

## **EXHIBIT 3-E**

### CEQA Sections 15162 and 15164

#### **15162. Subsequent EIRs and Negative Declarations**

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) 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;

(2) 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

(3) 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 as complete or the Negative Declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

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

(C) Mitigation measures or alternatives 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 decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives 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 or alternative.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.

(c) Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subdivision (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

(d) A subsequent EIR or subsequent negative declaration shall be given the same notice and public review as required under Section 15087 or Section 15072. A subsequent EIR or negative declaration shall state where the previous document is available and can be reviewed.

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**Note:** Authority cited: Public Resources Code Section 21083; Reference: Section 21166, Public Resources Code; *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065; *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467; and *Fort Mojave Indian Tribe v. California Department of Health Services et al.* (1995) 38 Cal.App.4th 1574.

**Discussion:** This section implements the requirements in Section 21166 of CEQA which limit preparation of a subsequent EIR to certain situations. This section provides interpretation of the three situations in which the statute requires preparation of a subsequent EIR. These interpretations are necessary to add certainty to the process.

This section also clarifies that a subsequent EIR may be prepared where a negative declaration had previously been adopted. Further, a subsequent negative declaration may be adopted where none of the situations described in subsection (a) have occurred.

Subsections (b) and (c) explain which agency would have responsibility for preparing a subsequent EIR under different circumstances. A subsequent EIR must, of course, receive the same circulation and review as the previous EIR.

*Fund for Environmental Defense v. Orange* (1988) 204 Cal. App. 3d 1538, contains a discussion of the application of §15162 and §15163. The Court in *Bowman v. Petaluma* (1986) 185 Cal. App. 3d 1065 distinguished requirements for a subsequent EIR from the threshold required for initial EIR preparation, saying "whereas §15064 (§21151 PRC) requires an EIR if the initial project may have a significant effect on the environment, §15162 (§21166 PRC) indicates a quite different intent, namely, to restrict the powers of agencies by prohibiting them from requiring a subsequent or supplemental EIR unless "substantial changes" in the project or its circumstances will require major revisions to the EIR. §15162 (§21166 PRC) comes into play precisely because in-depth review has already occurred, the time for challenging the sufficiency of the original EIR has long since expired, and the question is whether circumstances have changed enough to justify repeating a substantial portion of the process.

### **15164. Addendum to an EIR or Negative Declaration**

- (a) The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.
- (b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.
- (c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.
- (d) The decision making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.
- (e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence.

**Note:** Authority cited: Public Resources Code Section 21083; Reference: Section 21166, Public Resources Code; *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065; and *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467.

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**Discussion:** This section is designed to provide clear authority for an addendum as a way of making minor corrections in EIRs and negative declarations without recirculating the EIR or negative declaration.

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