

*County Water Agency* (2003) 108 Cal. App. 4th 859; *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515; *Consolidated Irrigation Dist. v. Superior Court* (2012) 205 Cal. App. 4th 697.

## **15088.5. RECIRCULATION OF AN EIR PRIOR TO CERTIFICATION**

- (a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term “information” can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement. “Significant new information” requiring recirculation include, for example, a disclosure showing that:
  - (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
  - (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
  - (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it.
  - (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043)
- (b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.
- (c) If the revision is limited to a few chapters or portions of the EIR, the lead agency need only recirculate the chapters or portions that have been modified.
- (d) Recirculation of an EIR requires notice pursuant to Section 15087, and consultation pursuant to Section 15086.
- (e) A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record.
- (f) The lead agency shall evaluate and respond to comments as provided in Section 15088. Recirculating an EIR can result in the lead agency receiving more than one set of comments from reviewers. The following are two ways in which the lead agency may identify the set of comments to which it will respond. This dual approach avoids confusion over whether the lead agency must respond to comments which are duplicates or which are no longer pertinent due to revisions to the EIR. In no case shall the lead agency fail to respond to pertinent comments on significant environmental issues.
  - (1) When an EIR is substantially revised and the entire document is recirculated, the lead agency may require reviewers to submit new comments and, in such cases, need not respond to those comments received during the earlier circulation period. The lead agency shall advise reviewers, either in the text of the revised EIR or by an attachment to the revised EIR, that although part of the administrative record, the previous comments do not require a written response in the final EIR, and that new comments must be submitted for the revised EIR. The lead agency need only respond to those comments submitted in response to the recirculated revised EIR.

- (2) When the EIR is revised only in part and the lead agency is recirculating only the revised chapters or portions of the EIR, the lead agency may request that reviewers limit their comments to the revised chapters or portions of the recirculated EIR. The lead agency need only respond to (i) comments received during the initial circulation period that relate to chapters or portions of the document that were not revised and recirculated, and (ii) comments received during the recirculation period that relate to the chapters or portions of the earlier EIR that were revised and recirculated. The lead agency's request that reviewers limit the scope of their comments shall be included either within the text of the revised EIR or by an attachment to the revised EIR.
- (3) As part of providing notice of recirculation as required by Public Resources Code Section 21092.1, the lead agency shall send a notice of recirculation to every agency, person, or organization that commented on the prior EIR. The notice shall indicate, at a minimum, whether new comments may be submitted only on the recirculated portions of the EIR or on the entire EIR in order to be considered by the agency.
- (g) When recirculating a revised EIR, either in whole or in part, the lead agency shall, in the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft EIR.

**Note:** Authority cited: Section 21083, Public Resources Code. Reference: Section 21092.1, Public Resources Code; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112.

## 15089. PREPARATION OF FINAL EIR

- (a) The Lead Agency shall prepare a final EIR before approving the project. The contents of a final EIR are specified in Section 15132 of these Guidelines.
- (b) Lead Agencies may provide an opportunity for review of the final EIR by the public or by commenting agencies before approving the project. The review of a final EIR should focus on the responses to comments on the draft EIR.

**Note:** Authority cited: Section 21083, Public Resources Code; Reference: Sections 21100, 21105, and 21151, Public Resources Code; *City of Carmel-by-the-Sea v. Board of Supervisors*, (1977) 71 Cal. App. 3d 84; State Administrative Manual, Section 1060.

## 15090. CERTIFICATION OF THE FINAL EIR

- (a) Prior to approving a project the lead agency shall certify that:
  - (1) The final EIR has been completed in compliance with CEQA;
  - (2) The final EIR was presented to the decision-making body of the lead agency, and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project; and
  - (3) The final EIR reflects the lead agency's independent judgment and analysis.
- (b) When an EIR is certified by a non-elected decision-making body within a local lead agency, that certification may be appealed to the local lead agency's elected decision-making body, if one exists. For example, certification of an EIR for a tentative subdivision map by a city's planning commission may be appealed to the city council. Each local lead agency shall provide for such appeals.

**Note:** Authority cited: Section 21083, Public Resources Code; Reference: Sections 21082.1, 21100, and 21151, Public Resources Code; *City of Carmel-by-the-Sea v. Board of Supervisors* (1977) 71 Cal.App.3d 84; *Kleist v. City of Glendale* (1976) 56 Cal.App.3d 770.