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AB-2731 California Environmental Quality Act: City of San Diego: Old Town Center redevelopment. (2019-2020)

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Assembly Bill No. 2731

CHAPTER 291

An act to add Chapter 6.9 (commencing with Section 21189.70) to Division 13 of, and to repeal Sections 21189.70.2, 21189.70.3, 21189.70.4, 21189.70.5, 21189.70.6, and 21189.70.7 of, the Public Resources Code, relating to environmental quality.

[Approved by Governor September 29, 2020. Filed with Secretary of State September 29, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2731, Gloria. California Environmental Quality Act: City of San Diego: Old Town Center redevelopment.

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 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. CEQA establishes a procedure by which a person may seek judicial review of the decision of the lead agency made pursuant to CEQA and a procedure for the preparation and certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA.

This bill would authorize the San Diego Association of Governments (SANDAG) to obtain site control to support the redevelopment of the Old Town Center site, including a transit and transportation facilities project, in the City of San Diego before completing the environmental review for those actions.

This bill would provide that the requirements of CEQA for transit-oriented development projects occurring at the Old Town Center site that meet certain requirements are satisfied by a specific environmental impact statement prepared by the United States Department of the Navy. The bill would require further environmental review for transit-oriented development projects to be conducted only if certain events occur. The bill would require the approval of a transit-oriented development project to be preceded by a certain determination.

This bill would require SANDAG, in certifying the environmental impact report and in granting approvals for a transit and transportation facilities project, as defined, to comply with specified procedures. The bill would require SANDAG to concurrently prepare the record of proceedings for the project. Because SANDAG, a regional agency, would be required to comply with those new procedures, this bill would impose a state-mandated local program. The bill would require a transit and transportation facilities project to comply with certain requirements concerning the emissions of greenhouse gases. The bill would apply certain rules of court establishing procedures requiring actions or proceedings seeking judicial review pursuant to CEQA or the granting

of project approvals, including any appeals to the court of appeal or the Supreme Court, to be resolved, to the extent feasible, within 270 business days of the filing of the certified record of proceedings with the court to an action or proceeding seeking judicial review of SANDAG's action related to the project. The bill would repeal these provisions if SANDAG fails to certify an environmental impact report for the transit and transportation facilities project before January 1, 2025.

This bill would require transit-oriented development projects at the Old Town Center site and transit and transportation facilities projects to comply with certain labor-related requirements.

This bill would make legislative findings and declarations as to the necessity of a special statute for the City of San Diego.

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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) requires that the environmental impacts of projects be identified and mitigated. The act also guarantees the public an opportunity to review and comment on the environmental impacts of a project and to participate meaningfully in the development of mitigation measures for potentially significant environmental impacts.

(b) In its capacity as the San Diego region's metropolitan planning organization under federal and state law, the San Diego Association of Governments (SANDAG) has identified the need for a multimodal regional transportation facility to serve as a connection for regional transit and to link regional transit to the San Diego International Airport.

(c) The United States Department of the Navy owns the Naval Information Warfare Systems Command (NAVWAR) and the Naval Information Warfare Center Pacific (NIWC PAC) at the Naval Base Point Loma's Old Town Center (Old Town Center). NAVWAR and NIWC PAC is a substandard and obsolete facility incapable of sustaining the United States Navy's mission.

(d) On July 5, 2018, the Department of Housing and Community Development determined that the San Diego region would need to plan for 171,685 housing units during the 6th Housing Element Cycle (2021–29). The San Diego region has made significant investments in transit. Encouraging housing growth near transit can promote infill development and preserve open space, as most transit is located in urbanized areas. Improved access to transit can also lower the vehicle miles traveled in a car and reduce emissions of greenhouse gases by locating housing near job centers.

(e) The approximately 70.5-acre Old Town Center is an infill area, located within the Midway-Pacific Highway Community Plan planning area in the City of San Diego. The San Diego region would greatly benefit from the redevelopment of the Old Town Center for purposes of new public transit and transportation facilities and transit oriented mixed-use development.

(f) The redevelopment of the Old Town Center presents an unprecedented opportunity to significantly reduce the cumulative traffic, air quality, and greenhouse gases emissions impacts of the anticipated growth within SANDAG's regional transportation planning area by developing new public transit and transportation facilities that will serve the entire San Diego region. The Old Town Center is located downtown in the City of San Diego near heavy and light rail transit facilities, situated to maximize opportunities to encourage nonautomobile modes of travel to the proposed transit oriented mixed-use development, and is consistent with the policies and regional vision included in the sustainable communities strategy developed pursuant to Chapter 728 of the Statutes of 2008 by SANDAG in October 2015. The Old Town Center is also located within close proximity to other major infill sites downtown in the City of San Diego.

(g) The Old Town Center has the potential to facilitate transit-oriented development adjacent, physically related, or functionally related to a new multimodal regional transportation facility linking the San Diego region with regional transit and the San Diego International Airport.

(h) The Old Town Center will support the development of new state-of-the-art naval facilities and may include mixed-use development, as described in the notice of intent to prepare an environmental impact statement for Navy Old Town Campus Revitalization at Naval Base Point Loma published by the United States Department of the Navy in the Federal Register on January 24, 2020.

(i) The naval facilities and mixed-use development are expected to generate significant full-time employment, including employees hired during both construction and operation of the mixed-use development at the Old Town Center. This employment

estimate does not include substantial job generation that will occur with the surrounding development uses, which will generate additional hospitality, office, restaurant, and retail jobs in the City of San Diego's downtown area.

(j) It is in the interest of the state to streamline the environmental review of the redevelopment of Old Town Center to promote transit-oriented development, including new housing near transit and job centers, and to expedite judicial review of new transit and transportation facilities, as appropriate, to facilitate their timely delivery while protecting the environment and the right of the public to review, comment on, and, if necessary, seek judicial review of, the adequacy of the environmental impact report for the transit and transportation facilities project.

SEC. 2. Chapter 6.9 (commencing with Section 21189.70) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 6.9. Old Town Center Redevelopment in the City of San Diego

21189.70. For purposes of this chapter, the following definitions apply:

(a) "Lead agency" or "public agency" means SANDAG.

(b) "Navy" means the United States Department of the Navy.

(c) "Old Town Center site" means the approximately 70.5-acres comprising the Naval Base Point Loma's Old Town Center.

(d) "Project labor agreement" has the same meaning as in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(e) "SANDAG" means the San Diego Association of Governments.

(f) "Site control" means a lease agreement, property transfer, or other property conveyance from the Navy to SANDAG related to transit and transportation facilities.

(g) "Site plan" means the site development plan approved, on or before December 31, 2022, by the Navy and SANDAG for the Old Town Center site that complies with the content requirements specified in subdivision (a) of Section 65451 of the Government Code and Section 65452 of the Government Code.

(h) "Skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(i) "Transit and transportation facilities" means a multimodal regional transportation facility, including a central mobility hub located in the Old Town Center site, and transportation linkages that connect the central mobility hub to the San Diego regional transportation system, as that transportation system existed as of December 31, 2020, and that connect the central mobility hub to the San Diego International Airport. A transit and transportation facility does not include a transit station or hub that is located outside of the Old Town Center site. The central mobility hub may include a multimodal transportation center that may include a high-frequency automated people mover service and one of the following:

(1) A nonstop, high-speed service to San Diego International Airport via a one-mile tunnel route.

(2) Service to San Diego International Airport via a 3.6 mile surface or elevated automated people mover route along the Pacific Highway, Laurel Street, and Harbor Drive with intermediate stops at the airport rental car center and the planned development at Harbor Island East Basin.

(3) An airport-like curb experience for auto-based travelers, an automated people mover station that would provide services to San Diego International Airport via a 2.6 mile surface or elevated route along the Pacific Highway, Laurel Street, and Harbor Drive, with intermediate stops at the airport rental car center and planned development at the Harbor Island East Basin.

(j) "Transit-oriented development project" means a project for the redevelopment of the Old Town Center site that substantially conforms to the description of the proposed action for the Navy Old Town Campus Revitalization at Naval Base Point Loma, California, set forth in the notice of intent to prepare an environmental impact statement published in the Federal Register on January 24, 2020, and that includes up to 10,000 residential units and up to 1,600,000 square feet of office and retail space, and one of the following:

(1) High-density mixed-use revitalization, including a transit center.

(2) Low-density mixed-use revitalization, including a transit center.

21189.70.1. (a) For purposes of this section, the following definitions apply:

(1) "Employment center project" means a project with a floor area ratio of no less than 0.75 and that is located within a transit priority area.

(2) "Floor area ratio" has the same meaning as in Section 21099.

(3) "Transit priority area" has the same meaning as in Section 21099.

(b) Except as provided in subdivision (c), the requirements of this division are satisfied by an environmental impact statement prepared pursuant to the notice of intent described in subdivision (i) of Section 21189.70 and that meets the requirements of subdivision (d) for a transit-oriented development project, including a residential, employment center, or mixed-use development project, approved by the lead agency, located in the Old Town Center site, if the transit-oriented development project meets all of the following criteria:

(1) The transit-oriented development project is proposed within a transit priority area.

(2) (A) The transit-oriented development project is undertaken to implement and is consistent with the land use standards approved by the Navy and SANDAG for the Old Town Center site and the site plan for which the environmental impact report has been certified on or before December 31, 2022.

(B) The site plan shall meet a vehicle miles traveled reduction of 25 percent below the regional average vehicle miles traveled identified in the sustainable communities strategy or alternative planning strategy applicable at the time of the approval of the site plan.

(3) The transit-oriented development project is consistent with the general use designation, density, building intensity, and applicable policies specified in the Old Town Center site in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted SANDAG's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emissions reduction targets.

(4) (A) For a transit-oriented development project undertaken by a public agency, except as provided in subparagraph (B), an entity shall not be prequalified or shortlisted or awarded a contract by the public agency to perform any portion of the transit-oriented development project unless the entity provides an enforceable commitment to the public agency that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the transit-oriented development project or contract that falls within an apprenticeable occupation in the building and construction trades.

(B) Subparagraph (A) does not apply if any of the following requirements are met:

(i) The public agency has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the transit-oriented development project or contract to use a skilled and trained workforce, and the entity agrees to be bound by that project labor agreement.

(ii) The transit-oriented development project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the public agency before January 1, 2021.

(iii) The entity has entered into a project labor agreement that will bind the entity and all of its subcontractors at every tier performing the transit-oriented development project or contract to use a skilled and trained workforce.

(5) For a transit-oriented development project undertaken by a private entity, the transit-oriented development project applicant shall do both of the following:

(A) Certify to the lead agency that either of the following is true:

(i) The entirety of the transit-oriented development project is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the transit-oriented development project is not in its entirety a public work, all construction workers employed in the execution of the transit-oriented development project will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the transit-oriented development project is subject to this clause, then, for those portions of the transit-oriented development project that are not a public work, all of the following shall apply:

(I) The transit-oriented development project applicant shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided by that section.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the transit-oriented development project, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) do not apply if all contractors and subcontractors performing work on the transit-oriented development project are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the transit-oriented development project and provides for enforcement of that obligation through an arbitration procedure.

(VI) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude the use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(B) Certify to the lead agency that a skilled and trained workforce will be used to perform all construction work on the transit-oriented development project. All of the following requirements shall apply to the transit-oriented development project:

(i) The transit-oriented development project applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the transit-oriented development project.

(ii) Every contractor and subcontractor shall use a skilled and trained workforce to complete the transit-oriented development project.

(iii) (I) Except as provided in subclause (II), the transit-oriented development project applicant shall provide to the lead agency, on a monthly basis while the transit-oriented development project or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the lead agency pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and shall be open to public inspection. A transit-oriented development project applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars (\$10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars (\$200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the transit-oriented development project using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(II) Subclause (I) does not apply if all contractors and subcontractors performing work on the transit-oriented development project are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure.

(c) Further environmental review, including the preparation of a supplemental environmental impact report, if appropriate, shall be conducted only if any of the events specified in Section 21166 have occurred.

(d) (1) Pursuant to Section 21083.5, the environmental impact statement prepared by the Navy for the redevelopment of the Old Town Center site pursuant to the federal National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) may be used in

lieu of all or any part of an environmental impact report prepared pursuant to this division for the redevelopment of the Old Town Center site if that statement complies with the applicable requirements of this division and the guidelines adopted pursuant to this division and its use for purposes of compliance with this division shall not in and of itself constitute a prejudicial abuse of discretion so long as the lead agency consults with the Navy, notifies the Navy regarding any scoping meetings for the proposed transit-oriented development project, and a discussion of mitigation measures or growth-inducing impacts are included in the environmental impact statement.

(2) Paragraph (1) is not intended to exempt approvals of public agencies from the requirements of Section 21081, 21081.6, 21100, or 21151, or to limit judicial review of those approvals under Section 21168.

(3) Any significant impacts identified in the Navy's environmental impact statement for the redevelopment of the Old Town Center site that are offsite of the Old Town Center site and that are incorporated by the lead agency into the environmental impact report shall be subject to the applicable mitigation requirements and enforcement provisions of this division.

(e) The approval of a transit-oriented development project shall be preceded by a determination under subdivisions (b) and (c).

21189.70.2. A transit and transportation facilities project subject to this chapter shall meet all of the following requirements:

(a) Any facility that is a part of the transit and transportation facilities project shall obtain Leadership in Energy and Environmental Design (LEED) gold certification for new construction within one year of the transit and transportation facilities project completion.

(b) (1) The project does not result in any net additional emission of greenhouse gases, as determined by the State Air Resources Board pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code. The State Air Resources Board is encouraged to make its determination no later than 120 calendar days after receiving an application for review of the methodology and calculations of the project's greenhouse gas emissions.

(2) The environmental baseline for greenhouse gas emissions shall be established based upon the physical conditions at the project site at the time the notice of preparation for the project-level environmental impact report is published in a manner consistent with Section 15125 of Title 14 of the California Code of Regulations as those regulations existed on January 1, 2020.

(3) To maximize public health and environmental benefits, the lead agency shall require measures that will reduce the emissions of greenhouse gases in the project area and in the neighboring communities.

(4) Not less than 50 percent of the greenhouse gas emissions reductions necessary to achieve the requirement of this subdivision shall be from local, direct greenhouse gas emissions reduction measures, including, but not limited to, any of the following:

(A) Project design features or onsite reduction measures, or both design features and onsite reduction measures, that include, but are not limited to, any of the following:

(i) Implementing project design features that enable the project to exceed the building energy efficiency standards set forth in Part 6 (commencing with Section 100) of Title 24 of the California Code of Regulations, except for 50 percent of emissions reductions attributable to design features necessary to meet the LEED gold certification requirement.

(ii) Requiring a transportation demand management program to reduce single-occupancy vehicular travel and vehicle miles traveled.

(iii) Providing onsite renewable energy generation, including a solar roof on the project with a minimum peak generation capacity of 500 kilowatts.

(iv) Providing solar-ready roofs.

(v) Providing cool roofs and cool parking promoting cool surface treatment for new parking facilities.

(B) Offsite reduction measures in the neighboring communities, including, but not limited to, any of the following:

(i) Providing funding to an offsite mitigation project consisting of replacing buses, trolleys, or other transit vehicles with zero-emission vehicles.

(ii) Providing offsite safety or other improvements for bicycles, pedestrians, and transit connections.

(iii) Undertaking or funding building retrofits to improve the energy efficiency of existing buildings.

(5) (A) The transit and transportation facilities project proponent may obtain offset credits for up to 50 percent of the greenhouse gas emissions reductions necessary to achieve the requirement of this subdivision that produce emissions

reductions within the City of San Diego or the boundaries of the San Diego County Air Pollution Control District. Any offset credits shall be verified by a third party accredited by the State Air Resources Board, and shall be undertaken in a manner consistent with Division 25.5 (commencing Section 38500) of the Health and Safety Code, including, but not limited to, the requirement that the offset be real, permanent, quantifiable, verifiable, and enforceable, and shall be undertaken from sources in the same community within which the project is located or adjacent communities.

(B) If 50 percent of greenhouse gas emissions reductions necessary to achieve no additional emissions of greenhouse gases cannot be feasibly and fully mitigated by offset credits as described in subparagraph (A), the mitigation of the remaining emissions of greenhouse gases shall be achieved pursuant to the following priority:

(i) Offset credits that would also reduce the emissions of criteria air pollutants or toxic air contaminants. The offsets shall be undertaken in a manner consistent with Division 25.5 (commencing with Section 38500) of the Health and Safety Code, including, but not limited to, the requirement that the offsets be real, permanent, quantifiable, verifiable, and enforceable, and shall be undertaken from sources in the community within which the project is located or in adjacent communities.

(ii) If the remaining emissions of greenhouse gases cannot be feasibly and fully mitigated by the offset credits described in clause (i), the remaining unmitigated greenhouse gas emissions shall be mitigated through the use of offsets that would also reduce the emissions of criteria air pollutants or toxic air contaminants and shall be undertaken in a manner consistent with clause (i) and shall be undertaken from sources that provide a specific, quantifiable, and direct environmental and public health benefit to the community in which the project is located.

(6) It is the intent of the Legislature, in enacting this subdivision, to maximize the environmental and public health benefits from measures to mitigate the emissions of greenhouse gases of a transit and transportation facilities project to those people that are impacted most by the project.

(c) (1) The transit and transportation facilities project has a transportation demand management program and achieves at least 25 percent reduction in vehicle miles traveled as compared to the regional average vehicle miles traveled identified in the sustainable communities strategy or alternative planning strategy applicable at the time of the approval of the transit and transportation facilities project.

(2) For purposes of this subdivision, "transportation demand management program" means a specific program of strategies, incentives, and tools to be implemented, including, with specified annual status reporting obligations, to reduce vehicle trips by providing opportunities for the public to choose sustainable travel options, such as transit, bicycle riding, or walking. A specific program of strategies, incentives, and tools includes, but is not limited to, any of the following:

(A) Provision of onsite electric vehicle charging stations in excess of applicable requirements.

(B) Provision of dedicated parking for car share or zero-emission vehicles, or both types of vehicles, in excess of applicable requirements.

(C) Provision of bicycle parking in excess of applicable requirements.

(d) The transit and transportation facilities project proponent certifies that the transit and transportation facilities project will comply with Section 21189.70.8.

21189.70.3. Notwithstanding any other law, Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by the Judicial Council, shall apply to an action or proceeding brought to attack, review, set aside, void, or annul the certification of an environmental impact report for the transit and transportation facilities project approved pursuant to Section 21189.70.2 or the granting of any approvals for this project, including any potential appeals to the court of appeal or the Supreme Court, to be resolved, to the extent feasible, within 270 business days of the filing of the certified record of proceedings with the court. On or before January 1, 2022, the Judicial Council shall amend the California Rules of Court, as necessary, to implement this section.

21189.70.4. Notwithstanding any other law, the preparation and certification of the record of proceedings for the transit and transportation facilities project shall be performed in the following manner:

(a) The lead agency for the transit and transportation facilities project shall prepare the record of proceedings pursuant to this division concurrently with the administrative process.

(b) All documents and other materials placed in the record of proceedings shall be posted on, and be downloadable from, an internet website maintained by the lead agency commencing with the date of the release of the draft environmental impact report.

(c) The lead agency shall make available to the public in a readily accessible electronic format the draft environmental impact report and all other documents submitted to, or relied on by, the lead agency in the preparation of the draft environmental impact report.

(d) A document prepared by the lead agency or submitted by the transit and transportation facilities project proponent after the date of the release of the draft environmental impact report that is a part of the record of the proceedings shall be made available to the public in a readily accessible electronic format within five business days after the document is released or received by the lead agency.

(e) The lead agency shall encourage written comments on the transit and transportation facilities project to be submitted in a readily accessible electronic format, and shall make any comment available to the public in a readily accessible electronic format within five days of its receipt.

(f) Within 14 business days after the receipt of any comment that is not in an electronic format, the lead agency shall convert that comment into a readily accessible electronic format and make it available to the public in that format.

(g) Notwithstanding subdivisions (b) to (f), inclusive, documents submitted to or relied on by the lead agency that were not prepared specifically for the transit and transportation facilities project and are copyright protected are not required to be made readily accessible in an electronic format. For those copyright-protected documents, the lead agency shall make an index of these documents available in an electronic format no later than the date of the release of the draft environmental impact report, or within five business days if the document is received or relied on by the lead agency after the release of the draft environmental impact report. The index shall specify the libraries or lead agency offices in which hardcopies of the copyrighted materials are available for public review.

(h) The lead agency shall certify the final record of proceedings within five days after the filing of the notice required by subdivision (a) of Section 21152.

(i) Any dispute arising from the record of proceedings shall be resolved by the superior court. Unless the superior court directs otherwise, a party disputing the content of the record of proceedings shall file a motion to augment the record of proceedings at the time it files its initial brief.

(j) The contents of the record of proceedings shall be as set forth in subdivision (e) of Section 21167.6.

21189.70.5. (a) If the lead agency fails to certify an environmental impact report for the transit and transportation facilities project before January 1, 2025, Sections 21189.70.2 to 21189.70.7, inclusive, shall become inoperative and are repealed on January 1 of the following year.

(b) On or before February 1, 2025, the lead agency shall, if it fails to certify the environmental impact report for the transit and transportation facilities project before January 1, 2025, notify the Secretary of State of its failure.

(c) SANDAG may obtain site control to support the redevelopment of the Old Town Center site, including the transit and transportation facilities project, before completing environmental review pursuant to this division.

21189.70.6. (a) The draft and final environmental impact report for the transit and transportation facilities project shall include a notice in not less than 12-point type stating the following:

THIS ENVIRONMENTAL IMPACT REPORT (EIR) IS SUBJECT TO CHAPTER 6.9 (COMMENCING WITH SECTION 21189.70) OF DIVISION 13 OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT THE LEAD AGENCY NEED NOT CONSIDER CERTAIN COMMENTS FILED AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD FOR THE DRAFT EIR. ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OF THE EIR OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN CHAPTER 6.9 (COMMENCING WITH SECTION 21189.70) OF DIVISION 13 OF THE PUBLIC RESOURCES CODE. A COPY OF CHAPTER 6.9 (COMMENCING WITH SECTION 21189.70) OF DIVISION 13 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE APPENDIX TO THIS EIR.

(b) The draft environmental impact report and final environmental impact report shall contain, as an appendix, the full text of this section.

(c) Within 10 days after the release of the draft environmental impact report, the lead agency shall conduct an informational workshop to inform the public of the key analyses and conclusions of that report.

(d) Within 10 days before the close of the public comment period, the lead agency shall hold a public hearing to receive testimony on the draft environmental impact report. A transcript of the hearing shall be included as an appendix to the final environmental impact report.

(e) (1) Within five days following the close of the public comment period, a commenter on the draft environmental impact report may submit to the lead agency a written request for nonbinding mediation. The lead agency and transit and transportation facilities project proponent shall participate in nonbinding mediation with all commenters who submitted timely comments on the draft environmental impact report and who requested the mediation. Mediation conducted pursuant to this paragraph shall end no later than 35 days after the close of the public comment period.

(2) A request for mediation shall identify all areas of dispute raised in the comment submitted by the commenter that are to be mediated.

(3) The lead agency shall select one or more mediators who shall be retired judges or recognized experts with at least five years of experience in land use and environmental law or science, or mediation. The transit and transportation facilities project proponent shall bear the costs of mediation.

(4) A mediation session shall be conducted on each area of dispute with the parties requesting mediation on that area of dispute.

(5) The lead agency shall adopt, as a condition of approval, any measures agreed upon by the lead agency, the transit and transportation facilities project proponent, and any commenter who requested mediation. A commenter who agrees to a measure pursuant to this paragraph shall not raise the issue addressed by that measure as a basis for an action or proceeding challenging the lead agency's decision to certify the environmental impact report or to grant one or more initial transit and transportation facilities project approvals.

(f) The lead agency need not consider written comments submitted after the close of the public comment period, unless those comments address any of the following:

(1) New issues raised in the response to comments by the lead agency.

(2) New information released by the public agency subsequent to the release of the draft environmental impact report, such as new information set forth or embodied in a staff report, proposed permit, proposed resolution, ordinance, or similar documents.

(3) Changes made to the transit and transportation facilities project after the close of the public comment period.

(4) Proposed conditions for approval, mitigation measures, or proposed findings required by Section 21081 or a proposed reporting or monitoring program required by paragraph (1) of subdivision (a) of Section 21081.6, where the lead agency releases those documents subsequent to the release of the draft environmental impact report.

(5) New information that was not reasonably known and could not have been reasonably known during the public comment period.

(g) (1) The lead agency shall file the notice required by subdivision (a) of Section 21152 within five days after the last initial transit and transportation facilities project approval.

(2) (A) The lead agency shall prepare and certify the record of proceedings in accordance with this subdivision and in accordance with Rule 3.1365 of the California Rules of Court. The transit and transportation facilities project proponent shall pay the lead agency for all costs of preparing and certifying the record of proceedings.

(B) No later than three business days following the date of the release of the draft environmental impact report, the lead agency shall make available to the public in a readily accessible electronic format the draft environmental impact report and all other documents submitted to or relied on by the lead agency in the preparation of the draft environmental impact report. A document prepared by the lead agency or submitted by the transit and transportation facilities project proponent after the date of the release of the draft environmental impact report that is a part of the record of proceedings shall be made available to the public in a readily accessible electronic format within five business days after the document is prepared or received by the lead agency.

(C) Notwithstanding subparagraph (B), documents submitted to or relied on by the lead agency that were not prepared specifically for the transit and transportation facilities project and are copyright-protected are not required to be made readily accessible in an electronic format. For those copyright protected documents, the lead agency shall make an index of these documents available in an electronic format no later than the date of the release of the draft environmental impact report, or within five business days if the document is received or relied on by the lead agency after the release of the draft

environmental impact report. The index must specify the libraries or lead agency offices in which hardcopies of the copyrighted materials are available for public review.

(D) The lead agency shall encourage written comments on the transit and transportation facilities project to be submitted in a readily accessible electronic format, and shall make any such comment available to the public in a readily accessible electronic format within five days of its receipt.

(E) Within seven business days after the receipt of any comment that is not in an electronic format, the lead agency shall convert that comment into a readily accessible electronic format and make it available to the public in that format.

(F) The lead agency shall indicate in the record of proceedings comments received that were not considered by the lead agency pursuant to subdivision (f) and need not include the content of the comments as a part of the record of proceedings.

(G) Within five days after the filing of the notice required by subdivision (a) of Section 21152, the lead agency shall certify the record of proceedings for the approval or determination and shall provide an electronic copy of the record of proceedings to a party that has submitted a written request for a copy. The lead agency may charge and collect a reasonable fee from a party requesting a copy of the record of proceedings for the electronic copy, which shall not exceed the reasonable cost of reproducing that copy.

(3) Within 10 days after being served with a complaint or a petition for a writ of mandate, the lead agency shall lodge a copy of the certified record of proceedings with the superior court.

(4) Any dispute over the content of the record of proceedings shall be resolved by the superior court. Unless the superior court directs otherwise, a party disputing the content of the record of proceedings shall file a motion to augment the record of proceedings at the time it files its initial brief.

(5) The contents of the record of proceedings shall be as set forth in subdivision (e) of Section 21167.6.

(h) Except as provided in subdivision (c) of Section 21189.70.5, the approval of a transit and transportation facilities project shall be preceded by the certification of a project-level environmental impact report.

21189.70.7. Except as provided in this chapter, an action or proceeding to attack, set aside, void, or annul a determination, finding, or decision of the lead agency granting the approval for a transit and transportation facilities project shall be subject to the requirements of Chapter 6 (commencing with Section 21165).

21189.70.8. (a) (1) For a transit and transportation facilities project undertaken by a public agency, except as provided in paragraph (2), an entity shall not be prequalified or shortlisted or awarded a contract by the public agency to perform any portion of the transit and transportation facilities project unless the entity provides an enforceable commitment to the public agency that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the transit and transportation facilities project or contract that falls within an apprenticeable occupation in the building and construction trades.

(2) Paragraph (1) does not apply if any of the following requirements are met:

(A) The public agency has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the transit and transportation facilities project or contract to use a skilled and trained workforce, and the entity agrees to be bound by that project labor agreement.

(B) The transit and transportation facilities project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the public agency before January 1, 2021.

(C) The entity has entered into a project labor agreement that will bind the entity and all of its subcontractors at every tier performing the transit and transportation facilities project or contract to use a skilled and trained workforce.

(b) For a transit and transportation facilities project undertaken by a private entity, the transit and transportation facilities project proponent shall do both of the following:

(1) Certify to the lead agency that either of the following is true:

(A) The entirety of the transit and transportation facilities project is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(B) If the transit and transportation facilities project is not in its entirety a public work, all construction workers employed in the execution of the transit and transportation facilities project will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections

1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. If the transit and transportation facilities project is subject to this subparagraph, then, for those portions of the transit and transportation facilities project that are not a public work, all of the following shall apply:

(i) The transit and transportation facilities project proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(ii) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(iii) (I) Except as provided in subclause (III), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided by that section.

(II) Except as provided in subclause (III), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the transit and transportation facilities project, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(III) Subclauses (I) and (II) do not apply if all contractors and subcontractors performing work on the transit and transportation facilities project are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the transit and transportation facilities project and provides for enforcement of that obligation through an arbitration procedure.

(iv) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(2) Certify to the lead agency that a skilled and trained workforce will be used to perform all construction work on the transit and transportation facilities project. All of the following requirements shall apply to the transit and transportation facilities project:

(A) The transit and transportation facilities project proponent shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the transit and transportation facilities project.

(B) Every contractor and subcontractor shall use a skilled and trained workforce to complete the transit and transportation facilities project.

(C) (i) Except as provided in clause (ii), the transit and transportation facilities project proponent shall provide to the lead agency, on a monthly basis while the transit and transportation facilities project or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the lead agency pursuant to this clause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and shall be open to public inspection. A transit and transportation facilities project proponent that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars (\$10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars (\$200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the transit and transportation facilities project using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(ii) Clause (i) does not apply if all contractors and subcontractors performing work on the transit and transportation facilities project are subject to a project labor agreement that requires compliance with the skilled and trained workforce

requirement and provides for enforcement of that obligation through an arbitration procedure.

21189.70.9. Notwithstanding Section 21189.70.10, the requirements of paragraph (4) of subdivision (b) of Section 21189.70.1 regarding the payment of prevailing wages and use of a skilled and trained workforce are material and integral parts of Section 21189.70.1. If the requirements of paragraph (4) of subdivision (b) of Section 21189.70.1 cannot lawfully be applied to a transit-oriented development project, then the other provisions of 21189.70.1 shall be null and void with respect to that transit-oriented development project unless all contractors and subcontractors performing work on the project are subject to a project labor agreement that provides hiring preferences for veterans and for apprentices who were emancipated minors or in foster care.

21189.70.10. Except as provided in Section 21189.70.9, the provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances set forth in Section 1 of this act regarding the redevelopment of the Old Town Center in the City of San Diego.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.