

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 754

Introduced by Senator Evans

February 22, 2013

An act to amend ~~Section 21081~~ of Sections 21082.1, 21083.2, 21094, and 21094.5 of, and to add Section 21168.10 to, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 754, as amended, Evans. California Environmental Quality Act.

(1) *The California Environmental Quality Act, referred to as CEQA, requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report, referred to as an EIR, on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. If a project is required to undertake mitigation measures pursuant to an EIR or a mitigated negative declaration, CEQA requires the lead agency to adopt a reporting or monitoring program for the project.*

This bill would authorize a person meeting specified requirements to bring an action or proceeding to enforce the implementation of the mitigation measures specified in a reporting and monitoring program adopted pursuant to CEQA if a project applicant fails to implement those measures.

This bill would prohibit a project proponent or environmental consultant retained by the project proponent to contract for, direct, or prepare the initial study, EIR, draft EIR, negative declaration, or mitigated negative declaration.

(2) Where a prior EIR has been certified for a project, CEQA authorizes the lead agency to rely on the prior EIR by authorizing the preparation of a tiered EIR for a later project if the lead agency makes a specified determination. If a prior EIR has been certified for a planning level decision, CEQA limits the environmental review of an infill project to those effects that are specific to the project that were not addressed in the prior EIR or, if substantial new information shows that the effects will be more significant, those effects that were considered in the prior EIR.

This bill would prohibit the use of a prior EIR for the above-described purposes if the EIR was certified more than 7 years prior to the issuance of a notice of preparation of an EIR for the later project or infill project or the commencement of the environmental review of the later project or infill project, whichever is earlier. By prohibiting the use of those prior EIRs, this bill would increase the level of service provided by the lead agency, thereby imposing a state-mandated local program.

(3) CEQA caps the amount a project applicant is required to pay for mitigation measures to avoid or mitigate the project's impact on archaeological resources to a specified amount.

This bill would repeal the cap on that amount.

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

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

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on~~

~~the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA exempts from its provisions, among other things, certain types of projects proposed to be carried out or approved by public agencies.~~

~~This bill would make various technical, nonsubstantive changes in those provisions governing exemptions from CEQA.~~

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

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

1 SECTION 1. (a) *The Legislature finds and declares all of the*
2 *following:*
3 (1) *For more than 40 years, the California Environmental*
4 *Quality Act (CEQA) has served to protect California’s environment*
5 *and provide a more transparent and informed decisionmaking*
6 *process on construction and other projects that can impact public*
7 *health, the environment, and cultural resources.*
8 (2) *CEQA has been modified through legislative and judicial*
9 *action throughout the act’s existence, ensuring that it has remained*
10 *useful.*
11 (3) *Additional modifications would ensure CEQA continues to*
12 *fulfill its critical functions and meet its purpose of ensuring that*
13 *projects are properly analyzed for environmental and cultural*
14 *impacts; that those impacts are fully disclosed to the public; that*
15 *significant impacts are reduced and mitigated to the extent feasible;*
16 *and that the public’s ability to enforce CEQA is maintained.*
17 (b) *It is the intent of the Legislature to provide limited*
18 *modifications to improve CEQA function by requiring translation*
19 *of initial notices and executive summaries in certain circumstances,*
20 *providing clear procedures for enforcement of mitigation measures,*
21 *clarifying that the baseline from which to assess environmental*
22 *impacts cannot be based on unpermitted activity, prohibiting a*
23 *project applicant from overseeing or directing preparation of its*
24 *environmental review documents, limiting an agency’s ability to*
25 *charge for administrative record costs where a petitioner elects*
26 *to prepare the administrative record, and removing outdated*
27 *restrictions on mitigation fees for certain archaeological resource*
28 *impacts.*

1 *SEC. 2. Section 21082.1 of the Public Resources Code is*
2 *amended to read:*

3 21082.1. (a) Any draft environmental impact report,
4 environmental impact report, negative declaration, or mitigated
5 negative declaration prepared pursuant to the requirements of this
6 division shall be prepared directly ~~by, or under contract to,~~ by a
7 public agency *or by environmental consultants under direct*
8 *contract with and supervision of the lead agency.*

9 **(b)** *A project applicant or a consultant retained by the project*
10 *applicant shall not contract for, direct, or prepare the lead*
11 *agency's initial study, environmental impact report, draft*
12 *environmental impact report, negative declaration, or mitigated*
13 *negative declaration.*

14 **(c)** This section is not intended to prohibit, and shall not be
15 construed as prohibiting, any person from submitting information
16 or other comments to the public agency responsible for preparing
17 an *initial study*, environmental impact report, draft environmental
18 impact report, negative declaration, or mitigated negative
19 declaration. The information or other comments may be submitted
20 in any format, shall be considered by the public agency, and may
21 be included, in whole or in part, in any report or declaration.

22 **(d)** The lead agency shall do all of the following:
23 (1) Independently review and analyze any report or declaration
24 required by this division.

25 (2) Circulate draft documents that reflect its independent
26 judgment.

27 (3) As part of the adoption of a negative declaration or a
28 mitigated negative declaration, or certification of an environmental
29 impact report, find that the report or declaration reflects the
30 independent judgment of the lead agency.

31 (4) Submit a sufficient number of copies of the draft
32 environmental impact report, proposed negative declaration, or
33 proposed mitigated negative declaration, and a copy of the report
34 or declaration in an electronic form as required by the guidelines
35 adopted pursuant to Section 21083, to the State Clearinghouse for
36 review and comment by state agencies, if any of the following
37 apply:

38 (A) A state agency is any of the following:
39
40

- 1 (i) The lead agency.
- 2 (ii) A responsible agency.
- 3 (iii) A trustee agency.
- 4 (B) A state agency otherwise has jurisdiction by law with respect
- 5 to the project.
- 6 (C) The proposed project is of sufficient statewide, regional, or
- 7 areawide environmental significance as determined pursuant to
- 8 the guidelines certified and adopted pursuant to Section 21083.
- 9 *SEC. 3. Section 21083.2 of the Public Resources Code is*
- 10 *amended to read:*
- 11 21083.2. (a) As part of the determination made pursuant to
- 12 Section 21080.1, the lead agency shall determine whether the
- 13 project may have a significant effect on archaeological resources.
- 14 If the lead agency determines that the project may have a significant
- 15 effect on unique archaeological resources, the environmental
- 16 impact report shall address the issue of those resources. An
- 17 environmental impact report, if otherwise necessary, shall not
- 18 address the issue of nonunique archaeological resources. A negative
- 19 declaration shall be issued with respect to a project if, but for the
- 20 issue of nonunique archaeological resources, the negative
- 21 declaration would be otherwise issued.
- 22 (b) If it can be demonstrated that a project will cause damage
- 23 to a unique archaeological resource, the lead agency may require
- 24 reasonable efforts to be made to permit any or all of these resources
- 25 to be preserved in place or left in an undisturbed state. Examples
- 26 of that treatment, in no order of preference, may include, but are
- 27 not limited to, any of the following:
- 28 (1) Planning construction to avoid archaeological sites.
- 29 (2) Deeding archaeological sites into permanent conservation
- 30 easements.
- 31 (3) Capping or covering archaeological sites with a layer of soil
- 32 before building on the sites.
- 33 (4) Planning parks, greenspace, or other open space to
- 34 incorporate archaeological sites.
- 35 (c) To the extent that unique archaeological resources are not
- 36 preserved in place or not left in an undisturbed state, mitigation
- 37 measures shall be required as provided in this subdivision. The
- 38 project applicant shall provide a guarantee to the lead agency to
- 39 pay one-half the estimated cost of mitigating the significant effects
- 40 of the project on unique archaeological resources. In determining

1 payment, the lead agency shall give due consideration to the in-kind
2 value of project design or expenditures that are intended to permit
3 any or all archaeological resources or California Native American
4 culturally significant sites to be preserved in place or left in an
5 undisturbed state. When a final decision is made to carry out or
6 approve the project, the lead agency shall, if necessary, reduce the
7 specified mitigation measures to those which can be funded with
8 the money guaranteed by the project applicant plus the money
9 voluntarily guaranteed by any other person or persons for those
10 mitigation purposes. In order to allow time for interested persons
11 to provide the funding guarantee referred to in this subdivision, a
12 final decision to carry out or approve a project shall not occur
13 sooner than 60 days after completion of the recommended special
14 environmental impact report required by this section.

15 (d) Excavation as mitigation shall be restricted to those parts of
16 the unique archaeological resource that would be damaged or
17 destroyed by the project. Excavation as mitigation shall not be
18 required for a unique archaeological resource if the lead agency
19 determines that testing or studies already completed have
20 adequately recovered the scientifically consequential information
21 from and about the resource, if this determination is documented
22 in the environmental impact report.

23 ~~(e) In no event shall the amount paid by a project applicant for~~
24 ~~mitigation measures required pursuant to subdivision (c) exceed~~
25 ~~the following amounts:~~

26 ~~(1) An amount equal to one-half of 1 percent of the projected~~
27 ~~cost of the project for mitigation measures undertaken within the~~
28 ~~site boundaries of a commercial or industrial project.~~

29 ~~(2) An amount equal to three-fourths of 1 percent of the~~
30 ~~projected cost of the project for mitigation measures undertaken~~
31 ~~within the site boundaries of a housing project consisting of a~~
32 ~~single unit.~~

33 ~~(3) If a housing project consists of more than a single unit, an~~
34 ~~amount equal to three-fourths of 1 percent of the projected cost of~~
35 ~~the project for mitigation measures undertaken within the site~~
36 ~~boundaries of the project for the first unit plus the sum of the~~
37 ~~following:~~

38 ~~(A) Two hundred dollars (\$200) per unit for any of the next 99~~
39 ~~units.~~

1 ~~(B) One hundred fifty dollars (\$150) per unit for any of the next~~
2 ~~400 units.~~

3 ~~(C) One hundred dollars (\$100) per unit in excess of 500 units.~~

4 ~~(f)~~

5 (e) Unless special or unusual circumstances warrant an
6 exception, the field excavation phase of an approved mitigation
7 plan shall be completed within 90 days after final approval
8 necessary to implement the physical development of the project
9 or, if a phased project, in connection with the phased portion to
10 which the specific mitigation measures are applicable. However,
11 the project applicant may extend that period if he or she so elects.
12 Nothing in this section shall nullify protections for Indian
13 cemeteries under any other provision of law.

14 ~~(g)~~

15 (f) As used in this section, “unique archaeological resource”
16 means an archaeological artifact, object, or site about which it can
17 be clearly demonstrated that, without merely adding to the current
18 body of knowledge, there is a high probability that it meets any of
19 the following criteria:

20 (1) Contains information needed to answer important scientific
21 research questions and that there is a demonstrable public interest
22 in that information.

23 (2) Has a special and particular quality such as being the oldest
24 of its type or the best available example of its type.

25 (3) Is directly associated with a scientifically recognized
26 important prehistoric or historic event or person.

27 ~~(h)~~

28 (g) As used in this section, “nonunique archaeological resource”
29 means an archaeological artifact, object, or site which does not
30 meet the criteria in subdivision ~~(g)~~ (f). A nonunique archaeological
31 resource need be given no further consideration, other than the
32 simple recording of its existence by the lead agency if it so elects.

33 ~~(i)~~

34 (h) As part of the objectives, criteria, and procedures required
35 by Section 21082 or as part of conditions imposed for mitigation,
36 a lead agency may make provisions for archaeological sites
37 accidentally discovered during construction. These provisions may
38 include an immediate evaluation of the find. If the find is
39 determined to be a unique archaeological resource, contingency
40 funding and a time allotment sufficient to allow recovering an

1 archaeological sample or to employ one of the avoidance measures
2 may be required under the provisions set forth in this section.
3 Construction work may continue on other parts of the building site
4 while archaeological mitigation takes place.

5 ~~(j)~~

6 (i) This section does not apply to any project described in
7 subdivision (a) or (b) of Section 21065 if the lead agency elects
8 to comply with all other applicable provisions of this division.
9 This section does not apply to any project described in subdivision
10 (c) of Section 21065 if the applicant and the lead agency jointly
11 elect to comply with all other applicable provisions of this division.

12 ~~(k)~~

13 (j) Any additional costs to any local agency as a result of
14 complying with this section with respect to a project of other than
15 a public agency shall be borne by the project applicant.

16 ~~(l) Nothing in this~~

17 (k) This section is *not* intended to affect or modify the
18 requirements of Section 21084 or 21084.1.

19 *SEC. 4. Section 21094 of the Public Resources Code, as*
20 *amended by Section 9 of Chapter 548 of the Statutes of 2012, is*
21 *amended to read:*

22 21094. (a) (1) If a prior environmental impact report has been
23 prepared and certified for a program, plan, policy, or ordinance,
24 the lead agency for a later project that meets the requirements of
25 this section shall examine significant effects of the later project
26 upon the environment by using a tiered environmental impact
27 report, except that the report on the later project is not required to
28 examine those effects that the lead agency determines were either
29 of the following:

30 (A) Mitigated or avoided pursuant to paragraph (1) of
31 subdivision (a) of Section 21081 as a result of the prior
32 environmental impact report.

33 (B) Examined at a sufficient level of detail in the prior
34 environmental impact report to enable those effects to be mitigated
35 or avoided by site-specific revisions, the imposition of conditions,
36 or by other means in connection with the approval of the later
37 project.

38 (2) If a prior environmental impact report has been prepared
39 and certified for a program, plan, policy, or ordinance, and the
40 lead agency makes a finding of overriding consideration pursuant

1 to subdivision (b) of Section 21081, the lead agency for a later
2 project that uses a tiered environmental impact report from that
3 program, plan, policy, or ordinance may incorporate by reference
4 that finding of overriding consideration if all of the following
5 conditions are met:

6 (A) The lead agency determines that the project's significant
7 impacts on the environment are not greater than or different from
8 those identified in the prior environmental impact report.

9 (B) The lead agency incorporates into the later project all the
10 applicable mitigation measures identified by the prior
11 environmental impact report.

12 (C) The prior finding of overriding considerations was not based
13 on a determination that mitigation measures should be identified
14 and approved in a subsequent environmental review.

15 (D) The prior environmental impact report was certified not
16 more than three years before the date findings are made pursuant
17 to Section 21081 for the later project.

18 (E) The lead agency has determined that the mitigation measures
19 or alternatives found to be infeasible in the prior environmental
20 impact report pursuant to paragraph (3) of subdivision (a) of
21 Section 21081 remain infeasible based on the criteria set forth in
22 that section.

23 (b) This section applies only to a later project that the lead
24 agency determines is all of the following:

25 (1) Consistent with the program, plan, policy, or ordinance for
26 which an environmental impact report has been prepared and
27 certified.

28 (2) Consistent with applicable local land use plans and zoning
29 of the city, county, or city and county in which the later project
30 would be located.

31 (3) Not subject to Section 21166.

32 (c) For purposes of compliance with this section, an initial study
33 shall be prepared to assist the lead agency in making the
34 determinations required by this section. The initial study shall
35 analyze whether the later project may cause significant effects on
36 the environment that were not examined in the prior environmental
37 impact report.

38 (d) All public agencies that propose to carry out or approve the
39 later project may utilize the prior environmental impact report and

1 the environmental impact report on the later project to fulfill the
2 requirements of Section 21081.

3 (e) (1) If a lead agency determines pursuant to this subdivision
4 that a cumulative effect has been adequately addressed in a prior
5 environmental impact report, that cumulative effect is not required
6 to be examined in a later environmental impact report, mitigated
7 negative declaration, or negative declaration for purposes of
8 subparagraph (B) of paragraph (1) of subdivision (a).

9 (2) When assessing whether there is new significant cumulative
10 effect, the lead agency shall consider whether the incremental
11 effects of the project are cumulatively considerable.

12 (3) (A) For purposes of paragraph (2), if the lead agency
13 determines the incremental effects of the project are significant
14 when viewed in connection with the effects of past, present, and
15 probable future projects, the incremental effects of a project are
16 cumulatively considerable.

17 (B) If the lead agency determines incremental effects of a project
18 are cumulatively considerable, the later environmental impact
19 report, mitigated negative declaration, or negative declaration shall
20 examine those effects.

21 (4) If the lead agency makes one of the following
22 determinations, the cumulative effects of a project are adequately
23 addressed for purposes of paragraph (1):

24 (A) The cumulative effect has been mitigated or avoided as a
25 result of the prior environmental impact report and findings adopted
26 pursuant to paragraph (1) of subdivision (a) of Section 21081 as
27 a result of the prior environmental impact report.

28 (B) The cumulative effect has been examined at a sufficient
29 level of detail in the prior environmental impact report to enable
30 the effect to be mitigated or avoided by site-specific revisions, the
31 imposition of conditions, or by other means in connection with
32 the approval of the later project.

33 (f) If tiering is used pursuant to this section, an environmental
34 impact report prepared for a later project shall refer to the prior
35 environmental impact report and state where a copy of the prior
36 environmental impact report may be examined.

37 (g) *A prior environmental impact report shall not be used for*
38 *tiering under this section if it was certified more than seven years*
39 *prior to the issuance of a notice of preparation of an environmental*

1 *impact report for the later project or the commencement of the*
2 *environmental review of the later project, whichever is earlier.*

3 ~~(g)~~

4 (h) This section shall remain in effect only until January 1, 2016,
5 and as of that date is repealed, unless a later enacted statute, that
6 is enacted before January 1, 2016, deletes or extends that date.

7 *SEC. 5. Section 21094 of the Public Resources Code, as added*
8 *by Section 4 of Chapter 496 of the Statutes of 2010, is amended*
9 *to read:*

10 21094. (a) Where a prior environmental impact report has
11 been prepared and certified for a program, plan, policy, or
12 ordinance, the lead agency for a later project that meets the
13 requirements of this section shall examine significant effects of
14 the later project upon the environment by using a tiered
15 environmental impact report, except that the report on the later
16 project is not required to examine those effects that the lead agency
17 determines were either of the following:

18 (1) Mitigated or avoided pursuant to paragraph (1) of subdivision
19 (a) of Section 21081 as a result of the prior environmental impact
20 report.

21 (2) Examined at a sufficient level of detail in the prior
22 environmental impact report to enable those effects to be mitigated
23 or avoided by site-specific revisions, the imposition of conditions,
24 or by other means in connection with the approval of the later
25 project.

26 (b) This section applies only to a later project that the lead
27 agency determines is all of the following:

28 (1) Consistent with the program, plan, policy, or ordinance for
29 which an environmental impact report has been prepared and
30 certified.

31 (2) Consistent with applicable local land use plans and zoning
32 of the city, county, or city and county in which the later project
33 would be located.

34 (3) Not subject to Section 21166.

35 (c) For purposes of compliance with this section, an initial study
36 shall be prepared to assist the lead agency in making the
37 determinations required by this section. The initial study shall
38 analyze whether the later project may cause significant effects on
39 the environment that were not examined in the prior environmental
40 impact report.

1 (d) All public agencies that propose to carry out or approve the
2 later project may utilize the prior environmental impact report and
3 the environmental impact report on the later project to fulfill the
4 requirements of Section 21081.

5 (e) When tiering is used pursuant to this section, an
6 environmental impact report prepared for a later project shall refer
7 to the prior environmental impact report and state where a copy
8 of the prior environmental impact report may be examined.

9 (f) *A prior environmental impact report shall not be used for*
10 *tiering under this section if it was certified more than seven years*
11 *prior to the issuance of a notice of preparation of an environmental*
12 *impact report for the later project or the commencement of the*
13 *environmental review of the later project, whichever is earlier.*

14 (f)

15 (g) This section shall become operative on January 1, 2016.

16 *SEC. 6. Section 21094.5 of the Public Resources Code is*
17 *amended to read:*

18 21094.5. (a) (1) If an environmental impact report was
19 certified for a planning level decision of a city or county, the
20 application of this division to the approval of an infill project shall
21 be limited to the effects on the environment that (A) are specific
22 to the project or to the project site and were not addressed as
23 significant effects in the prior environmental impact report or (B)
24 substantial new information shows the effects will be more
25 significant than described in the prior environmental impact report.
26 A lead agency's determination pursuant to this section shall be
27 supported by substantial evidence.

28 (2) An effect of a project upon the environment shall not be
29 considered a specific effect of the project or a significant effect
30 that was not considered significant in a prior environmental impact
31 report, or an effect that is more significant than was described in
32 the prior environmental impact report if uniformly applicable
33 development policies or standards adopted by the city, county, or
34 the lead agency, would apply to the project and the lead agency
35 makes a finding, based upon substantial evidence, that the
36 development policies or standards will substantially mitigate that
37 effect.

38 (3) *The environmental impact report for a planning level*
39 *decision of a city or county may not be used under this section if*
40 *it was certified more than seven years prior to the issuance of a*

1 *notice of preparation of an environmental impact report for the*
2 *infill project or the commencement of environmental review of the*
3 *infill project, whichever is earlier.*

4 (b) If an infill project would result in significant effects that are
5 specific to the project or the project site, or if the significant effects
6 of the infill project were not addressed in the prior environmental
7 impact report, or are more significant than the effects addressed
8 in the prior environmental impact report, and if a mitigated negative
9 declaration or a sustainable communities environmental assessment
10 could not be otherwise adopted, an environmental impact report
11 prepared for the project analyzing those effects shall be limited as
12 follows:

13 (1) Alternative locations, densities, and building intensities to
14 the project need not be considered.

15 (2) Growth inducing impacts of the project need not be
16 considered.

17 (c) This section applies to an infill project that satisfies both of
18 the following:

19 (1) The project satisfies any of the following:

20 (A) Is consistent with the general use designation, density,
21 building intensity, and applicable policies specified for the project
22 area in either a sustainable communities strategy or an alternative
23 planning strategy for which the State Air Resources Board,
24 pursuant to subparagraph (H) of paragraph (2) of subdivision (b)
25 of Section 65080 of the Government Code, has accepted a
26 metropolitan planning organization's determination that the
27 sustainable communities strategy or the alternative planning
28 strategy would, if implemented, achieve the greenhouse gas
29 emission reduction targets.

30 (B) Consists of a small walkable community project located in
31 an area designated by a city for that purpose.

32 (C) Is located within the boundaries of a metropolitan planning
33 organization that has not yet adopted a sustainable communities
34 strategy or alternative planning strategy, and the project has a
35 residential density of at least 20 units per acre or a floor area ratio
36 of at least 0.75.

37 (2) Satisfies all applicable statewide performance standards
38 contained in the guidelines adopted pursuant to Section 21094.5.5.

1 (d) This section applies after the Secretary of the Natural
2 Resources Agency adopts and certifies the guidelines establishing
3 statewide standards pursuant to Section 21094.5.5.

4 (e) For the purposes of this section, the following terms mean
5 the following:

6 (1) “Infill project” means a project that meets the following
7 conditions:

8 (A) Consists of any one, or combination, of the following uses:

9 (i) Residential.

10 (ii) Retail or commercial, where no more than one-half of the
11 project area is used for parking.

12 (iii) A transit station.

13 (iv) A school.

14 (v) A public office building.

15 (B) Is located within an urban area on a site that has been
16 previously developed, or on a vacant site where at least 75 percent
17 of the perimeter of the site adjoins, or is separated only by an
18 improved public right-of-way from, parcels that are developed
19 with qualified urban uses.

20 (2) “Planning level decision” means the enactment or
21 amendment of a general plan, community plan, specific plan, or
22 zoning code.

23 (3) “Prior environmental impact report” means the
24 environmental impact report certified for a planning level decision,
25 as supplemented by any subsequent or supplemental environmental
26 impact reports, negative declarations, or addenda to those
27 documents.

28 (4) “Small walkable community project” means a project that
29 is in an incorporated city, which is not within the boundary of a
30 metropolitan planning organization and that satisfies the following
31 requirements:

32 (A) Has a project area of approximately one-quarter mile
33 diameter of contiguous land completely within the existing
34 incorporated boundaries of the city.

35 (B) Has a project area that includes a residential area adjacent
36 to a retail downtown area.

37 (C) The project has a density of at least eight dwelling units per
38 acre or a floor area ratio for retail or commercial use of not less
39 than 0.50.

1 (5) “Urban area” includes either an incorporated city or an
2 unincorporated area that is completely surrounded by one or more
3 incorporated cities that meets both of the following criteria:

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

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

9 *SEC. 7. Section 21168.10 is added to the Public Resources
10 Code, to read:*

11 *21168.10. (a) If a project applicant or other responsible person
12 or entity identified in a reporting or monitoring program adopted
13 pursuant to Section 21081.6 fails to implement any mitigation
14 measure specified in that reporting or monitoring program, a
15 person may bring an action or proceeding to require the
16 implementation of the mitigation measure, if the private action is
17 commenced more than 60 days after the date that the person has
18 given notice of the alleged failure to the project applicant or other
19 responsible person or entity, the public agency that adopted the
20 mitigation measure for the project and the Attorney General.*

21 *(b) The action described in subdivision (a) may be filed
22 concurrently with the required notice to the public agency and the
23 Attorney General, if the person filing the action includes detailed
24 allegations in the petition demonstrating that the environmental
25 harm the mitigation measure or measures are intended to reduce
26 or avoid is reasonably likely to be incurred before the 60-day
27 waiting period has lapsed, and seeks a restraining order, a
28 preliminary injunction, or other interim relief to prevent the
29 damage when filing the action.*

30 *(c) A person bringing an action or proceeding pursuant to this
31 section shall notify the public agency and the Attorney General
32 that the action or proceeding has been filed.*

33 *SEC. 8. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 a local agency or school district has the authority to levy service
36 charges, fees, or assessments sufficient to pay for the program or
37 level of service mandated by this act, within the meaning of Section
38 17556 of the Government Code.*

39 ~~SECTION 1. Section 21081 of the Public Resources Code is~~
40 ~~amended to read:~~

1 ~~21081. Pursuant to the policy stated in Sections 21002 and~~
2 ~~21002.1, a public agency shall not approve or carry out a project~~
3 ~~for which an environmental impact report has been certified that~~
4 ~~identifies one or more significant effects on the environment that~~
5 ~~would occur if the project is approved or carried out unless both~~
6 ~~of the following occur:~~

7 ~~(a) The public agency makes one or more of the following~~
8 ~~findings with respect to each significant effect:~~

9 ~~(1) Changes or alterations have been required in, or incorporated~~
10 ~~into, the project that mitigate or avoid the significant effects on~~
11 ~~the environment.~~

12 ~~(2) Those changes or alterations are within the responsibility~~
13 ~~and jurisdiction of another public agency and have been, or can~~
14 ~~and should be, adopted by that other agency.~~

15 ~~(3) Specific economic, legal, social, technological, or other~~
16 ~~considerations, including considerations for the provision of~~
17 ~~employment opportunities for highly trained workers, make~~
18 ~~infeasible the mitigation measures or alternatives identified in the~~
19 ~~environmental impact report.~~

20 ~~(b) With respect to significant effects that were subject to a~~
21 ~~finding under paragraph (3) of subdivision (a), the public agency~~
22 ~~finds that specific overriding economic, legal, social, technological,~~
23 ~~or other benefits of the project outweigh the significant effects on~~
24 ~~the environment.~~