transit Priority Project"** means a mixed use project that is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which for which the State Air Resources Board has accepted a Metropolitan Planning Organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets. Such a project may be exempt from CEQA if a detailed laundry list of requirements is met. To qualify for the exemption, the Transit Priority Project must:

(1) contain at least 50 percent residential use based on total building square footage

(2) if the project contains between 26 percent and 50 percent non-residential uses, the floor-to-area ratio (FAR) must be at least 0.75;

(3) have a minimum net density of 20 dwelling units per acre;

(4) be located within a half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan; and

(5) meet all the requirements of Public Resources Code Section 21155.1.

10.68 **"Transportation Facilities"** includes major local arterials and public transit within five (5) miles of the project site, and freeways, highways, and rail transit service within ten (10) miles of the project site.

10.69 **"Trustee Agency"** means a State agency having jurisdiction by law over natural resources affected by a project which are held in trust for the people of the State of California. Trustee Agencies may include, but are not limited to, the following:

(a) The California Department of Fish and Game ("DFG") with regard to the fish and wildlife of the state, designated rare or endangered native plants, and game refuges, ecological reserves, and other areas administered by DFG.

(b) The State Lands Commission with regard to state owned "sovereign" lands such as the beds of navigable waters and state school lands.

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(c) The State Department of Parks and Recreation with regard to units of the State Park System.

(d) The University of California with regard to sites within the Natural Land and Water Reserve System.

(e) The State Water Resources Control Board with respect to surface waters.

10.70 **"Urbanized Area"** means either of the following:

(1) An incorporated city that either by itself or in combination with two contiguous incorporated cities has a population of at least one hundred thousand (100,000) persons;

(2) An unincorporated area that meets both of the following requirements:

(a) The unincorporated area is either:

(i) completely surrounded by one or more incorporated cities, have a population of at least 100,000 persons either by itself or in combination with the surrounding incorporated city or cities, and have a population density that at least equals the population density of the surrounding city or cities; or

(ii) located within an urban growth boundary and has an existing residential population of at least five thousand (5,000) persons per square mile. 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.

(b) The board of supervisors with jurisdiction over the unincorporated area has taken all three of the following steps:

1. Prepared a draft document by which the board would find 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 promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing, and protects the environment, open space and agricultural areas;

2. Submitted the draft document to the Office of Planning and Research and allowed OPR thirty (30) days to submit comments on the draft finding to the board; and

3. At least thirty (30) days after submitting the draft document to OPR, the board has adopted a final finding in substantial conformity with the draft finding described in the draft document. (Public Resources Code Sections 21083, 21159.20-21159.24; State Guidelines Section 15191(m).))

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10.71 **"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 of the boundary.

10.72 **"Water Acquisition Plans"** means any plans for acquiring additional water supplies prepared by the public water system or a city or county Lead Agency pursuant to subdivision (a) of section 10911 of the Water Code.

10.73 **"Water Assessment" or "Water Supply Assessment"** means the water supply assessment that must be prepared by the governing body of a public water system, or a city or county, pursuant to and in compliance with sections 10910 to 10915 of the Water Code, and that includes, without limitation, the elements of the assessment required to comply with subdivisions (d), (e), (f), and (g) of section 10910 of the Water Code.

10.74 **"Water Demand Project"** means any one of the following:

(A) A residential development of more than 500 dwelling units;

(B) A shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space;

(C) A commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space;

(D) A hotel or motel, or both, having more than 500 rooms;

(E) An industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area;

(F) A mixed-use project that includes one or more of the projects specified in subdivisions (A); (B), (C), (D), (E), or (G) of this section;

(G) A project that would demand an amount of water equivalent to, or greater than, the amount of water; required by a 500 dwelling unit project; or

(H) For public water systems with fewer than 5,000 service connections, a project that meets the following criteria:

(1) A proposed residential, business, commercial, hotel or motel, or industrial development that would account for an increase of 10 percent or more in the number of a public water system's existing service connections; or

(2) A mixed-use project that would demand an amount of water equivalent to, or greater than, the amount of water required by residential development that would represent an increase of 10 percent or more in

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the number of the public water system's existing service connections. (State Guideline Section 15155.)

10.75 **"Wetlands"** has the same meaning as that term is construed in the regulations issued by the United States Army Corps of Engineers pursuant to the Clean Water Act. Thus, "wetlands" means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. (Public Resources Code Section 21159.21(d), incorporating Title 33, Code of Federal Regulations, Section 328.3.)

10.76 **"Wildlife Habitat"** means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection. (Public Resources Code Section 21159.21.)

10.77 **"Zoning Approval"** means any enactment, amendment, or appeal of a zoning ordinance; granting of a conditional use permit or variance; or any other form of land use, subdivision, tract, or development approval required from the city or county having jurisdiction to permit the particular use of the property.

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10.77 "Zoning Approval" 10-16

11. FORMS