Proposed Updates to the CEQA Guidelines

November 2017

Section 21083 of the Public Resources Code requires regular updates to the Guidelines Implementing the California Environmental Quality Act. This is a final version of the Governor's Office of Planning and Research's proposed updates to the Guidelines.

Final

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

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LETTER FROM THE DIRECTOR

The Governor's Office of Planning and Research is pleased to provide this Proposed Update to the CEQA Guidelines, which includes a comprehensive update to the CEQA Guidelines. Most of the proposed changes consist of refinements and clarifications of existing requirements. This package also includes proposed changes responding to Senate Bill 743 (Steinberg 2013), which required an update to address the analysis of transportation impacts.

Since 2013, OPR and the California Natural Resources Agency have engaged in an iterative and extensive process to develop the CEQA Guidelines proposal. As part of that process, which has been one of the most extensive ever under CEQA, OPR and the Natural Resources Agency broadly solicited suggestions during public comment periods from stakeholders and the public regarding what updates, if any, should be made to the CEQA Guidelines. In addition to these public comment periods, OPR, the Natural Resources Agency, or both have gathered input from close to 200 stakeholder meetings, presentations, conferences, and other venues. The Proposed Updates to the CEQA Guidelines reflect the numerous suggestions from the public for improvements to the CEQA Guidelines, and it has been made stronger as a result.

Ken Alex
Director
Governor's Office of Planning and Research

Executive Summary

Proposed Amendments to the CEQA Guidelines

Background

The California Environmental Quality Act, also known as CEQA, requires public agencies, as part of the decision of whether to approve a project, to evaluate and mitigate a project's potential impacts. The Governor's Office of Planning and Research (OPR) develops the administrative regulations that implement CEQA, and the Natural Resources Agency adopts those regulations following a formal rulemaking process. Those regulations, commonly referred to as the CEQA Guidelines, are required to be regularly updated. The last comprehensive update to the CEQA Guidelines, however, occurred in the late 1990s.

In 2013, OPR began a process to comprehensively update the CEQA Guidelines. Since that time, the Legislature has adopted numerous changes to CEQA requiring specific updates to the Guidelines including a reform regarding transportation impacts, and the addition of tribal cultural resources as a consideration in environmental documents. The California Supreme Court has also published several decisions affecting the Guidelines.

Since 2013, OPR has engaged in an iterative process to develop the comprehensive update. Specifically, it:

- distributed a formal Solicitation for Input on possible improvements in the Summer of 2013
- published a possible list of topics to address in the update in December 2013
- published an evaluation of alternative transportation metrics pursuant to Senate Bill 743, also in December 2013
- released a first draft of Guidelines evaluating vehicle miles traveled in August 2014
- developed a draft Technical Advisory on the analysis of tribal cultural resources pursuant to Assembly Bill 52 in May 2015
- released a first draft of a comprehensive update to the CEQA Guidelines in August 2015
- developed proposed changes to Appendix G of the CEQA Guidelines addressing tribal cultural resources in November 2015
- revised and released an updated draft of the Guidelines addressing vehicle miles traveled, together with a draft Technical Advisory, in January 2016
- worked with the Natural Resources Agency to complete the changes to Appendix G related to tribal cultural resources in August 2016
- developed changes, in October 2016, to the Guidelines addressing hazards in response to the California Supreme Court's decision in *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369 (*CBIA v. BAAQMD*)

- finalized the comprehensive package and submitted it to the Natural Resources Agency in November 2017

This document contains a complete set of updates to the CEQA Guidelines. It reflects not only input that OPR received during numerous public comment periods, but also input received during informal stakeholder meetings, conferences, and other venues.

What is in this Package?

The package contains changes or additions involving nearly thirty different sections of the Guidelines addressing nearly every step of the environmental review process. It is a ***balanced*** package that is intended to make the process easier and quicker to implement, and better protect natural and fiscal resources consistent with other state environmental policies.

Efficiency Improvements

OPR proposes several changes intended to result in a smoother, more predictable process for agencies, project applicants, and the public.

First, the package promotes use of existing **regulatory standards** in the CEQA process. Using standards as "thresholds of significance" creates a predictable starting point for the analysis, and allows agencies to rely on the expertise of other regulatory bodies, without foreclosing consideration of possible project-specific effects.

Second, the package proposes to update the **environmental checklist** that most agencies use to conduct their environmental review. Redundant questions in the existing checklist would be eliminated and some questions would be updated to address contemporary topics. The checklist has also been updated with new questions related to transportation and wildfire, pursuant to Senate Bill 743 (Steinberg, 2013), and Senate Bill 1241 (Kehoe, 2012), respectively. It also relocates questions related to paleontological resources as directed in Assembly Bill 52 (Gatto, 2014).

Third, the package includes several changes to make existing programmatic environmental review easier to use for later projects. Specifically, it clarifies the rules on **tiering**, and provides additional guidance on when a later project may be considered **within the scope** of a program EIR thereby obviating the need for additional environmental review..

Fourth, the package enhances several **exemptions**. For example, consistent with Senate Bill 743 (Steinberg, 2013), it expands an existing exemption for projects implementing a specific plan to include not just residential, but also commercial and mixed-use projects near transit. It also clarifies the rules on the exemption for changes to existing facilities so that vacant buildings can more easily be redeveloped. Changes to that same exemption would also promote pedestrian, bicycle, and streetscape improvements within an existing right of way.

Finally, the package includes a new section to assist agencies in complying with CEQA in response to a court's **remand**, and to help the public and project proponents understand the effect of the remand on project implementation.

Substantive Improvements

The package also contains substantive improvements related to environmental protection.

First, the package would provide guidance regarding **energy** impacts analysis. Specifically, it would require an EIR to include an analysis of a project's energy impacts that addresses not just building design, but also transportation, equipment use, location, and other relevant factors.

Second, the package proposes guidance on the analysis of **water supply** impacts. The guidance is built on the holding in the California Supreme Court decision in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412 (*Vineyard*). It requires analysis of a proposed project's possible sources of water supply over the life of the project and the environmental impacts of supplying that water to the project. The analysis must consider any uncertainties in supply, as well as potential alternatives.

Third, the package includes proposed updates related to analyzing **transportation impacts** pursuant to Senate Bill 743. These updates will specify that vehicle miles travelled is the appropriate measure of transportation impacts for most projects.

Finally, the package includes proposed updated related to analyzing the impacts from **greenhouse gas emissions**. The proposed changes reflect current appellate case law, including *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204 and *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497.

Technical Improvements

The package also includes many technical changes to conform to recent cases and statutory changes. For example, it includes changes related to **evaluation of hazards** mandated by the California Supreme Court in *CBIA v. BAAQMD* (2015) 62 Cal.4th 369. Another change clarifies when it may be appropriate to use projected future conditions as the **environmental baseline**. Another change addresses when agencies may defer specific details of **mitigation measures** until after project approval. The package also proposes a set of changes related to the duty of lead agencies to provide detailed **responses to comments** on a project. The changes would clarify that a general response may be appropriate when a comment submits voluminous data and information without explaining its relevance to the project. Other changes address a range of topics such as **selecting the lead agency**, **posting notices** with county clerks, clarifying the definition of "**discretionary**," and others. Finally, the package includes technical changes to **Appendices D and E** to reflect recent statutory requirements and previously adopted amendments to the CEQA Guidelines, and to correct typographical errors.

Additional technical improvements include those related to: pre-approval agreements; lead agency by agreement; common sense exemption; preparing the initial study; consultation with transit agencies; citations in environmental documents; posting notices with the county clerk; time limits for negative

declarations; project benefits; joint NEPA/CEQA documents; using the emergency exemption; discretionary projects; conservation easements as mitigation; and Appendices C and M to the CEQA Guidelines.

Tips for Reviewing This Document

This document is lengthy, in part because it includes both existing and proposed changes to the CEQA Guidelines. The following pages contain an index of proposed changes grouped into categories. Each amendment listed in the index is hyperlinked to the full discussion of that amendment. You can jump directly to that discussion by pressing the "Ctrl" button and clicking on the link. Each discussion contains background, detailed explanation of the proposed changes, and the text of the proposed amendments in **underline**/~~**strikeout**~~ format.

Efficiency Improvements

The following pages describe proposed amendments intended to increase the efficiency of the environmental review process. Those potential efficiency improvements address:

- Using regulatory standards in the CEQA process
- Determining whether a project is “within the scope” of a program EIR
- Clarifying that restrictive tiering rules apply only to tiering, and not to other streamlining
- Using the new exemption for transit oriented developments
- Using the Existing Facilities Exemption
- Updates to the Sample Environmental Checklist in Appendix G
- Remand and Remedies

Using Regulatory Standards in CEQA

Proposed Amendments to Sections 15064 and 15064.7

Background

One purpose of the CEQA Guidelines is to provide "criteria for public agencies to follow in determining whether or not a proposed project may have a 'significant effect on the environment.'" (Pub. Resources Code, § 21083(b).) Courts have recognized that thresholds of significance may assist lead agencies in determining whether impacts are significant. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111 (*CBE v. Resources Agency*) ("a lead agency's use of existing environmental standards in determining the significance of a project's environmental impacts is an effective means of promoting consistency in significance determinations and integrating CEQA environmental review activities with other environmental program planning and regulation").)

CEQA also directs local agencies to "integrate the requirements of [CEQA] with planning and environmental review procedures otherwise required by law or by local practice . . . ." (Pub. Resources Code, § 21003, subd. (a).) The sample initial study checklist in Appendix G of the CEQA Guidelines, for example, includes several questions asking about compliance with regulatory standards. (See, e.g., State CEQA Guidelines, App. G, IX(a) ("Would the project… [v]iolate any water quality standards or waste discharge requirements").) In practice, many local governments also treat regulatory standards as thresholds of significance. (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 904 ("compliance with the Building Code, and the other regulatory provisions, in conjunction with the detailed Geotechnical Investigation, provided substantial evidence that the mitigation measures would reduce seismic impacts to a less than significant level").)

In 1998, the Resources Agency adopted amendments to the CEQA Guidelines that would have, among other things, defined regulatory "standards" and codified the role of such standards in a CEQA analysis. Those amendments were later determined to be invalid because they failed to incorporate the fair argument standard. (*CBE v. Resources Agency, supra,* 103 Cal.App.4th at p. 114.) The court in *CBE* did not, however, suggest that standards should not be used in a CEQA analysis. On the contrary, according to the Third District Court of Appeal "a lead agency's use of existing environmental standards in determining the significance of a project's environmental impacts is an effective means of promoting consistency in significance determinations and integrating CEQA environmental review activities with other environmental program planning and regulation." (*CBE v. Resources Agency, supra,* 103 Cal.App.4th at p. 111; see also *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108 ("invalidation of former Guidelines section 15064, subdivision (h), was not a repudiation of the use of thresholds of significance altogether").)

Explanation of Proposed Amendments

OPR proposes to update sections 15064 and 15064.7 to expressly provide that lead agencies may use thresholds of significance in determining significance, and that some regulatory standards may be appropriately used as thresholds of significance.

Explanation of Proposed Amendments to Section 15064

OPR proposes to amend section 15064 to expressly provide that lead agencies may use thresholds of significance in determining whether the impacts of a project may be significant. Specifically, OPR proposes to add subdivision (b)(2) to section 15064.

The first sentence of proposed subdivision (b)(2) states the rule that thresholds of significance may be used to determine significance. (See *CBE v. Resources Agency*, *supra*, 103 Cal.App.4th at p. 111; see also *Protect the Historic Amador Waterways, supra,* 116 Cal.App.4th at p. 1111.) Importantly, that sentence provides a cross-reference to section 15064.7, which defines a threshold of significance.

The second sentence provides that an agency that relies on a threshold to determine the significance of an impact should explain how application of the threshold indicates a less-than-significant effect. This sentence recognizes the court's caution in *Protect the Historic Amador Waterways* that "thresholds cannot be used to determine *automatically* whether a given effect will or will not be significant." (*Protect the Historic Amador Waterways, supra*, 116 Cal.App.4th at pp. 1108-1109.) This sentence is also consistent with a similar provision in existing subdivision (h)(3), which states: "When relying on a plan, regulation or program [to evaluate cumulative impacts], the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable." (CEQA Guidelines, § 15064(h)(3).) Demonstrating that compliance with a threshold indicates that a project's impact is less than significant is impliedly already required by CEQA. For example, an initial study must include sufficient information to support its conclusions. (CEQA Guidelines, § 15063(d)(3).) Notably, however, section 15128 provides that explanation that an impact is determined to be less than significant and therefore was not analyzed in an EIR, need only be brief.

Finally, the third sentence cautions that a lead agency must evaluate any substantial evidence supporting a fair argument that, despite compliance with thresholds, the project's impacts are nevertheless significant. (*Protect the Historic Amador Waterways, supra,* 116 Cal.App.4th at pp. 1108-1109 ("thresholds cannot be used to determine automatically whether a given effect will or will not be significant[;]" rather, "thresholds of significance can be used only as a measure of whether a certain environmental effect 'will normally be determined to be significant' or 'normally will be determined to be less than significant' by the agency"); see also *CBE v. Resources Agency*, *supra*, 103 Cal.App.4th at 112-113.) This sentence does not alter the standard of review. Thus, in the context of an environmental impact report, a lead agency may weigh the evidence before it to reach a conclusion regarding the significance of a project's effects. This added sentence clarifies that a project's compliance with a threshold does not excuse an agency of its obligation to consider the information presented to it regarding a project's impacts. (*Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 717.) In other words, thresholds shall not be applied in a rote manner; analysis and evaluation of the evidence is still

required. In this regard, this sentence is similar to a lead agency's requirement to review and consider comments submitted on its environmental documents. (CEQA Guidelines, §§ 15074(b), 15088.)

Explanation of Proposed Amendments to Section 15064.7

Because environmental standards, if used correctly, may promote efficiency in the environmental review process, OPR proposes to add subdivision (d) to section 15064.7 on thresholds of significance. Consistent with the rulings in both *CBE v. Resources Agency, supra*, and *Protect the Historic Amador Waterways, supra*, the first sentence recognizes that lead agencies may treat environmental standards as thresholds of significance.

The second sentence provides that when adopting or applying an environmental standard as a threshold, the lead agency should explain how application of the environmental standard indicates a less-than-significant effect. This sentence recognizes the court's caution in *Protect the Historic Amador Waterways* that "thresholds cannot be used to determine *automatically* whether a given effect will or will not be significant." (*Protect the Historic Amador Waterways, supra*, 116 Cal.App.4th at pp. 1108-1109.) This sentence is also consistent with a similar provision in existing subdivision (h)(3), which states: "When relying on a plan, regulation or program [to evaluate cumulative impacts], the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable." (CEQA Guidelines, § 15064(h)(3); see also §§ 15063(d)(3) (requiring an initial study to include sufficient information to support its conclusions), 15128 (requiring a lead agency to explain briefly the reasons that an impact is determined to be less than significant and therefore was not analyzed in an EIR).)

Finally, the third sentence provides criteria to assist a lead agency in determining whether an environmental standard is appropriate for use as a threshold of significance. The first criterion requires that the standard be adopted by some formal mechanism. This is necessary to prevent informal standards from being used that have never been subject to any decisionmaker's judgment or public scrutiny. The second criterion requires the standard to be adopted for environmental protection. The third criterion requires that the standard govern the impact at issue. This is necessary to prevent reliance on a standard that is not related to the impact of concern. (See, e.g., *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 16–20; *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs*. (2001) 91 Cal.App.4th 1344, 1382 (requiring analysis of single event noise despite compliance with cumulative noise standard).) The last criterion is that the standard must govern the project type.

Notably, OPR also proposes to amend section 15064 to clarify the appropriate use of thresholds of significance. Those provisions would also apply to environmental standards that are used as thresholds of significance.

Finally, OPR further proposes to add a sentence to existing subdivision (b), which clarifies that agencies may use thresholds on a case-by-case basis. OPR proposes that sentence because, in practice, most lead agencies have not formally adopted thresholds. Nevertheless, the policy supporting the use of

thresholds remains. The addition contains a cross-reference to Section 15064(b)(2) to help guide agency's use of such thresholds on a case-by-case basis.

Text of Proposed Amendments to Section 15064

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15064. Determining the Significance of the Environmental Effects Caused by a Project

(a) Determining whether a project may have a significant effect plays a critical role in the CEQA process.

(1) If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR.

(2) When a final EIR identifies one or more significant effects, the lead agency and each responsible agency shall make a finding under Section 15091 for each significant effect and may need to make a statement of overriding considerations under Section 15093 for the project.

(b) **(1)** The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.

(2) Thresholds of significance, as defined in Section 15064.7(a), may assist lead agencies in determining whether a project may cause a significant impact. When using a threshold, the lead agency should briefly explain how compliance with the threshold means that the project's impacts are less than significant and describe the substantial evidence supporting that conclusion. Compliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence indicating that the project's environmental effects may still be significant.

(c) In determining whether an effect will be adverse or beneficial, the lead agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency. Before requiring the preparation of an EIR, the lead agency must still determine whether environmental change itself might be substantial.

(d) In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.

(1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are

the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.

(2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.

(3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

(e) Economic and social changes resulting from a project shall not be treated as significant effects on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

(f) The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.

(1) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (*Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988). Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68).

(2) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment but the lead agency determines that revisions in the project plans or proposals made by, or agreed to by, the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment then a mitigated negative declaration shall be prepared.

(3) If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (*Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988).

(4) The existence of public controversy over the environment effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.

(5) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

(6) Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.

(7) The provisions of sections 15162, 15163, and 15164 apply when the project being analyzed is a change to, or further approval for, a project for which an EIR or negative declaration was previously certified or adopted (e.g. a tentative subdivision, conditional use permit). Under case law, the fair argument standard does not apply to determinations of significance pursuant to sections 15162, 15163, and 15164.

(g) After application of the principles set forth above in Section 15064(f), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

(h)(1) When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(2) A lead agency may determine in an initial study that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. When a project might contribute to a significant cumulative impact, but the contribution will be rendered less than cumulatively considerable through mitigation measures set forth in a mitigated negative declaration, the initial study shall briefly indicate and explain how the contribution has been rendered less than cumulatively considerable.

(3) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program (including, but not limited to, water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plan, plans or regulations for the reduction of greenhouse gas emissions) that provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project.

(4) The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable.

AUTHORITY:

Note: Authority cited: Sections 21083 and 21083.05, Public Resources Code. Reference: Sections 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083, 21083.05 and 21100, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68; *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal.4th 1112; ~~**and**~~ *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98**; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099**.

Text of Proposed Amendments to Section 15064.7

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15064.7. Thresholds of Significance

(a) ~~**Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects.**~~ A threshold of significance is an

identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.

(b) **Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects.** Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence. **Lead agencies may also use thresholds on a case-by-case basis as provided in Section 15064(b)(2).**

(c) When adopting **or using** thresholds of significance, a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts, provided the decision of the lead agency to adopt such thresholds is supported by substantial evidence.

(d) Using environmental standards as thresholds of significance promotes consistency in significance determinations and integrates environmental review with other environmental program planning and regulation. Any public agency may adopt or use an environmental standard as a threshold of significance. In adopting or using an environmental standard as a threshold of significance, a public agency shall explain how the particular requirements of that environmental standard avoid project impacts, including cumulative impacts, to a less-than-significant level, and why the environmental standard is relevant to the analysis of the project under consideration. For the purposes of this subdivision, an "environmental standard" is a rule of general application that is adopted by a public agency through a public review process and that is all of the following:

(1) a quantitative, qualitative or performance requirement found in an ordinance, resolution, rule, regulation, order, plan or other environmental requirement of general application;

(2) adopted for the purpose of environmental protection;

(3) addresses the environmental effect caused by the project; and,

(4) applies to the project under review.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000, 21082 and 21083, Public Resources Code**; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099**.

"Within the Scope" of a Program EIR

Proposed Amendments to Section 15168

Background

Administrative efficiency has long been an explicit policy in CEQA. (See Pub. Resources Code, § 21003(f) (statement of legislative intent that "[a]ll persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment").) The CEQA Guidelines encourage efficiency in several ways, including the provisions regarding program EIRs.

Program EIRs can be used to evaluate a series of connected actions, such as adoption and implementation of regulations or land use plans, in one environmental document. Section 15168 of the CEQA Guidelines governs the preparation and later use of program EIRs. It suggests that program EIRs are particularly useful in addressing big picture alternatives and cumulative impacts. When a program EIR is sufficiently detailed, later activities may be approved on the basis of that document without conducting further environmental review. The key question in determining whether additional review is required is whether the later activity falls "within the scope" of the program analyzed in the EIR. (CEQA Guidelines, § 15168(c)(2).)

Courts have treated the determination of whether an activity is within the scope of a program EIR to be a question of fact to be resolved by the lead agency. Several organizations representing CEQA practitioners have suggested that additional guidance should be provided to help lead agencies make that determination. (See, "Recommendations for Updating the State CEQA Guidelines," American Planning Association, California Chapter; Association of Environmental Professionals; and Enhanced CEQA Action Team (August 30, 2013).)

Explanation of Proposed Amendments to Section 15168

OPR proposes to amend section 15168 to further assist lead agencies in determining whether later activities are within the scope of a prior program EIR. The additions appear primarily in subdivision (c).

First, the proposed additions to subdivision (c)(2) would clarify that the determination of whether a later activity falls within the scope of the program EIR is a question of fact to be resolved by the lead agency, and supported with substantial evidence in the record. This addition implements judicial opinions that have addressed the issue. (See, e.g., *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 610 (*CREED*) ("the fair argument standard does not apply to judicial review of an agency's determination that a project is within the scope of a previously completed EIR"); *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1320-

1321 ("evidence does not support a determination that [the] proposed site-specific project was either the same as or within the scope of the project, program, or plan described in the program EIR").)

Second, the proposed additions to subdivision (c)(2) provide a list of factors that may assist a lead agency in determining whether a later activity is within the scope of a program EIR. Again, those factors have been recognized in judicial opinions as being instructive. Those factors include:

- Consistency with allowable land uses included in the project description (*compare Sierra Club*, *supra*, 6 Cal.App.4th at pp. 1320-1321 (later activity could not have been within the scope of the prior EIR because it involved engaging "in terrace mining on land which was specifically designated in the Plan as an agricultural resource") *with CREED*, *supra*, 134 Cal.App.4th at p. 616 ("the Community Plan designated the area where the hotel [project] is to be built as a "Commercial/Office District" in which "hotels and motels" would be emphasized as among the allowable land uses"));
- Consistency with densities and building intensities included in the project description (see *ibid* (the "MEIR forecast[ed] that a total of 5,880 additional hotel rooms would be constructed over a 35-year period within the Planning Area, and expressly contemplate[d] the completion of the Horton Plaza Redevelopment Project, which the hotel project will complete"));
- Being within the geographic area that the program EIR analyzed for potential impacts (see, e.g., *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 704 (the project "will use recycled water in the same way and in the same general location evaluated by the previous studies"));
- Being included in the infrastructure described in the program EIR (see *ibid*).

Notably, this list of factors is not intended to be exclusive.

Third, OPR proposes to add a sentence to subdivision (c)(1) to clarify how to proceed with the analysis of a later activity that a lead agency determines is not "within the scope" of the program EIR. Specifically, the new sentence states that if additional analysis is needed, that analysis should follow the tiering process described in section 15152. This addition is necessary to clarify that even if a project is not "within the scope" of a program EIR, the lead agency might still streamline the later analysis using the tiering process. This might allow a lead agency, for example, to focus the analysis of the later activity on effects that were not adequately analyzed in the program EIR. (See CEQA Guidelines, § 15152(d).) This addition promotes administrative efficiency. (Pub. Resources Code, § 21093(b) ("environmental impact reports shall be tiered whenever feasible").) This addition also follows the analysis in the *Sierra Club* decision, which addressed the relationship between program EIRs and tiering. (*Sierra Club*, *supra*, 6 Cal.App.4th at pp. 1320-1321 (because the project was not within the scope of the program EIR, "section 21166 was inapplicable, and the [agency] was obligated by section 21094, subdivision (c), to consider whether [the] site- specific new project might cause significant effects on the environment that were not examined in the prior program EIR").)

Fourth, in subdivision (c)(5), OPR proposes to add that program EIRs will be most useful for evaluating later activities when those activities have been included in the program EIR's project description. (*CREED*, *supra*, 134 Cal.App.4th at p. 616.)

Finally, OPR proposes a number of minor word changes throughout this section to improve clarity.

Text of Proposed Amendments

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15168. Program EIR

(a) General. A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either:

(1) Geographically,

(2) As logical parts in the chain of contemplated actions,

(3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or

(4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

(b) Advantages. Use of a program EIR can provide the following advantages. The program EIR can:

(1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action,

(2) Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis,

(3) Avoid duplicative reconsideration of basic policy considerations,

(4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts,

(5) Allow reduction in paperwork.

(c) Use With Later Activities. ~~**Subsequent**~~ **Later** activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration. **That later analysis may tier from the program EIR as provided in Section 15152.**

(2) If the agency finds that pursuant to Section 15162, no ~~new effects could occur or no new mitigation measures~~ **subsequent EIR** would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required. **Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record. Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and description of covered infrastructure, as presented in the project description or elsewhere in the program EIR.**

(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into ~~subsequent actions~~ **later activities** in the program.

(4) Where the ~~subsequent~~ **later** activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were ~~covered in~~ **within the scope of** the program EIR.

(5) A program EIR will be most helpful in dealing with ~~subsequent~~ **later** activities if it **provides a description of planned activities that would implement the program and** deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed **project description and** analysis of the program, many ~~subsequent~~ **later** activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

(d) Use With Subsequent EIRS and Negative Declarations. A program EIR can be used to simplify the task of preparing environmental documents on later ~~parts of~~ **activities in** the program. The program EIR can:

(1) Provide the basis in an initial study for determining whether the later activity may have any significant effects.

(2) Be incorporated by reference to deal with regional influences, secondary effects, cumulative impacts, broad alternatives, and other factors that apply to the program as a whole.

(3) Focus an EIR on a ~~subsequent project~~ **later activity** to permit discussion solely of new effects which had not been considered before.

(e) Notice With Later Activities. When a law other than CEQA requires public notice when the agency later proposes to carry out or approve an activity within the program and to rely on the program EIR for CEQA compliance, the notice for the activity shall include a statement that:

(1) This activity is within the scope of the program approved earlier, and

(2) The program EIR adequately describes the activity for the purposes of CEQA.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21003, Public Resources Code; ***Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598; *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689**; *County of Inyo v. Yorty* **(1973)**~~,~~ 32 Cal.App.3d 795 ~~**(1973)**~~.

Clarifying Rules on Tiering

Proposed Amendments to Section 15152

Background and Specific Purpose of Amendment

OPR proposes to amend section 15152(h). As currently written, that section states that "[t]here are various types of EIRs that may be used in a tiering situation." OPR proposes to rewrite this section to clarify that tiering is only one of several streamlining mechanisms that can simplify the environmental review process. (See, e.g., CEQA Guidelines, § 15006 (lists methods to reduce or eliminate duplication in the CEQA process).) Tiering is one such efficiency measure. (See, e.g., Pub. Resources Code, § 21093 (states that tiering may be appropriate "to exclude duplicative analysis" completed in previous EIRs), § 21094 (states that a lead agency may examine significant effects of a project by using a tiered EIR).) Public Resources Code section 21094 is broadly worded to potentially be used for any number of programs, plans, policies, or ordinances, with a wide variety of content. (*Ibid.*) In adopting section 21094, the legislature did not indicate that it intended to replace any other streamlining mechanisms. For example, the legislature did not override existing provisions including, but not limited to, Program EIRs (CEQA Guidelines, § 15168) and mitigation measures under a prior EIR (Pub. Resources Code, § 21083.3). In fact, the legislature created additional streamlining mechanisms after tiering was adopted. (See, e.g., Pub. Resources Code, § 21157 (Master EIR), § 21158 (Focused EIR).) Thus, this revision clarifies that tiering describes one mechanism for streamlining the environmental review process, but where other methods have more specific provisions, those provisions shall apply.

Text of Proposed Amendments

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15152. Tiering

(a) "Tiering" refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and concentrating the later EIR or negative declaration solely on the issues specific to the later project.

(b) Agencies are encouraged to tier the environmental analyses which they prepare for separate but related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the later EIR or negative declaration on the actual issues ripe for decision at each level of environmental review. Tiering is appropriate when the

sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site-specific EIR or negative declaration. Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.

(c) Where a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof (e.g., an area plan or community plan), the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.

(d) Where an EIR has been prepared and certified for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for a later project pursuant to or consistent with the program, plan, policy, or ordinance should limit the EIR or negative declaration on the later project to effects which:

(1) Were not examined as significant effects on the environment in the prior EIR; or

(2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.

(e) Tiering under this section shall be limited to situations where the project is consistent with the general plan and zoning of the city or county in which the project is located, except that a project requiring a rezone to achieve or maintain conformity with a general plan may be subject to tiering.

(f) A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR. A negative declaration shall be required when the provisions of Section 15070 are met.

(1) Where a lead agency determines that a cumulative effect has been adequately addressed in the prior EIR, that effect is not treated as significant for purposes of the later EIR or negative declaration, and need not be discussed in detail.

(2) When assessing whether there is a new significant cumulative effect, the lead agency shall consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and probable future projects. At this point, the question is not whether there is a significant cumulative impact, but whether the effects of the project are cumulatively considerable. For a discussion on how to assess whether project impacts are cumulatively considerable, see Section

15064(i).

(3) Significant environmental effects have been “adequately addressed” if the lead agency determines that:

(A) they have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report; or

(B) they have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(g) When tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR or negative declaration should state that the lead agency is using the tiering concept and that it is being tiered with the earlier EIR.

(h) ~~**There are various types of EIRs that may be used in a tiering situation.**~~ **The rules in this section govern tiering generally. Several other methods to streamline the environmental review process exist, which are governed by the more specific rules of those provisions. Where other methods have more specific provisions, those provisions shall apply, rather than the provisions in this section. Where multiple methods may apply, lead agencies have discretion regarding which to use.** These **other methods** include, but are not limited to, the following:

(1) General plan EIR (Section 15166).

(2) Staged EIR (Section 15167).

(3) Program EIR (Section 15168).

(4) Master EIR (Section 15175).

(5) Multiple-family residential development/residential and commercial or retail mixed-use development (Section 15179.5).

(6) Redevelopment project (Section 15180).

(7) Projects consistent with community plan, general plan, or zoning (Section 15183).

(8) Infill projects (Section 15183.3).

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21061, **21083.3,** 21093, 21094, 21100**, ~~and~~** 21151, **21157, and 21158** Public Resources Code; *Stanislaus Natural Heritage Project, Sierra Club v. County of Stanislaus* (1996) 48 Cal.App.4th 182; *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729; and *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307.

Transit Oriented Development Exemption

Proposed Amendments to Section 15182

Background

In 1978, the Governor adopted California's first Environmental Goals and Policy Report. Known as the Urban Strategy, it set forth key statewide environmental goals as well as an action plan to attain those goals. One of the recommendations in the action plan was to exempt certain types of projects that are consistent with a specific plan from further CEQA review. (An Urban Strategy for California (February 1978), at p. 14.) Shortly after adoption of the Urban Strategy, the legislature created an exemption for residential projects that are consistent with a specific plan. (See Gov. Code, § 65453 (added in 1979, later renumbered to section 65457).) That exemption is described in existing section 15182 of the CEQA Guidelines.

The exemption in the Government Code was much more limited than the Urban Strategy's original recommendation. First, its provisions were difficult to apply in practice. For example, if changed circumstances occurred, the exemption could not be used until a supplemental EIR was prepared to cover the entire specific plan, even if the analysis remained valid for the individual project. Second, rather than exempting a variety of uses, section 65457 exempts only purely residential development. Commercial projects, or even projects that included a commercial component, could not use the exemption. In the decades since the exemption was first enacted, planners have recognized that promoting mixed use developments may reduce land consumption, air pollution, and other environmental ills.

In 2013, Governor Brown's administration proposed, and the Legislature enacted, a set of amendments to CEQA designed to better align the statute with other environmental goals, including the reduction of greenhouse gas emissions and promotion of infill development. (Senate Bill 743, Steinberg 2013.) One of those amendments added 21155.4 to the Public Resources Code. That section resembles Government Code section 65457, but extends beyond purely residential projects to include commercial and mixed-use projects as well. The trigger for requiring additional review also is more closely tied to the project under consideration, instead of to the entire specific plan area. This expanded exemption is available to projects that are located near transit and that are consistent with regional plans for reducing greenhouse gas emissions.

Explanation of Proposed Amendments

OPR proposes to amend existing Guidelines section 15182 to reflect the new exemption in Public Resources Code section 21155.4. The specific amendments are explained in detail below.

Subdivision (a)

OPR proposes to reorganize Section 15182 to describe both the exemption in Public Resources Code section 21155.4 as well as the exemption in Government Code section 65457. As amended, subdivision (a) would be a general section that points to the more specific provisions in subdivisions (b) and (c). Importantly, subdivision (a) clarifies that a specific plan is a plan that is adopted pursuant to the requirements set forth in Article 8, Chapter 3 of the Government Code. This clarification is necessary because cities and counties may give qualifying plans various titles, such as Master Plan or Downtown Plan. So long as the plan includes the contents described in the Government Code, it should enable use of the exemptions described in section 15182.

Subdivision (b)

As amended, subdivision (b) would contain the provisions applicable to projects within transit priority areas.

Subdivision (b)(1) describes the eligibility criteria for use of the exemption. Those eligibility criteria are drawn directly from section 21155.4(a). Notably, while section 21155.4 uses the term "employment center project," proposed subdivision (b)(1) clarifies that term by referring to a commercial project with a floor area ratio of at least 0.75. (See Pub. Resources Code, § 21099, subd. (a)(1) (defining "employment center project"). Further, subdivision (b)(1)(A) includes a cross reference to a new proposed section 15385.5 which defines "transit priority area".

Subdivision (b)(2) describes the limitation to the exemption. Specifically, it clarifies that additional review may be required if the project triggers one of the requirements for further review described in section 15162. New review may be required if, for example, the project requires changes in the specific plan that would result in new or worse significant impacts, or if circumstances have changed since adoption of the specific plan that would lead to new or worse significant impacts.

Subdivision (b)(3) includes a cross reference to the statute of limitation periods described in section 15112. This subdivision is necessary to alert planners that, unlike the exemption in section 65457, which provides for a 30 day statute of limitations regardless of whether a notice of exemption is filed, the exemption in section 21155.4 is subject to CEQA's normal statute of limitations.

Subdivision (c)

As amended, subdivision (c) would contain the provisions that apply to purely residential projects. The content in subdivision (c) largely mirrors the text in existing section 15182. OPR does propose several clarifications, however. For example, section 15182 currently states that no further environmental impact report or negative declaration is required for residential projects that are consistent with a specific plan. Section 65457 actually states that such projects are exempt from any of CEQA

requirements, not just preparation of a new environmental document. Therefore, OPR proposes to clarify in subdivision (c) that such projects are exempt.

Also, OPR proposes to pull the existing description of the special statute of limitations into subdivision (c)(3).

Subdivision (d)

Subdivision (d) in existing section 15182 allows local governments to collect fees to cover the cost of preparing a specific plan. This authority is found in Government Code section 65456. Since fees may be collected to cover the preparation of specific plans, regardless of whether the plans cover residential, commercial, or other uses, OPR proposes to leave subdivision (d) as currently written.

Text of Proposed Amendments

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15182. ~~**Residential**~~ Projects Pursuant to a Specific Plan

(a) **General. Certain residential, commercial and mixed-use projects that are consistent with a specific plan adopted pursuant to Article 8, Chapter 3 of the Government Code are exempt from CEQA, as described in subdivisions (b) and (c) of this section.**

(b) Projects Proximate to Transit.

(1) Eligibility. A residential or mixed-use project, or a project on commercially-zoned property with a floor area ratio of at least 0.75, including any required subdivision or zoning approvals, is exempt if the project satisfies the following criteria:

(A) It is located within one-half mile of an existing or planned rail transit station, ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods;

(B) It is consistent with a specific plan for which an environmental impact report was certified; and

(C) It is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board has accepted the determination that the sustainable communities strategy or the alternative planning strategy would achieve the applicable greenhouse gas emissions reduction targets.

(2) Limitation. Additional environmental review shall not be required for a project described in this subdivision unless one of the events in Section 15162 occurs with respect to that project.

(3) Statute of Limitations. A challenge to a project described in this subdivision is subject to the statute of limitations periods described in Section 15112.

(c) ~~**Exemption**~~ **Residential Projects Implementing Specific Plans**.

(1) Eligibility. Where a public agency has prepared an EIR on a specific plan after January 1, 1980, ~~**no EIR or negative declaration need be prepared for**~~ a residential project undertaken pursuant to and in conformity to that specific plan **is exempt from CEQA** if the project meets the requirements of this section.

~~**(b) Scope.**~~ Residential projects covered by this section include but are not limited to land subdivisions, zoning changes, and residential planned unit developments.

~~**(c)**~~ **(2)** Limitation. ~~**This section is subject to the limitation that i**~~ **I**f after the adoption of the specific plan, an event described in Section 15162 ~~**should**~~ occur**s**, ~~**this**~~ **the** exemption **in this subdivision** shall not apply until the city or county which adopted the specific plan completes a subsequent EIR or a supplement to an EIR on the specific plan. The exemption provided by this section shall again be available to residential projects after the lead agency has filed a Notice of Determination on the specific plan as reconsidered by the subsequent EIR or supplement to the EIR.

(3) Statute of Limitations. A court action challenging the approval of a project under this subdivision for failure to prepare a supplemental EIR shall be commenced within 30 days after the lead agency's decision to carry out or approve the project in accordance with the specific plan.

(d) Fees. The lead agency has authority to charge fees to applicants for projects which benefit from this section. The fees shall be calculated in the aggregate to defray but not to exceed the cost of developing and adopting the specific plan including the cost of preparing the EIR.

~~**(e) Statute of Limitations. A court action challenging the approval of a project under this section for failure to pre-pare a supplemental EIR shall be commenced within 30 days after the lead agency's decision to carry out or approve the project in accordance with the specific plan.**~~

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section **21155.4, Public Resources Code, Sections** ~~**65453**~~ **65456 and 65457**, Government Code**; *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301**.

Using the Existing Facilities Exemption

Proposed Amendments to Section 15301

Background

Section 15301 of the CEQA Guidelines exempts operations and minor alterations of existing facilities from CEQA. The key in determining whether the exemption applies is whether the project involves an *expansion* to an existing use. Projects that involve no or only a negligible expansion may be exempt. This exemption plays an important role in implementing the state's goal of prioritizing infill development.

Explanation of Proposed Amendments

OPR proposes to make two changes to section 15301.

The first change appears in the first sentence of the exemption. It would delete the phrase "beyond that existing at the time of the lead agency's determination." Stakeholders have noted that this phrase could be interpreted to preclude use of this exemption if a facility were vacant "at the time of the lead agency's determination," even if it had a history of productive use, because compared to an empty building *any* use would be an expansion of use. (See, Comments of the Building Industry Association, August 30, 2013.) Such an interpretation is inconsistent with California's policy goals of promoting infill development.

It would also not reflect recent case law regarding "baseline." Those cases have found that a lead agency may look back to historic conditions to establish a baseline where existing conditions fluctuate, again provided that it can document such historic conditions with substantial evidence. (See *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327-328 ("Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods") (quoting *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125); see also *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.)

The phrase at issue was apparently added in response to *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307. The court in that case was asked to decide whether the fact that the facility in question had never undergone CEQA review triggered an exception to the exemption. In analyzing that question, the court in *Bloom* relied on the analysis of a prior Supreme Court decision. It explained:

> Under *Wine Train's* analysis, the term "existing facility" in the class 1 exemption would mean a facility as it exists at the time of the agency's determination, *rather than a facility existing at the time CEQA was enacted*. For purposes of the exception to the categorical exemptions, "significant effect on the environment" would mean a change in

> the environment existing at the time of the agency's determination, rather than a change in the environment that existed when CEQA was enacted.

(*Id*. at p. 1315 (citing *Napa Valley Wine Train, Inc. v. Public Utilities Com*. (1990) 50 Cal.3d 370, 378, fn. 12) (emphasis added).) Nothing in that decision indicates, however, that a lead agency could not consider actual historic use in deciding whether the project would expand beyond that use.

The second change appears in subdivision (c). The purpose of this change is to clarify that improvements within a public right of way that enable use by multiple modes (i.e., bicycles, pedestrians, transit, etc.) would normally not cause significant environmental impacts. This is an important clarification because it would allow other modes to be served within existing road-space. It also is consistent with the Complete Streets Act of 2008, which requires cities and counties to plan for the needs of all users of their streets. In this regard, because such improvements involve operation of public rights of way, they may be similar to the imposition of water conservation requirements for existing water facilities (see *Turlock Irrigation Dist. v. Zanker* (2006) 140 Cal.App.4th 1047,1065), or the regulation of the right of way for parking (see *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 793 ("it is clear that the Class 1 exemption applies to the legislation/project here[; it] involves adjusting the particular group of persons permitted to use 'existing facilities,' in other words, the existing, unmetered, curbside parking on residential streets")). Improvements to the existing right of way have long been understood to fall within the category of activities in subdivision (c), provided that the activity does not involve roadway widening. (*See Erven v. Bd. of Supervisors* (1975) 53 Cal.App.3d 1004.)

Text of Proposed Amendments

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15301. Existing Facilities

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of **existing or former** use ~~**beyond that existing at the time of the lead agency's determination**~~. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of ~~**an existing**~~ use.

Examples include but are not limited to:

(a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;

(b) Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;

(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety**, and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, pedestrian crossings, street trees, and other similar improvements that do not create additional automobile lanes**).

(d) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood;

(e) Additions to existing structures provided that the addition will not result in an increase of more than:

(1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or

(2) 10,000 square feet if:

(A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and

(B) The area in which the project is located is not environmentally sensitive.

(f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities, or mechanical equipment, or topographical features including navigational devices;

(g) New copy on existing on and off-premise signs;

(h) Maintenance of existing landscaping, native growth, and water supply reservoirs (excluding the use of pesticides, as defined in Section 12753, Division 7, Chapter 2, Food and Agricultural Code);

(i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;

(j) Fish stocking by the California Department of Fish and Game;

(k) Division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt;

(l) Demolition and removal of individual small structures listed in this subdivision;

(1) One single-family residence. In urbanized areas, up to three single-family residences may be demolished under this exemption.

(2) A duplex or similar multifamily residential structure. In urbanized areas, this exemption applies to duplexes and similar structures where not more than six dwelling units will be demolished.

(3) A store, motel, office, restaurant, and similar small commercial structure if designed for an occupant load of 30 persons or less. In urbanized areas, the exemption also applies to the demolition of up to three such commercial buildings on sites zoned for such use.

(4) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

(m) Minor repairs and alterations to existing dams and appurtenant structures under the supervision of the Department of Water Resources.

(n) Conversion of a single family residence to office use.

(o) Installation, in an existing facility occupied by a medical waste generator, of a steam sterilization unit for the treatment of medical waste generated by that facility provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.

(p) Use of a single-family residence as a small family day care home, as defined in Section 1596.78 of the Health and Safety Code.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code; ***Communities for a Better Environment v. South Coast Air Quality Management Dist*. (2010) 48 Cal.4th 310;** *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307.

Updating the Environmental Checklist

Proposed Amendments to Appendix G

Background

Appendix G in the CEQA Guidelines contains a sample initial study format. The purpose of an initial study is to assist lead agencies in determining whether a project may cause a significant impact on the environment. (CEQA Guidelines, § 15063.) To help guide that determination, Appendix G asks a series of questions regarding a range of environmental resources and potential impacts. Appendix G's questions are not an exhaustive list of all potential impacts. (*Protect the Historic Amador Waterways, supra,* 116 Cal.App.4th at pp. 1109-1112 (seasonal reduction of surface flow in local streams may be an impact on the environment, even though that particular impact is not specifically listed in Appendix G).) For that reason, Appendix G advises that "[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered." Appendix G further advises that its environmental checklist is only a *sample* form that can be tailored to address local conditions and project characteristics.

When the checklist was originally developed, it contained only a handful of questions. Over time, the list of questions has grown in response to increasing awareness of the effects of development on the environment. Currently, the sample checklist contains 89 questions divided into 18 categories of potential impacts. Depending on the project's location and circumstances, the sample checklist questions may be both under- and over-inclusive. Because the purpose of an initial study is to provoke thought and investigation, and because the checklist cannot contain an exhaustive list, the sample in Appendix G should, in OPR's view, contain questions that are (1) broadly worded, (2) highlight environmental issues *commonly* associated with *most* types of new development, and (3) alert lead agencies to environmental issues that might otherwise be overlooked in the project planning and approval process.

As part of this comprehensive update to the CEQA Guidelines, OPR is investigating ways to enhance both the efficiency and efficacy of the environmental review process. To that end, OPR proposes to revise the sample environmental checklist in several ways. First, it proposes to reframe or delete certain questions that should be addressed in the planning process to focus attention on those issues that must be addressed in the CEQA process. Second, it proposes to add questions that, although required by current law, tend to be overlooked in the environmental review process. Finally, it proposes to revise the questions related to transportation impacts, and wildfire risk as required by SB 743 and SB 1241, respectively, and relocate questions related to paleontological resources as required by AB 52 (Gatto, 2014).

While OPR originally proposed a far more streamlined and consolidated set of questions, stakeholders objected that confusion might ensue. OPR's agrees that additional discussion of ways to streamline the checklist is appropriate. The changes proposed in this package are more narrowly tailored. A narrative

description of the changes, and the intent behind those changes, is provided below, followed by the actual text of the changes in underline/strikeout format.

Deleted or Consolidated Questions

OPR proposes to delete or consolidate numerous questions from the Appendix G checklist. Those questions, and the reason that they are proposed for deletion, are discussed below.

Soils Incapable of Supporting Septic Systems

In Section VI (Geology and Soils), Appendix G currently asks whether a project would "[h]ave soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water." According to the U.S. Environmental Protection Agency, inappropriately placed or operated septic systems may be a source of significant groundwater contamination.

OPR proposes to revise the questions in Appendix G related to water quality. Specifically, among other revisions, OPR proposes to clarify that the question asking whether a project would "substantially degrade water quality" refers to both surface and ground water quality. Thus, as revised, the broader question about groundwater quality would capture not just impacts from inappropriately placed septic tanks, but also any other possible sources of uncontrolled leachate.

Conflicts with a Habitat Conservation Plan

Existing Appendix G asks whether a project would conflict with a habitat conservation plan and other related plans in two separate sections: biological resources and land use planning. OPR proposes to delete the question from the land use planning section. The question in the biological resources section would remain unchanged.

Wastewater Treatment Requirements

In the section on utilities, Appendix G currently asks whether a project would exceed wastewater treatment requirements of an applicable regional water quality control board. Similarly, in the water quality section, Appendix G asks whether a project would violate any waste discharge requirements. Since the question in the water quality section would encompass wastewater treatment requirements as well as other water quality standards, OPR proposes to delete the question from the utilities section.

Updated Considerations

As part of the reorganization of Appendix G, OPR also proposes to update some considerations or questions to the checklist. Those considerations, and the reason that they are proposed to be revised, are discussed below.

Aesthetics

Existing Appendix G asks whether a project would degrade the existing visual character of a site. Visual character is a particularly difficult issue to address in the context of environmental review, in large part

because it calls for exceedingly subjective judgments. Both federal and state courts have struggled with the issue of precisely what questions related to aesthetics are relevant to an analysis of environmental impact. (See, e.g., *Maryland-National Cap. Pk. & Pl. Com'n. v. U.S. Postal Serv*. (D.C. Cir. 1973) 159 U.S. App. D.C. 158; see also *Bowman v. City of Berkeley* (2006) 122 Cal.App.4th 572.) As a practical matter, infill projects are often challenged on the grounds of aesthetics. (See, e.g., Pub. Resources Code, § 21099(d) (exempting certain types of infill projects from the requirement to analyze aesthetics).)

For these reasons, OPR proposes to recast the existing question on "visual character" to ask whether the project is consistent with zoning or other regulations governing visual character. This change is intended to align with the analysis of the aesthetics issue in the *Bowman* case, *supra*. The court in that case, which involved a challenge to a multifamily residential project in an urban area, noted:

> Virtually every city in this state has enacted zoning ordinances for the purpose of improving the appearance of the urban environment" …, and architectural or design review ordinances, adopted "solely to protect aesthetics," are increasingly common…. While those local laws obviously do not preempt CEQA, we agree with the Developer and the amicus curiae brief of the Sierra Club in support of the Project that aesthetic issues like the one raised here are ordinarily the province of local design review, not CEQA.

(*Bowman*, *supra*, 122 Cal.App.4th at p. 593 (citations omitted).) This revision is also consistent with the proposed changes in sections 15064 and 15064.7 that recognize the appropriate role of environmental standards in a CEQA analysis.

Air Quality

Existing Appendix G asks whether the project would create objectionable odors. OPR proposes to update this question in several ways. First, the term "objectionable" is subjective. Sensitivities to odors may vary widely. Therefore, OPR proposes to recast the question to focus on the project's potential to cause adverse impacts to substantial numbers of people. (See *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 492–493 ("Under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons"); see also *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 279.) Similarly, OPR proposes to include odor as one of several examples of potential localized air quality impacts.

Biological Resources and State Wetlands

Appendix G currently asks whether a project would substantially adversely affect a federally protected wetland. California law protects all waters of the state, while the federal Clean Water Act governs only "navigable waters". Since nothing in CEQA's definition of environment limits consideration to federally regulated resources, OPR proposes to clarify in Appendix G that lead agencies should consider impacts to wetlands that are protected by either the state or the federal government.

Cultural Resources

AB 52 required an update to Appendix G to separate the consideration of paleontological resources from tribal cultural resources and update the relevant sample questions, and to add consideration of tribal cultural resources with relevant sample questions. In September 2016, the Office of Administrative Law approved changes to Appendix G adding consideration of tribal cultural resources. This proposed package includes an amendment to Appendix G that separates the consideration of paleontological resources from cultural resources, and includes consideration of paleontological resources among the relevant sample questions related to geology and soils.

Energy

As explained in the discussion of proposed amendments to section 15126.2, CEQA has long required analysis of energy impacts. (Pub. Resources Code, § 21100(b)(3) (added in 1974, requiring EIRs to include measures to avoid wasteful and inefficient uses of energy); *California Clean Energy Com. v. City of Woodland* (2014) 225 Cal.App.4th 173.) However, the description of the required analysis sits largely unnoticed in a stand-alone Appendix F in the CEQA Guidelines. To better integrate the energy analysis with the rest of CEQA, OPR proposes to add relevant questions regarding potential energy impacts to the sample environmental checklist in Appendix G.

Impervious Surfaces

Appendix G currently asks a series of questions about hydrology, one of which asks whether the project will alter the drainage patterns of the site through alteration of the course of a stream or river. Another relevant factor in determining the effect of a project on existing drainage systems, however, is how much impervious surfaces a project might add. (See State Water Resources Control Board, Non-Point Source Encyclopedia, §§ 3.1A (Planning and Design – Watershed and Groundwater Protection), 3.1B (Planning and Design – Land Development).) OPR's Technical Advisory on "low impact design" identifies the development of new impervious surfaces as a contributor to non-point source pollution and hydromodification. (Office of Planning and Research, "CEQA and Low Impact Development Stormwater Design: Preserving Stormwater Quality and Stream Integrity Through California Environmental Quality Act (CEQA) Review" (August 2009).) Therefore, OPR proposes to add "impervious surfaces" to the considerations in the hydrology portion of the checklist.

Notably, the proposed addition of impervious surfaces as a consideration is not intended to imply that *any* addition of impervious material will necessarily lead to a significant impact. Rather, the modified question asks whether the addition of impervious surface would lead to substantial erosion, exceed the capacity of stormwater drainage systems, etc. Also, some water quality permits do already address the addition of impervious surfaces, and, as provided in updated sections 15064 and 15064.7, a project's compliance with those requirements will be relevant in determining whether the added surfaces create a significant impact.

Geology and Soils

OPR proposes amendments to the questions in Appendix G related to geology and soils by clarifying that agencies should consider the direct and indirect impacts to those resources. This change is consistent

with CEQA's general requirement that agencies consider the direct and indirect impacts caused by a proposed project. (See generally, Pub. Resources Code, §§ 21065 [definition of a "project"], 21065.3 [definition of a "project-specific effect"].) And as noted earlier, this proposed package includes an amendment to Appendix G that separates the consideration of paleontological resources from cultural resources, and includes consideration of paleontological resources among the relevant sample questions related to geology and soils.

Groundwater

OPR proposes to make two changes to the existing question in Appendix G asking about a project's impacts to groundwater. First, the existing question asks whether a project will "substantially *deplete*" groundwater supplies. The word "deplete" could be interpreted to mean "empty". Therefore, OPR proposes to revise the question to ask whether the project would "substantially *decrease* groundwater supplies." Second, the existing question asks whether the project would lower the groundwater table level and provides the following example: "e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted." There are many other potential impacts that could result from lowering groundwater levels, including subsidence, altering surface stream hydrology, causing migration of contaminants, etc. Therefore, OPR proposes to delete the example from the question. These proposed changes are consistent with the new regime governing groundwater passed in 2014.

Land Use Plans

Appendix G currently asks whether a project conflicts with certain land use plans. The question largely mirrors section 15125(d), which requires an EIR to analyze any inconsistencies with any applicable plans. OPR proposes to revise that question in two ways in order to better focus the analysis.

First, OPR proposes to clarify that the focus of the analysis should not be on the "conflict" with the plan, but instead, on any adverse environmental impact that might result from a conflict. For example, destruction of habitat that results from development in conflict with a habitat conservation plan might lead to a significant environmental impact. The focus, however, should be on the impact on the environment, not on the conflict with the plan. (See, e.g., *Marin Mun. Water Dist. v. Kg Land Cal. Corp*. (1991) 235 Cal.App.3d 1652, 1668 ("A local agency engaged in EIR analysis may not ignore regional needs and the cumulative impacts of a proposed project. … Thus the Guidelines require an EIR to discuss any inconsistencies between the proposed project and applicable general and regional plans"); see also Pub. Resources Code, § 21100(e) ("Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, *may be used in cumulative impact analysis*") (emphasis added).) Application of a density bonus to exceed limits in a general plan or zoning, on the other hand, might not lead to any environmental impact. (See, e.g., *Wollmer v. City of Berkeley* (2009) 179 Cal.App.4th 933.)

Second, OPR proposes to delete the phrase "with jurisdiction over the project" from the question, again for the purpose of focusing the analysis on any *actual environmental impacts* that might result from the project. Finally, OPR proposes to delete the list of examples of plans from the question. Section 15125(d)

contains numerous examples of potentially relevant land use plans, and so repetition in the question in Appendix G is not necessary.

Population Growth

Appendix G currently asks whether a project will cause substantial population growth. OPR proposes to clarify that the question should focus on whether such growth is *unplanned*. Growth that is planned, and the environmental effects of which have been analyzed in connection with a land use plan or a regional plan, should not by itself be considered an impact.

Transportation

OPR proposes several changes to the questions related to transportation in Appendix G. First, OPR proposes to revise the questions related to "measures of effectiveness" so that the focus is more on the circulation element and other plans governing transportation. Second, OPR proposes to delete the second question related to level of service, and proposes to insert references to proposed new Guideline section 16054.3, subdivisions (b)(1) and (b)(2). Third, OPR proposes to clarify the question related to design features.

Water Supply

Appendix G currently asks whether the project has adequate water supplies. OPR proposes to update the question to better reflect the factors identified by the Supreme Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, as well as the water supply assessment and verification statutes. (Wat. Code, § 10910; Gov. Code, § 66473.7.)

Wildfire

Senate Bill 1241 (Kehoe, 2012) requires the Office of Planning and Research, the Natural Resources Agency, and CalFire to develop "amendments to the initial study checklist of the [CEQA Guidelines] for the inclusion of questions related to fire hazard impacts for projects located on lands classified as state responsibility areas, as defined in section 4102, and on lands classified as very high fire hazard severity zones, as defined in subdivision (i) of section 51177 of the Government Code." (Pub. Resources Code, § 21083.01 (emphasis added).) Proposed additions implementing SB 1241 are included in this package.

Proposed Revisions

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~. [*Please note: some of formatting in the following table may be off*.]

Appendix G

Environmental Checklist Form

NOTE: The following is a sample form ~~and~~ **that** may be tailored to satisfy individual agencies' needs and project circumstances. It may be used to meet the requirements for an initial study when the criteria set forth in CEQA Guidelines have been met. Substantial evidence of potential impacts that are not listed on this form must also be considered. The sample questions in this form are intended to encourage thoughtful assessment of impacts, and do not necessarily represent thresholds of significance.

1. Project title:_____

2. Lead agency name and address:

   _____
   _____
   _____

3. Contact person and phone number: _____

4. Project location: _____

5. Project sponsor's name and address:

   _____
   _____
   _____

6. General plan designation: _____ 7. Zoning:_____

8. Description of project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)

   _____
   _____
   _____
   _____

9. Surrounding land uses and setting: Briefly describe the project's surroundings:

_____
_____
_____
_____

10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.)

_____
_____
_____
_____

11. Have California Native American tribes traditionally and culturally affiliated with the project area requested consultation pursuant to Public Resources Code section 21080.3.1? If so, has consultation begun?

_____
_____
_____
_____

NOTE: Conducting consultation early in the CEQA process allows tribal governments, lead agencies, and project proponents to discuss the level of environmental review, identify and address potential adverse impacts to tribal cultural resources, and reduce the potential for delay and conflict in the environmental review process. (See Public Resources Code section 21083.3.2.) Information may also be available from the California Native American Heritage Commission's Sacred Lands File per Public Resources Code section 5097.96 and the California Historical Resources Information System administered by the California Office of Historic Preservation. Please also note that Public Resources Code section 21082.3(c) contains provisions specific to confidentiality.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

☐	Aesthetics	☐	Agriculture and Forestry Resources	☐	Air Quality
☐	Biological Resources	☐	Cultural Resources	☐	**Energy**
☐	Geology / Soils	☐	Greenhouse Gas Emissions	☐	Hazards & Hazardous Materials
☐	Hydrology / Water Quality	☐	Land Use / Planning	☐	Mineral Resources
☐	Noise	☐	Population / Housing	☐	Public Services
☐	Recreation	☐	Transportation ~~/ **Traffic**~~	☐	Tribal Cultural Resources
☐	Utilities / Service Systems	☐	**Wildfire**	☐	Mandatory Findings of Significance

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the

effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature	Date
Signature	Date

EVALUATION OF ENVIRONMENTAL IMPACTS:

1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from "Earlier Analyses," as described in (5) below, may be cross-referenced).

5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section

15063(c)(3)(D). In this case, a brief discussion should identify the following:

a) Earlier Analysis Used. Identify and state where they are available for review.

b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

9) The explanation of each issue should identify:

a) the significance criteria or threshold, if any, used to evaluate each question; and

b) the mitigation measure identified, if any, to reduce the impact to less than significance

10) Other checklist forms may be appropriate in certain circumstances. For example:

a) When the project under consideration is a subsequent approval for a previously approved project, the checklist should ask whether a potential impact is a new significant impact or a substantial increase in the severity of previously identified significant impact. (See CEQA Guidelines § 15162.) If the project would not cause new or more severe impacts, the lead agency may adopt an addendum. (See CEQA Guidelines § 15164.)

b) When the project is an infill project that satisfies the performance standards in Appendix M, the agency should use the checklist in Appendix N. (See CEQA Guidelines § 15183.3.)

c) When the project is a residential, mixed use or employment center project, and is located within a transit priority area, the project's aesthetic or parking impacts shall not be considered to be significant impacts on the environment. (See Public Resources Code §

21099.)

SAMPLE QUESTION

Issues:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
I. AESTHETICS. Would the project:				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☐	☐
b)-Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☐
c) Substantially degrade the existing visual character or quality of **public views of** the site and its surroundings? **If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality**?	☐	☐	☐	☐
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	☐	☐	☐	☐
Note: certain projects within transit priority areas need not evaluate aesthetics. (Pub. Resources Code, § 21099.)				
II. AGRICULTURE AND FOREST**RY** RESOURCES. In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts				

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. -- Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☐
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☐
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?	☐	☐	☐	☐
d) Result in the loss of forest land or conversion of forest land to non-forest use?	☐	☐	☐	☐
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
conversion of forest land to non-forest use?				
III. AIR QUALITY. Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☐	☐
b) Violate any air quality standard or ~~contribute substantially to~~ **result in a cumulatively considerable net increase in** an existing or projected air quality violation?	☐	☐	☐	☐
~~**c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?**~~	☐	☐	☐	☐
~~d)~~ **c)** Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☐	☐
~~e)~~ **d)** ~~**Create objectionable**~~ **Result in substantial emissions (such as** odors **or dust) adversely** affecting a substantial number of people?	☐	☐	☐	☐
IV. BIOLOGICAL RESOURCES. Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	☐	☐	☐	☐
c) Have a substantial adverse effect on **state or** federally protected wetlands ~~**as defined by Section 404 of the Clean Water Act**~~ (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	☐	☐	☐	☐
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☐
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☐	☐	☐
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
V. CULTURAL RESOURCES. Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource **pursuant to** ~~**as defined in**~~ § 15064.5?	☐	☐	☐	☐
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	☐	☐	☐	☐
~~**c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?**~~	~~☐~~	~~☐~~	~~☐~~	~~☐~~
~~**d)**~~ **c)** Disturb any human remains, including those interred outside of dedicated cemeteries?	☐	☐	☐	☐
VI. ENERGY. Would the project:				
a) Result in a potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy, or wasteful use of energy resources, during project construction or operation?	☐	☐	☐	☐
b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?	☐	☐	☐	☐
VII. GEOLOGY AND SOILS. Would the project:				

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) ~~**Expose people or structures to**~~ **Directly or indirectly cause** potential substantial adverse effects, including the risk of loss, injury, or death involving:	☐	☐	☐	☐
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☐	☐
ii) Strong seismic ground shaking?	☐	☐	☐	☐
iii) Seismic-related ground failure, including liquefaction?	☐	☐	☐	☐
iv) Landslides?	☐	☐	☐	☐
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☐	☐
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☐	☐
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial **direct or indirect** risks to life or property?	☐	☐	☐	☐
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
disposal of waste water?				
f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	☐	☐	☐	☐
VIII. GREENHOUSE GAS EMISSIONS. Would the project:				
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	☐	☐	☐
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	☐	☐	☐	☐
IX. HAZARDS AND HAZARDOUS MATERIALS. Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☐	☐	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☐	☐	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	☐
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
65962.5 and, as a result, would it create a significant hazard to the public or the environment?				
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard **or excessive noise** for people residing or working in the project area?	☐	☐	☐	☐
~~**f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?**~~	~~☐~~	~~☐~~	~~☐~~	~~☐~~
~~**g)**~~ **f)** Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☐
~~**h)**~~ **g)** Expose people or structures**, either directly or indirectly,** to a significant risk of loss, injury or death involving wildland fires ~~**including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands**~~?	☐	☐	☐	☐
X. HYDROLOGY AND WATER QUALITY. Would the project:				
a) Violate any water quality standards or waste discharge requirements **or otherwise substantially degrade surface or ground water quality**?	☐	☐	☐	☐
b) Substantially ~~**deplete**~~ **decrease** groundwater supplies or interfere substantially with groundwater recharge	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
such that **the project may impede sustainable groundwater management of the basin** ~~**(e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)**~~?				
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river **or through the addition of impervious surfaces**, in a manner which would**:**	☐	☐	☐	☐
(i) result in substantial erosion or siltation on- or off-site**;**	☐	☐	☐	☐
(ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;	☐	☐	☐	☐
(iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or	☐	☐	☐	☐
(iv) impede or redirect flood flows?				
d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?	☐	☐	☐	☐
e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
~~**d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?**~~	☐	☐	☐	☐
~~**e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?**~~	☐	☐	☐	☐
~~**f) Otherwise substantially degrade water quality?**~~	☐	☐	☐	☐
~~**g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?**~~	☐	☐	☐	☐
~~**h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?**~~	☐	☐	☐	☐
~~**i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?**~~	☐	☐	☐	☐
~~**j) Inundation by seiche, tsunami, or mudflow?**~~	☐	☐	☐	☐

XI. LAND USE AND PLANNING. Would the project:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Physically divide an established community?	☐	☐	☐	☐
b) ~~**Conflict**~~ **Cause a significant environmental impact due to a conflict** with any ~~**applicable**~~ land use plan, policy, or regulation ~~**of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance)**~~ adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☐	☐
~~**c) Conflict with any applicable habitat conservation plan or natural community conservation plan?**~~	~~☐~~	~~☐~~	~~☐~~	~~☐~~
XII. MINERAL RESOURCES. Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☐
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☐
XIII. NOISE. Would the project result in:				
a) **G**eneration of **a substantial temporary or permanent increase in ambient** noise levels **in the vicinity of the project** in excess of standards established in the local general plan or noise ordinance, or	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
applicable standards of other agencies?				
b) **G**eneration of excessive groundborne vibration or groundborne noise levels?	☐	☐	☐	☐
~~**c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?**~~	~~☐~~	~~☐~~	~~☐~~	~~☐~~
~~**d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?**~~	~~☐~~	~~☐~~	~~☐~~	~~☐~~
~~**e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?**~~	~~☐~~	~~☐~~	~~☐~~	~~☐~~
~~**f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?**~~	~~☐~~	~~☐~~	~~☐~~	~~☐~~
XIV. POPULATION AND HOUSING. Would the project:				
a) Induce substantial **unplanned** population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☐
b) Displace substantial numbers of existing **people or** housing, necessitating the construction of replacement housing	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
elsewhere?				
~~**c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?**~~	☐	☐	☐	☐
XV. PUBLIC SERVICES.				
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:	☐	☐	☐	☐
Fire protection?	☐	☐	☐	☐
Police protection?	☐	☐	☐	☐
Schools?	☐	☐	☐	☐
Parks?	☐	☐	☐	☐
Other public facilities?	☐	☐	☐	☐
XVI. RECREATION.				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
facility would occur or be accelerated?				
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	☐	☐	☐	☐
XVII. TRANSPORTATION/~~**TRAFFIC**~~**.** Would the project:				
a) Conflict with a~~**n applicable**~~ plan, ordinance or policy ~~**establishing measures of effectiveness for the**~~ **addressing** the circulation system**, including transit, roadways, bicycle lanes and pedestrian paths?** ~~**, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?**~~	☐	☐	☐	☐
b) ~~**Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?**~~ **For a land use project, would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(1)?**	☐	☐	☐	☐
c) ~~**Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that**~~	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
~~**results in substantial safety risks**~~? **For a transportation project, would the project conflict with or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(2)?**				
d) Substantially increase hazards due to a **geometric** design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☐
e) Result in inadequate emergency access?	☐	☐	☐	☐
~~**f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?**~~	☐	☐	☐	☐
XVIII. TRIBAL CULTURAL RESOURCES.				
a) Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:	☐	☐	☐	☐
i) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.	☐	☐	☐	☐
XVIX. UTILITIES AND SERVICE SYSTEMS. Would the project:				
~~a) **Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?**~~	☐	☐	☐	☐
~~b)~~ **a)** Require or result in the **relocation or** construction of new **or expanded** water**,** ~~**or**~~ wastewater treatment **or storm water drainage, electric power, natural gas, or telecommunications** facilities ~~**or expansion of existing facilities**~~, the construction **or relocation** of which could cause significant environmental effects?	☐	☐	☐	☐
~~**c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?**~~	☐	☐	☐	☐
~~d)~~ **b)** Have sufficient water supplies available to serve the project **and reasonably foreseeable future development during normal, dry and multiple dry years** ~~**from existing**~~	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
~~**entitlements and resources, or are new or expanded entitlements needed**~~?				
~~**e)**~~ **c)** Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☐	☐
~~**f)**~~ **d)** ~~**Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?**~~ **Generate solid waste in excess of State or local standards or in excess of the capacity of local infrastructure?**	☐	☐	☐	☐
e) Negatively impact the provision of solid waste services or impair the attainment of solid waste reduction goals?	☐	☐	☐	☐
~~**g)**~~ **f)** Comply with federal, state, and local **management and reduction** statutes and regulations related to solid waste?	☐	☐	☐	☐
XX. WILDFIRE. If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:				
a) Impair an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☐
b) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?	☐	☐	☐	☐
d) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?	☐	☐	☐	☐
XXI. MANDATORY FINDINGS OF SIGNIFICANCE.				
a) Does the project have the potential to **substantially** degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, **substantially** reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☐	☐	☐
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☐	☐

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☐	☐	☐

Note: Authority cited: Sections 21083, 21083.05, Public Resources Code. Reference: Section 65088.4, Gov. Code; Sections 21080, 21083.05, 21095, Pub. Resources Code; *Eureka Citizens for Responsible Govt. v. City of Eureka* (2007) 147 Cal.App.4th 357; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th at 1109; *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656.

Remedies and Remand

Proposed New Section 15234

Background

CEQA is in most instances enforced through a form of judicial review known as a writ of mandate proceeding.[1] In reviewing a petition for writ of mandate, the court examines an agency's administrative record to determine whether it properly implemented CEQA in connection with a project approval. If the court concludes that the agency did not comply with CEQA, it may order the agency to take further action before proceeding with the project. At that point, questions may arise regarding what further environmental review is needed, and what project activities, if any, may continue while the agency takes further action. Proposed new section 15234 will assist agencies in complying with CEQA in response to a court's remand, and help the public and project proponents understand the effect of the remand on project implementation. Specifically, proposed new section 15234 reflects the language of the statutory provision governing remedies in CEQA cases, Public Resources Code section 21168.9, as well as case law interpreting that statute.

Explanation of Proposed Section 15234

Proposed subdivision (a) is necessary to explain to public agencies and the public how CEQA litigation may affect project implementation. First, it clarifies that not every violation of CEQA will compel a court to set aside project approvals. Public Resources Code section 21005 provides that "courts shall continue to follow the established principle that there is no presumption that error is prejudicial." The California Supreme Court recently reiterated that "[i]nsubstantial or merely technical omissions are not grounds for relief." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 463.) In order to justify setting aside a project approval, a violation must "preclude relevant information from being presented to the public agency." (Pub. Resources Code, § 21005, subd. (a).)

Second, subdivision (a) states that, except as provided in Public Resources Code section 21168.9 itself, CEQA does not limit the traditional equitable powers of the judicial branch and that remedies may be tailored based on the circumstances of the project. It further explains that the court may order the agency to set aside all or a portion of the project approvals, and may require the agency to conduct additional environmental review.

[1] Exceptions apply where challenges to certain types of agency actions specifically require a different procedure. For example, Government Code section 56103 requires that any challenge to any change of organization, reorganization, or sphere of influence determination approved by a local agency formation commission be accomplished through a validating action pursuant to Code of Civil Procedure section 860 et seq. (See *Protect Agricultural Land v. Stanislaus County Local Agency Formation Com.* (2014) 223 Cal.App.4th 550.)

Next, subdivision (b) clarifies that in certain circumstances, portions of the project approvals or the project itself may proceed while the agency conducts further review. Specifically, section 21168.9 of the Public Resources Code provides that a court may allow certain project approvals or activities to proceed as long as continued implementation of the project would not prevent the agency from fully complying with CEQA. In 1993, the legislature amended that section "to expand the authority of courts to fashion a remedy that permits a part of the project to continue while the agency seeks to correct its CEQA violations." (*Poet, LLC v. State Air Resources Bd*. (2013) 218 Cal.App.4th 681, 756.)

Next, subdivision (c) codifies the outcome in *Poet, LLC v. State Air Resources Bd*. (2013) 218 Cal.App.4th 681, in which the Court of Appeal found that the California Air Resources Board had failed to fully comply with CEQA in enacting Low Carbon Fuel Standards regulations, but nevertheless exercised its equitable discretion to leave the challenged regulations in place during the remand period. The court reasoned that a remedy that left the regulations in place would achieve a higher level of environmental protection than would a remedy that left them inoperative.

Finally, subdivision (d) addresses how an agency should proceed with additional environmental review if required by a court. Specifically, it indicates that where a court upholds portions of an agency's environmental document, additional review of topics covered in the upheld portions is only required if the project or circumstances surrounding the project have changed in a way that results in new or worse environmental impacts. To illustrate, assume that a court concludes that an agency's analysis of noise impacts is inadequate, but that the remainder of its environmental impact report complies with CEQA. The agency may prepare a revised environmental impact report that focuses solely on noise. It would only need to revise the air quality analysis, for example, if the agency concluded that changes in the circumstances surrounding the project would result in substantially more severe air quality impacts.

Text of Proposed Section 15234

***New* Section 15234. Remand**

(a) Courts may fashion equitable remedies in CEQA litigation. If a court determines that a public agency has not complied with CEQA, and that noncompliance was a prejudicial abuse of discretion, the court shall issue a peremptory writ of mandate requiring the agency to do one or more of the following:

> **(1) void the project approval, in whole or in part;**
>
> **(2) suspend any project activities that preclude consideration and implementation of mitigation measures and alternatives necessary to comply with CEQA; or**
>
> **(3) take specific action necessary to bring the agency's consideration of the project into compliance with CEQA.**

(b) Following a determination described in subdivision (a), an agency may only proceed with those portions of the challenged determinations, findings, or decisions for the project or those project activities that the court finds:

(1) are severable;

(2) will not prejudice the agency's compliance with CEQA as described in the court's peremptory writ of mandate; and

(3) complied with CEQA.

(c) An agency may also proceed with a project, or individual project activities, during the remand period where the court has exercised its equitable discretion to permit project activities to proceed during that period because the environment will be given a greater level of protection if the project remains operative than if it were inoperative during that period.

(d) As to those portions of an environmental document that a court finds to comply with CEQA, additional environmental review shall only be required as required by the court consistent with principles of res judicata.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21005, 21168.9; *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439; *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260; *Golden Gate Land Holdings, LLC v. East Bay Regional Park Dist*. (2013) 215 Cal.App.4th 353; *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681; *Silverado Modjeska Recreation and Parks Dist. v. County of Orange* (2011) 197 Cal.App.4th 282.

Substance Improvements

The following pages describe substantive improvements to the CEQA Guidelines. These improvements address:

- Energy Impacts Analysis
- Water Supply Analysis
- Transportation Impacts Analysis
- Greenhouse Gas Analysis

Analysis of Energy Impacts

Proposed Amendments to Section 15126.2

Background

In 1974, the Legislature adopted the Warren-Alquist State Energy Resources Conservation and Development Act. (Pub. Resources Code, § 25000 et seq.) That act created what is now known as the California Energy Commission, and enabled it to adopt building energy standards. (See, e.g., *id.* at § 25402.) At that time, the Legislature found the "rapid rate of growth in demand for electric energy is in part due to wasteful, uneconomic, inefficient, and unnecessary uses of power and a continuation of this trend will result in serious depletion or irreversible commitment of energy, land and water resources, and potential threats to the state's environmental quality." (*Id*. at § 25002; see also § 25007 ("It is further the policy of the state and the intent of the Legislature to employ a range of measures to reduce wasteful, uneconomical, and unnecessary uses of energy, thereby reducing the rate of growth of energy consumption, prudently conserve energy resources, and assure statewide environmental, public safety, and land use goals").)

The same year that the Legislature adopted Warren-Alquist, it also added section 21100(b)(3) to CEQA, requiring environmental impact reports to include "measures to reduce the wasteful, inefficient, and unnecessary consumption of energy." As explained by a court shortly after it was enacted, the "energy mitigation amendment is *substantive* and not procedural in nature and was enacted for the purpose of requiring the lead agencies to focus upon the energy problem in the preparation of the final EIR." (*People v. County of Kern* (1976) 62 Cal.App.3d 761, 774 (emphasis added).) It compels an affirmative investigation of the project's potential energy use and feasible ways to reduce that use.

Though Appendix F of the CEQA Guidelines has contained guidance on energy analysis for decades, implementation among lead agencies has not been consistent. (See, e.g., *California Clean Energy Committee v. City of Woodland*, *supra,* 225 Cal.App.4th 173, 209.) While California is a leader in energy conservation, the importance of addressing energy impacts has not diminished since 1974. On the contrary, given the need to avoid the effects of climate change, energy use is an issue that we cannot afford to ignore. As the California Energy Commission's Integrated Energy Policy Report (2016) explains:

> Energy fuels the economy, but it is also the biggest source of greenhouse gas emissions that lead to climate change. Despite California's leadership, Californians are experiencing the impacts of climate change including higher temperatures, prolonged drought, and more wildfires. There is an urgent need to reduce greenhouse gas emissions and increase the state's resiliency to climate change. . . . ¶ . . . With transportation accounting for about 37 percent of California's greenhouse gas emissions in 2014, transforming California's transportation system away from gasoline to zero-emission and near-zero-emission vehicles is a fundamental part of the state's efforts to

> meet its climate goals. . . . ¶ . . . Energy efficiency and demand response are also key components of the state's strategy to reduce greenhouse gas emissions.

(*Id.* at pp. 5, 8, 10.)

Appendix F was revised in 2009 to clarify that analysis of energy impacts is mandatory. OPR today proposes to add a subdivision in section 15126.2 on energy impacts to further elevate the issue, and remove any question about whether such an analysis is required.

Explanation of Proposed Amendments

OPR proposes to add a new subdivision (b) to section 15126.2 discussing the required contents of an environmental impact report. The new subdivision would specifically address the analysis of a project's potential energy impacts. This addition is necessary for several reasons explained in detail below.

The first sentence clarifies that an EIR must analyze whether a project will result in significant environmental effects due to "wasteful, inefficient, or unnecessary consumption of energy." This clarification is necessary to implement Public Resources Code section 21100(b)(3). Since the duty to impose mitigation measures arises when a lead agency determines that the project may have a significant effect, section 21100(b)(3) necessarily requires both analysis and a determination of significance in addition to energy efficiency measures. (Pub. Resources Code, § 21002.)

The second sentence further clarifies that all aspects of the project must be considered in the analysis. This clarification is consistent with the rule that lead agencies must consider the "whole of the project" in considering impacts. It is also necessary to ensure that lead agencies consider issues beyond just building design. (*See*, *e.g.*, *California Clean Energy Com. v. City of Woodland*, *supra,* 225 Cal.App.4th at pp. 210-212.) The analysis of vehicle miles traveled provided in proposed section 15064.3 (implementing Public Resources Code section 21099 (SB 743)) on transportation impacts may be relevant to this analysis.

The third sentence signals that the analysis of energy impacts may need to extend beyond building code compliance. (*Ibid*.) The requirement to determine whether a project's use of energy is "wasteful, inefficient, and unnecessary" compels consideration of the project in its context. (Pub. Resources Code, § 21100(b)(3).) While building code compliance is a relevant factor, the generalized rules in the building code will not necessarily indicate whether a particular project's energy use could be improved. (*Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 933 (after analysis, lead agency concludes that project proposed to be *at least 25% more energy efficient than the building code requires* would have a less than significant impact); see also CEQA Guidelines, Appendix F, § II.C.4 (describing building code compliance as one of several different considerations in determining the significance of a project's energy impacts).) That the Legislature added the energy analysis requirement in CEQA at the same time that it created an Energy Commission authorized to impose building energy standards indicates that compliance with the building code is a necessary but not exclusive means of satisfying CEQA's independent requirement to analyze energy impacts broadly.

The new proposed subdivision (b) also provides a cross-reference to Appendix F. This cross-reference is necessary to direct lead agencies to the more detailed provisions contained in that appendix.

Finally, new proposed subdivision (b) cautions that the analysis of energy impacts is subject to the rule of reason, and must focus on energy demand actually caused by the project. This sentence is necessary to place reasonable limits on the analysis. Specifically, it signals that a full "lifecycle" analysis that would account for energy used in building materials and consumer products will generally not be required. (See also Cal. Natural Resources Agency, Final Statement of Reasons for Regulatory Action: Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97 (Dec. 2009) at pp. 71-72.)

Text of Proposed Amendments to Section 15126.2

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15126.2. Consideration and Discussion of Significant Environmental Impacts

(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant environmental effects of the proposed project. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there. Similarly, the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans, addressing such hazards areas.

(b) **Energy Impacts. If the project may result in significant environmental effects due to wasteful, inefficient, or unnecessary consumption of energy, the EIR shall analyze and mitigate that energy use. This analysis should include the project's energy use for all project phases and components, including transportation-related energy, during construction and operation. In addition to building code**

compliance, other relevant considerations may include, among others, the project's size, location, orientation, equipment use and any renewable energy features that could be incorporated into the project. (Guidance on information that may be included in such an analysis is presented in Appendix F.) This analysis is subject to the rule of reason and shall focus on energy demand that is caused by the project. This analysis may be included in related analyses of air quality, greenhouse gas emissions or utilities in the discretion of the lead agency.

(c) Significant Environmental Effects Which Cannot be Avoided if the Proposed Project is Implemented. Describe any significant impacts, including those which can be mitigated but not reduced to a level of insignificance. Where there are impacts that cannot be alleviated without imposing an alternative design, their implications and the reasons why the project is being proposed, notwithstanding their effect, should be described.

~~(c)~~**(d)** Significant Irreversible Environmental Changes Which Would be Caused by the Proposed Project Should it be Implemented. Uses of nonrenewable resources during the initial and continued phases of the project may be irreversible since a large commitment of such resources makes removal or nonuse thereafter unlikely. Primary impacts and, particularly, secondary impacts (such as highway improvement which provides access to a previously inaccessible area) generally commit future generations to similar uses. Also irreversible damage can result from environmental accidents associated with the project. Irretrievable commitments of resources should be evaluated to assure that such current consumption is justified. (See Public Resources Code section 21100.1 and Title 14, California Code of Regulations, section 15127 for limitations to applicability of this requirement.)

~~(d)~~**(e)** Growth-Inducing Impact of the Proposed Project. Discuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth (a major expansion of a waste water treatment plant might, for example, allow for more construction in service areas). Increases in the population may tax existing community service facilities, requiring construction of new facilities that could cause significant environmental effects. Also discuss the characteristic of some projects which may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively. It must not be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment.

AUTHORITY:

Note: Authority cited: Sections 21083 and 21083.05, Public Resources Code. Reference: Sections 21002, 21003 and 21100, Public Resources Code; ***Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256; *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912;** *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; and *Goleta Union School Dist. v. Regents of the Univ. of California* (1995) 37 Cal.App.4th 1025.

Water Supply Analysis in CEQA

Proposed Amendments to Section 15155

Background

California recently experienced the worst water crisis in our state's modern history over multiple consecutive years of extremely dry conditions. During that time, precipitation and snowpack were a small fraction of their normal averages, reservoirs were at extremely low levels, and rivers had severely diminished flows. In response to the growing crisis, Governor Brown proclaimed a state of emergency in January 2014 and called on all Californians to reduce their water consumption by 20 percent. In April 2014, the Department of Water Resources announced a five percent allocation of the State Water Project—the lowest ever. (DWR, Water Conditions.) Allocations remained low in 2015. The State Water Resources Control Board began to notify water rights holders that they must curtail their diversions in certain watersheds. (See State Water Resources Control Board, "Notices of Water Availability (Curtailment and Emergency Regulations)".) In September 2014, Governor Brown signed into law the Sustainable Groundwater Management Act, historic legislation to strengthen local management and monitoring of groundwater basins most critical to the state's water needs. Responding to continuing dry conditions, in April 2015, the Governor issued Executive Order B-29-15, calling on Californians to redouble their water conservation efforts. Specifically, urban water agencies are required to reduce water use by a combined 25 percent. After unprecedented water conservation efforts and high levels of winter water and snow, Governor Brown issued Executive Order B-40-17 in April 2017, lifting the drought emergency in all counties except Fresno, Kings, Tulare, and Tuolumne.

Even so, climate change is expected to increase long-term variability in California's water supplies. (Esther Conrad, "Preparing for New Risks: Addressing Climate Change in California's Urban Water Management Plans" (June 2013).)

The Department of Water Resources has identified several climate change effects that could affect water supplies, including:

- Water Demand — Hotter days and nights, as well as a longer irrigation season, will increase landscaping water needs, and power plants and industrial processes will have increased cooling water needs.
- Water Supply and Quality — Reduced snowpack, shifting spring runoff to earlier in the year …, increased potential for algal bloom, and increased potential for seawater intrusion—each has the potential to impact water supply and water quality.
- Sea Level Rise — It is expected that sea level will continue to rise, resulting in near shore ocean changes such as stronger storm surges, more forceful wave energy, and more extreme tides. This will also affect levee stability in low-lying areas and increase flooding.

- Disaster — Disasters are expected to become more frequent as climate change brings increased climate variability, resulting in more extreme droughts and floods. This will challenge water supplier operations in several ways as wildfires are expected to become larger and hotter, droughts will become deeper and longer, and floods can become larger and more frequent.

(Department of Water Resources, "Guidebook to Assist Urban Water Suppliers to Prepare a 2010 Urban Water Management Plan," (March 2011), at G-3.) These risks are now being incorporated into long-term water supply planning.

California courts have long recognized CEQA's requirement to analyze the adequacy of water supplies needed to serve a proposed project. (See, e.g., *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818.) Accordingly, the sample initial study checklist in Appendix G asks whether the project would have "sufficient water supplies available to serve the project…." (CEQA Guidelines, App. G., § XVII(d).)

In recent years, the California Legislature added water supply assessment and verification requirements for certain types of projects. (See Wat. Code, §§ 10910 et seq. (water supply assessments); Gov. Code, § 66473.7 (water supply verifications).) Shortly after those statutory requirements were enacted, the California Supreme Court articulated several principles describing the content requirements for an adequate water supply evaluation in CEQA. (*Vineyard, supra,* 40 Cal.4th 412.) The Natural Resources Agency added section 15155 to the CEQA Guidelines to describe the consultation and documentation that must be occur between water suppliers and lead agencies. (CEQA Guidelines, § 15155.) Because that section was developed before the Supreme Court's decision in *Vineyard*, it focuses on compliance with the consultation requirements in SB 610, and does not discuss the issue of adequacy of a water supply analysis in CEQA more broadly.

Description of the Proposed Amendments to Section 15155

Because water is such a critical resource in California, and because California courts have required specific content in environmental documents regarding water supply, OPR proposes to revise section 15155 to incorporate the adequacy principles described in the Supreme Court's *Vineyard* decision. Doing so should ensure that lead agencies consistently develop the information needed to evaluate the impacts associated with providing water to their projects. The specific additions to section 15155 are described below.

New Subdivision (f) – Water Supply Analysis and Degree of Specificity

OPR proposes to add a new subdivision (f) to section 15155 to set forth the content requirements for a water supply analysis in CEQA. While subdivision (f) describes these content requirements, it is important to note that OPR is not creating *new* requirements. Rather, it is merely stating explicitly in the Guidelines what CEQA already requires. (See Pub. Resources Code, § 21060.5 ("environment" defined as "the physical conditions that exist within the area which will be affected by a proposed project, including … water …"); *Vineyard, supra,* 40 Cal.4th 412 (setting forth the required elements of a water supply analysis).)

The first two sentences in subdivision (f) state the rule that the level of certainty regarding water supplies will increase as the analysis moves from general to specific. (*Vineyard*, *supra*, 40 Cal.4th at p. 434 ("we emphasize that the burden of identifying likely water sources for a project varies with the stage of project approval involved; the necessary degree of confidence involved for approval of a conceptual plan is much lower than for issuance of building permits").) This rule is consistent with other portions of the CEQA Guidelines governing forecasting and the degree of specificity required in environmental documents. (CEQA Guidelines, §§ 15144 ("[w]hile foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can"), 15146 ("degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR").)

Subdivision (f)(1) – Purpose

Subdivision (f)(1) states the requirement that a water supply analysis provide enough information to the lead agency to evaluate the pros and cons of providing water to the project. (*Vineyard*, *supra*, 40 Cal.4th at 431; *Santiago*, *supra*, 118 Cal.App.3d at pp. 829-831.) This will necessarily require information regarding the project's water demand as well as the quantity of water that is available to serve the project.

Subdivision (f)(2) – Environmental Impacts of Supplying the Water

Subdivision (f)(2) states the requirement to analyze the environmental effects of supplying water to the project. This sentence further specifies that the analysis must account for all phases of the project, over the life of the project. (*Vineyard*, *supra*, 40 Cal.4th at p. 431 ("an adequate environmental impact analysis for a large project, to be built and occupied over a number of years, cannot be limited to the water supply for the first stage or the first few years").) This is an important clarification because the water supply assessment and verification statutes only require looking twenty years into the future. Some projects may have a lifespan of fifty or more years. In that circumstance, some degree of forecasting may be required. (CEQA Guidelines, § 15144.) Pure speculation, however, is not required. (*Id*. at § 15145.)

Additionally, the focus of this subdivision should be on the *environmental impacts* associated with a particular water supply. (*Vineyard*, *supra*, 40 Cal. 4th at 434 (the "ultimate question under CEQA … is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project") (emphasis in original).) For example, after establishing the amount of water a project will need, the analysis might examine whether supplying that amount from groundwater might lead to subsidence or unsafe yield, or whether diverting that amount from surface flow might adversely affect fish and wildlife.

Subdivision (f)(3) – Circumstances Affecting the Likelihood of Supplies

Since water supply availability is variable in California, subdivision (f)(3) requires acknowledging any circumstances that might affect the availability of water supplies identified for a project. (*Vineyard*, *supra*, 40 Cal. 4th at 432 (an environmental document "must address the impacts of likely future water sources, and the EIR's discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water's availability").) The magnitude of variability should also be disclosed. (*Id*. at p.

434 ("an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved").) Subdivision (f)(3) also provides a list of circumstances that might potentially affect water supplies, including but not limited to: "drought, salt-water intrusion, regulatory or contractual curtailments, and other reasonably foreseeable demands on the water supply."

Subdivision (f)(4) – Alternatives and Mitigation

Subdivision (f)(4) provides that when supplies for the project are not certain, the analysis should address alternatives. (*Vineyard*, *supra*, 40 Cal.4th at 432.) Again, the focus of the analysis should be on the *environmental impacts* that would flow from using those alternative sources of supply. (*Ibid*.) However, the level of detail of that analysis need not be as great as that provided for the project itself. (See, State CEQA Guidelines § 15126.6(d) ("If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed").) Thus, subdivision (f)(4) states that the analysis of impacts from alternative sources should be stated "at least in general terms." (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors*. (2001) 91 Cal.App.4th 342, 373.) Further, subdivision (f)(4) provides that in addition to analyzing alternative water supplies when identified supplies are uncertain, a lead agency may also consider project alternatives that require less water. For example, if supplies are certain up to a certain amount, a lead agency should be able to consider alternative project designs that would use less water and that could be confidently served.

Finally, subdivision (f)(4) provides that if water supplies are not certain, and if the agency has fully analyzed water supply availability as described above, curtailing later project phases may be an appropriate mitigation measure.

Text of the Proposed Amendments to Section 15155

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15155. **Water Supply Analysis;** City or County Consultation with Water Agencies

(a) The following definitions are applicable to this section.

(1) A "water-demand project" means:

(A) A residential development of more than 500 dwelling units.

(B) A shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.

(C) A commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.

(D) A hotel or motel, or both, having more than 500 rooms.

(E) An industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.

(F) A mixed-use project that includes one or more of the projects specified in subdivisions (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(D), (a)(1)(E), and (a)(1)(G) of this section.

(G) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

(H) For public water systems with fewer than 5,000 service connections, a project that meets the following criteria:

1. A proposed residential, business, commercial, hotel or motel, or industrial development that would account for an increase of 10 percent or more in the number of a public water system's existing service connections; or

2. A mixed-use project that would demand an amount of water equivalent to, or greater than, the amount of water required by residential development that would represent an increase of 10 percent or more in the number of the public water system's existing service connections.

(2) "Public water system" means a system for the provision of piped water to the public for human consumption that has 3000 or more service connections. A public water system includes all of the following:

(A) Any collection, treatment, storage, and distribution facility under control of the operator of the system which is used primarily in connection with the system.

(B) Any collection or pretreatment storage facility not under the control of the operator that is used primarily in connection with the system.

(C) Any person who treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

(3) "Water acquisition plans" means any plans for acquiring additional water supplies prepared by the public water system or a city or county lead agency pursuant to subdivision (a) of section 10911 of the Water Code.

(4) "Water assessment" means the water supply assessment that must be prepared by the governing body of a public water system, or the city or county lead agency, pursuant to and in compliance with

sections 10910 to 10915 of the Water Code, and that includes, without limitation, the elements of the assessment required to comply with subdivisions (d), (e), (f), and (g) of section 10910 of the Water Code.

(5) "City or county lead agency" means a city or county, acting as lead agency, for purposes of certifying or approving an environmental impact report, a negative declaration, or a mitigated negative declaration for a water-demand project.

(b) Subject to section 15155, subdivision (d) below, at the time a city or county lead agency determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration, or any supplement thereto, is required for the water-demand project, the city or county lead agency shall take the following steps:

(1) The city or county lead agency shall identify any water system that either: (A) is a public water system that may supply water to the water-demand project, or (B) that may become such a public water system as a result of supplying water to the water-demand project. The city or county lead agency shall request the governing body of each such public water system to determine whether the projected water demand associated with a water-demand project was included in the most recently adopted urban water management plan adopted pursuant to Part 2.6 (commencing with section 10610) of the Water Code, and to prepare a water assessment approved at a regular or special meeting of that governing body.

(2) If the city or county lead agency is not able to identify any public water system that may supply water for the water-demand project, the city or county lead agency shall prepare a water assessment after consulting with any entity serving domestic water supplies whose service area includes the site of the water-demand project, the local agency formation commission, and the governing body of any public water system adjacent to the site of the water-demand project. The governing body of the city or county lead agency must approve the water assessment prepared pursuant to this section at a regular or special meeting.

(c) The city or county lead agency shall grant any reasonable request for an extension of time that is made by the governing body of a public water system preparing the water assessment, provided that the request for an extension of time is made within 90 days after the date on which the governing body of the public water system received the request to prepare a water assessment. If the governing body of the public water system fails to request and receive an extension of time, or fails to submit the water assessment notwithstanding the 30-day extension, the city or county lead agency may seek a writ of mandamus to compel the governing body of the public water system to comply with the requirements of Part 2.10 of Division 6 (commencing with section 10910) of the Water Code relating to the submission of the water assessment.

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

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

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

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

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

(C) Significant new information becomes available which was not known and could not have been known at the time when the entity had reached the conclusion in subdivision (d)(1).

(e) The city or county lead agency shall include the water assessment, and any water acquisition plan in the EIR, negative declaration, or mitigated negative declaration, or any supplement thereto, prepared for the water-demand project, and may include an evaluation of the water assessment and water acquisition plan information within such environmental document. The city or county lead agency shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If a city or county lead agency determines that water supplies will not be sufficient, the city or county lead agency shall include that determination in its findings for the water-demand project.

(f) The degree of certainty regarding the availability of water supplies will vary depending on the stage of project approval. A lead agency should have greater confidence in the availability of water supplies for a specific project than might be required for a conceptual plan (i.e., general plan, specific plan). An analysis of water supply in an environmental document may incorporate by reference information in a water supply assessment, urban water management plan, or other publicly available sources. The analysis shall include the following:

(1) Sufficient information regarding the project's proposed water demand and proposed water supplies to permit the lead agency to evaluate the pros and cons of supplying the amount of water that the project will need.

(2) An analysis of the reasonably foreseeable environmental impacts of supplying water throughout the life of all phases of the project.

(3) An analysis of circumstances affecting the likelihood of the water's availability, as well as the degree of uncertainty involved. Relevant factors may include but are not limited to, drought, salt-water intrusion, regulatory or contractual curtailments, and other reasonably foreseeable demands on the water supply.

(4) If the lead agency cannot determine that a particular water supply will be available, it shall conduct an analysis of alternative sources, including at least in general terms the environmental consequences of using those alternative sources, or alternatives to the project that could be served with available water.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code; and Sections 10910-10915, Water Code**; *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412**.

Analyzing Transportation Impacts

Proposed New Section 15064.3

Background

Californians drive approximately 332 *billion* vehicle miles each year, accounting for about 36 to 46 percent of the State's GHG emissions (depending on whether refinery emissions are included).

Traffic studies used in CEQA documents have typically focused on one thing: the impact of projects on traffic flows.

Senate Bill 743 (2013) requires the Governor's Office of Planning and Research to develop alternative methods of measuring transportation impacts under CEQA. At a minimum, the new methods must apply within areas that are served by transit; however, OPR may extend the new methods statewide. Once the new transportation guidelines are adopted, automobile delay (often called Level of Service) generally will no longer be considered to be an environmental impact under CEQA.

As described below, OPR proposes to add Section 15064.3 providing that in most cases vehicle miles travelled is the most appropriate measure of transportation impacts. OPR provides additional background information, advice and recommendations regarding vehicle miles traveled in a separate, non-regulatory Technical Advisory.

Explanation of Proposed New Section 15064.3

The proposed new section 15064.3 contains several subdivisions, which are described below. In brief, these Guidelines provide that transportation impacts of projects are, in general, best measured by evaluating the project's vehicle miles traveled. Methodologies for evaluating such impacts are already in use for most land use projects, as well as many transit and active transportation projects. Methods for evaluating vehicle miles traveled for roadway capacity projects continue to evolve, however, and so these Guidelines recognize a lead agency's discretion to analyze such projects, provided such analysis is consistent with CEQA and applicable planning requirements.

Subdivision (a): Purpose

Subdivision (a) sets forth the purpose of the entire new section 15064.3. First, the subdivision clarifies that the primary consideration, in an environmental analysis, regarding transportation is the amount and distance that a project might cause people to drive. This captures two measures of transportation impacts: auto trips generated and vehicle miles traveled. These factors were identified by the legislature in SB 743. The last sentence clarifies that automobile delay is not a significant effect on the environment.

Subdivision (b): Criteria for Analyzing Transportation Impacts

While subdivision (a) sets forth general principles related to transportation analysis, subdivision (b) focuses on specific criteria for determining the significance of transportation impacts. It is further divided into four subdivisions: (1) land use projects, (2) transportation projects, (3) qualitative analysis, and (4) methodology.

Subdivision (b)(1): Land Use Projects

SB 743 did not authorize OPR to set thresholds, but it did direct OPR to develop Guidelines "for determining the significance of transportation impacts of projects[.]" (Pub. Resources Code, § 21099(b)(2).) Therefore, to provide guidance on determining the significance of impacts, subdivision (b)(1) describes factors that might indicate whether the amount of a project's vehicle miles traveled may be significant, or not. Notably, projects that locate within one half mile of transit should be considered to have a less than significant transportation impact.

Subdivision (b)(2): Transportation Projects

While subdivision (b)(1) addresses vehicle miles traveled associated with land use projects, subdivision (b)(2) focuses on impacts that result from certain transportation projects. Subdivision (b)(2) clarifies that projects that reduce VMT, such as pedestrian, bicycle and transit projects, should be presumed to have a less than significant impact. This subdivision further provides that lead agencies have discretion in which measure to use to evaluate roadway, including highway, capacity projects, provided that any such analysis is consistent with the requirements of CEQA and any other applicable requirements (e.g., local planning rules). Importantly, this provision does not prohibit capacity expansion. Finally, recognizing that roadway capacity projects may be analyzed at a programmatic level, subdivision (b)(2) states that lead agencies may be able to tier from a programmatic analysis that adequately addresses the effects of such capacity projects.

Subdivision (b)(3): Qualitative Analysis

Subdivision (b)(3) recognizes that lead agencies may not be able to quantitatively estimate vehicle miles traveled for every project type. In those circumstances, this subdivision encourages lead agencies to evaluate factors such as the availability of transit, proximity to other destinations, and other factors that may affect the amount of driving required by the project.

Subdivision (b)(4): Methodology

Lead agencies have the discretion to choose the most appropriate methodology to analyze a project's vehicle miles traveled. Depending on the project, vehicle miles traveled may be best measures on a per person, per household or other similar unit of measurement. Subdivision (b)(4) also recognizes the role for both models and professional judgment in estimating vehicle miles traveled.

Subdivision (c): Applicability

The new procedures may be used immediately upon the effective date of these Guidelines by lead agencies that are ready to begin evaluating vehicle miles traveled, but jurisdictions will have approximately two years to switch to VMT if they so choose.

Text of the Proposed Section 15064.3

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

Proposed **New Section 15064.3. Determining the Significance of Transportation Impacts**

(a) Purpose.

This section describes specific considerations for evaluating a project's transportation impacts. Generally, vehicle miles traveled is the most appropriate measure of transportation impacts. For the purposes of this section, "vehicle miles traveled" refers to the amount and distance of automobile travel attributable to a project. Other relevant considerations may include the effects of the project on transit and non-motorized travel. Except as provided in subdivision (b)(2) below (regarding roadway capacity), a project's effect on automobile delay does not constitute a significant environmental impact.

(b) Criteria for Analyzing Transportation Impacts.

(1) Land Use Projects. Vehicle miles traveled exceeding an applicable threshold of significance may indicate a significant impact. Generally, projects within one-half mile of either an existing major transit stop or a stop along an existing high quality transit corridor should be presumed to cause a less than significant transportation impact. Projects that decrease vehicle miles traveled in the project area compared to existing conditions should be considered to have a less than significant transportation impact.

(2) Transportation Projects. Transportation projects that reduce, or have no impact on, vehicle miles traveled should be presumed to cause a less than significant transportation impact. For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements. To the extent that such impacts have already been adequately addressed at a programmatic level, a lead agency may tier from that analysis as provided in Section 15152.

(3) Qualitative Analysis. If existing models or methods are not available to estimate the vehicle miles traveled for the particular project being considered, a lead agency may analyze the project's vehicle miles traveled qualitatively. Such a qualitative analysis would evaluate factors such as the availability of transit, proximity to other destinations, etc. For many projects, a qualitative analysis of construction traffic may be appropriate.

(4) Methodology. A lead agency has discretion to choose the most appropriate methodology to evaluate a project's vehicle miles traveled, including whether to express the change in absolute terms, per capita, per household or in any other measure. A lead agency may use models to estimate a project's vehicle miles traveled, and may revise those estimates to reflect professional judgment based on substantial evidence. Any assumptions used to estimate vehicle miles traveled and any

revisions to model outputs should be documented and explained in the environmental document prepared for the project. The standard of adequacy in Section 15151 shall apply to the analysis described in this section.

(c) Applicability.

The provisions of this section shall apply prospectively as described in section 15007. A lead agency may elect to be governed by the provisions of this section immediately. Beginning on January 1, 2020, the provisions of this section shall apply statewide.

Note: Authority cited: Sections 21083 and 21083.05, Public Resources Code. Reference: Sections 21099 and 21100, Public Resources Code; *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) __Cal.App.5th__; *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256; *California Clean Energy Com. v. City of Woodland* (2014) 225 Cal.App.4th 173.

Analyzing Impacts from Greenhouse Gas Emissions

Proposed Amendments to CEQA Guidelines section 15064.4

Background and Explanation of Proposed Amendments to Section 15064.4

OPR proposes to amend several portions of existing section 15064.4. The Natural Resources Agency added Section 15064.4 to the CEQA Guidelines in 2010 as part of a package of amendments addressing greenhouse gas emissions, as directed by SB 97 (Dutton, 2007). The purpose of Section 15064.4 is to assist lead agencies in determining the significance of a project's greenhouse gas emissions on the environment. (A complete background on those amendments is available in the Natural Resources Agency's Final Statement of Reasons (December 2009).)

Subdivision (a)

The first change that OPR proposes is in subdivision (a) of section 15064.4. As currently drafted, that subdivision states that lead agencies "should" make a good faith effort to estimate or describe a project's greenhouse gas emissions. OPR proposes to replace the word "should" with the word "shall" to clarify that evaluation of a project's greenhouse gas emissions is a requirement of CEQA. (See Pub. Resources Code, § 21083.05; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 90-91 ["climate-change impacts are significant environmental impacts requiring analysis under CEQA"]; *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497 (*SANDAG*); see also CEQA Guidelines, § 15005 [defining the terms "should" and "shall"].) This clarification is necessary because some agencies continue to provide information regarding climate change in their projects' environmental documents without actually determining whether the project's greenhouse gas emissions are significant. A similar clarifying change is proposed in subdivision (b), replacing the word "assessing" with the word "determining". CEQA requires a lead agency to determine the significance of all environmental impacts. (Pub. Resources Code, § 21082.2; CEQA Guidelines, § 15064.)

Subdivision (b)

The second change that OPR proposes is in subdivision (b) of section 15064.4. That subdivision currently provides a list of factors that a lead agency should use when evaluating a project's greenhouse gas emissions. OPR proposes to add three sentences.

The first sentence that OPR proposes to add would clarify that the focus of the lead agency's analysis should be on the project's effect on climate change. This clarification is necessary to avoid an incorrect focus on the quantity of emissions, and in particular how that quantity of emissions compares to

statewide or global emissions. (See, e.g., *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 842 [invalidating an EIR that based significance determination in part on comparing the project's emissions to statewide emissions]; *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 228 [invalidating an EIR because the lead agency did not provide sufficient evidence that "the Scoping Plan's statewide measure of emissions reduction can also serve as the criterion for an individual land use project"]; see also *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 198-200 [upholding agency's greenhouse gas analysis that did not quantify emissions].) OPR proposes to further clarify that lead agencies should consider the reasonably foreseeable incremental contribution of the project's emissions to the effects of climate change. In doing that analysis, agencies should avoid in engaging in speculation. (CEQA Guidelines, §§ 15144 ["an agency must use its best efforts to find out and disclose all that it reasonably can"], 15145 ["[i]f, after a thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact"].)

The second sentence OPR proposes to add clarifies that lead agencies should consider a timeframe for the analysis that is appropriate for the project. CEQA requires agencies to consider a project's direct and indirect significant impacts on the environment, "giving due consideration to both the short-term and long-term effects." (CEQA Guidelines, § 15126.2, subd. (a); see Pub. Resources Code, § 21001, subd. (d) [state policy "[e]nsure[s] that the long-term protection of the environment . . . shall be the guiding criterion in public decisions"]; § 21001, subd. (g) [state policy requires "governmental agencies at all levels to consider . . . long-term benefits and costs, in addition to short-term benefits and costs . . . ."]; § 21083 [requiring preparation of an EIR for a project that "has the potential to . . . achieve short-term, to the disadvantage of long-term, environmental goals"].) In some cases, it would be appropriate for agencies to consider a project's long-term greenhouse gas impacts, such as for projects with long time horizons for implementation.

The third sentence OPR proposes to add clarifies that an agency's analysis must reasonably reflect evolving scientific knowledge and state regulatory schemes. This clarification is proposed to acknowledge *SANDAG*, *supra*, 3 Cal.5th 497. In that case, the Supreme Court addressed the adequacy of an EIR prepared for a long-range regional transportation plan. In addressing the plan's greenhouse gas emissions, the Court held the lead agency did not abuse its discretion by declining to analyze the consistency of projected long-term greenhouse gas emissions with the goals of an executive order declaring an emissions reduction goal for 2050. But the Court further stated: "we do not hold that the analysis of greenhouse gas impacts employed by SANDAG in this case will necessarily be sufficient going forward. CEQA requires public agencies like SANDAG to ensure that such analysis stay in step with evolving scientific knowledge and state regulatory schemes." (*Id.* at p. 504; see *id.* at p. 519.)

The third change that OPR proposes is in subdivision (b)(3) of section 15064.4. That subdivision currently directs consideration of the extent to which a project complies with a plan or regulation to reduce greenhouse emissions. OPR proposes to clarify the first sentence of subdivision (b)(3) by adding a reference to CEQA Guidelines section 15183.5, which governs the contents of an agency's plan for the reduction of greenhouse gas emissions. This addition is necessary to clarify that lead agencies may rely on plans prepared pursuant to section 15183.5 in evaluating a project's greenhouse gas emissions. This

proposed change is consistent with the Natural Resources Agency's Final Statement of Reasons for the addition of section 15064.4, which states that "[t]he proposed section 15064.4(b)(3) is intended to be read in conjunction with . . . proposed section 15183.5. Those sections each indicate that local and regional plans may be developed to reduce GHG emissions." (Natural Resources Agency, Final Statement of Reasons (December 2009), p. 27; see *Mission Bay Alliance v. Office of Community Investment & Infrastructure, supra,* 6 Cal.App.5th at pp. 201-202 [upholding agency's reliance on greenhouse gas strategy].)

OPR also proposes to add another sentence to subdivision (b)(3) of section 15064.4. Specifically, OPR proposes to clarify that in determining the significance of a project's impacts, the lead agency may consider a project's consistency with the State's long-term climate goals or strategies, provided that substantial evidence supports the agency's analysis of how those goals or strategies address the project's incremental contribution to climate change. This clarification implements the Supreme Court's decision in *Center for Biological Diversity v. Dept. of Fish & Wildlife*, *supra*, 62 Cal.4th 204. In that case, the EIR used consistency with Assembly Bill 32's greenhouse gas emissions reduction goals as a threshold of significance. The EIR also discussed the California Air Resources Board's Scoping Plan and "business as usual" (BAU) scenario, and found that the project would emit less than the BAU scenario. The Court concluded that the agency used a permissible threshold of significance, but failed to support with substantial evidence the finding that the project's greenhouse gas emissions would not have a cumulatively significant impact on the environment. (*Id.* at pp. 218-222, 225.) As the Court stated, the lead agency failed to establish through substantial evidence "a quantitative equivalence between the Scoping Plan's statewide comparison and the EIR's own project-level comparison . . . ." (*Id.* at p. 227.)

Subdivision (c)

Finally, OPR proposes to add subdivision (c) to address the use of models and methodologies. OPR proposes to clarify that the lead agency has discretion to select the model or methodology it considers most appropriate to enable decision makers to intelligently take into account the project's incremental contribution to climate change. Most of the text in proposed subdivision (c) is taken from subdivision (a)(1) of the current section 15064.4. Additionally, the proposed clarification regarding the agency's discretion in selecting an appropriate model or methodology is consistent with CEQA Guidelines section 15151, which addresses the standards for adequacy of EIRs. (*Ibid.* ["An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences."].) Models may play a role not only in estimating a project's greenhouse gas emissions, but also in determining baseline emissions and applying thresholds. Moving the text to subdivision (c) clarifies that the guidance on models applies to the entire section. However, when an agency relies completely on a single quantitative method, it must research and document the quantitative parameters essential to that method. (*Center for Biological Diversity v. Department of Fish & Wildlife, supra,* 62 Cal.4th at p. 228.)

Text of Proposed Amendments to Section 15064.4

Changes to the text of the existing section are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

(a) The determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in section 15064. A lead agency ~~**should**~~ **shall** make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. A lead agency shall have discretion to determine, in the context of a particular project, whether to:

(1) ~~**Use a model or methodology to q**~~ **Q**uantify greenhouse gas emissions resulting from a project~~**, and which model or methodology to use. The lead agency has discretion to select the model or methodology it considers most appropriate provided it supports its decision with substantial evidence. The lead agency should explain the limitations of the particular model or methodology selected for use**~~; and/or

(2) Rely on a qualitative analysis or performance based standards.

(b) **In determining the significance of a project's greenhouse gas emissions, the lead agency should focus its analysis on the reasonably foreseeable incremental contribution of the project's emissions to the effects of climate change. The agency's analysis should consider a timeframe that is appropriate for the project. The agency's analysis also must reasonably reflect evolving scientific knowledge and state regulatory schemes.** A lead agency should consider the following factors, among others, when ~~**assessing**~~ **determining** the significance of impacts from greenhouse gas emissions on the environment:

(1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;

(2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.

(3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions **(see, e.g., section 15183.5(b))**. Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project's incremental contribution of greenhouse gas emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project. **In determining the significance of impacts, the lead agency may consider a project's consistency with the State's long-term climate goals or strategies, provided that substantial evidence supports the agency's analysis of how those goals or strategies address the project's incremental contribution to climate change**.

(c) A lead agency may use a model or methodology to estimate greenhouse gas emissions resulting from a project. The lead agency has discretion to select the model or methodology it considers most

appropriate to enable decision makers to intelligently take into account the project's incremental contribution to climate change. The lead agency must support its selection of a model or methodology with substantial evidence. The lead agency should explain the limitations of the particular model or methodology selected for use.

AUTHORITY:

Note: Authority cited: Sections 21083 and 21083.05, Public Resources Code. Reference: Sections 21001, 21002, 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083.05 and 21100, Public Resources Code; ***Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497; *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160; *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204; *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70**; ***Communities for a Better Environment v. South Coast Air Quality Management Dist*. (2010) 48 Cal.4th 310; *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683**; *Eureka Citizens for Responsible Govt. v. City of Eureka* (2007) 147 Cal.App.4th 357; *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98; *Berkeley Keep Jets Over the Bay Com. v. Board of Port Comm.* (2001) 91 Cal.App.4th 1344; and *City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868.

Technical Improvements

The following pages describe technical improvements to the CEQA Guidelines. These improvements address:

- Hazards
- Baseline
- Mitigation details
- Responses to Comments
- Notice of Determination and Notice of Exemption
- Pre-Approval Agreements
- Lead Agency by Agreement
- Common Sense Exemption
- Preparing the Initial Study
- Consultation with Transit Agencies
- Citations in Environmental Documents
- Posting with the County Clerk
- Time Limits for Negative Declarations
- Project Benefits
- Joint NEPA/CEQA Documents
- Using the Emergency Exemption
- When is a Project Discretionary?
- Conservation Easements as Mitigation
- Appendices to the CEQA Guidelines

Consideration of Significant Effects and Hazards in the CEQA Guidelines

Proposed Amendments to CEQA Guidelines Section 15126.2(a)

Background

CEQA requires analysis of the potential effects of a project on the environment. CEQA defines "environment" to mean "the physical conditions which exist within the area which will be affected *by a proposed project*, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (Pub. Resources Code, § 21060.5 (emphasis added).)

The CEQA Guidelines are administrative regulations that implement CEQA. They clarify the types of environmental effects that an environmental impact report must analyze. Section 15126.2(a) states the general rule that an "EIR shall identify and focus on the significant environmental effects of the proposed project." Among the potential effects that must be analyzed are "any significant environmental effects the project might cause by *bringing development and people into the area affected*." (CEQA Guidelines, § 15126.2, subd. (a) (emphasis added).) To illustrate, that Guidelines section currently provides the following example[2]:

> [A]n EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there.

Other examples include: "any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans, addressing such hazards areas."[3]

The California Supreme Court addressed these provisions in *CBIA v. BAAQMD* (2015) 62 Cal.4th 369. In that case, an industry association challenged an air district's suggested thresholds for the analysis of impacts of toxic air contaminants on future project residents. The Court accepted review to address: "[u]nder what circumstances, if any, does [CEQA] require an analysis of how existing environmental conditions will impact future residents or users of a proposed project?" (*Id*. at p. 377.) The Court held that "agencies subject to CEQA *generally* are not required to analyze the impact of existing environmental conditions on a project's future users or residents." (*Ibid* (emphasis added).) The Court

[2] The Natural Resources Agency added this example to the CEQA Guidelines in 1983.
[3] The Natural Resources Agency added these examples to the CEQA Guidelines in 2009. For a full explanation of that addition, see the Agency's Final Statement of Reasons (December 2009), available online at http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf.

further explained, however, that the general rule does not apply to effects the project might risk exacerbating. Specifically, it held:

> [W]hen a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users. In those specific instances, it is the *project's* impact on the environment—and not the *environment's* impact on the project—that compels an evaluation of how future residents or users could be affected by exacerbated conditions.

(*Id*. at pp. 377-378 (emphasis in original).)[4] In reaching this conclusion, the Court found that two sentences in CEQA Guidelines section 15126.2(a) (using development on a fault line as an example of exposing development to a hazard in a manner that would not risk exacerbating it) exceeded CEQA's scope and so were invalid. The Court found the remainder of that section to be consistent with CEQA, and therefore valid.

In reaching its conclusion, the Court looked to both the plain words of the statute as well as express legislative policy underlying CEQA. For example, the Court began its analysis by restating the well-known principle guiding interpretation of CEQA: "afford the most thorough possible protection to the environment that fits reasonably within the scope of its text." (*CBIA v. BAAQMD, supra,* 62 Cal.4th at p. 381.) The Court also repeatedly noted CEQA's concern for public health and safety. (See, e.g., *id.* at p. 386 ("the Legislature has made clear—in declarations accompanying CEQA's enactment—that public health and safety are of great importance in the statutory scheme. (E.g., §§ 21000, subds. (b), (c), (d), (g), 21001, subds. (b), (d) [emphasizing the need to provide for the public's welfare, health, safety, enjoyment, and living environment]").) At the same time, the Court also recognized CEQA's technical complexity and the costs that its analysis requirements impose on project development. (*Id*. at pp. 387 (noting "the sometimes costly nature of the analysis required under CEQA"), 390 (noting "the often technical and complex waters of CEQA").) These same policy considerations guide the Office of Planning and Research in developing revisions to section 15126.2(a) to be consistent with the Court's holding.

Explanation of Proposed Amendments to Section 15126.2(a)

Changes are proposed in the first, as well as the fifth through the eighth sentences in existing section 15126.2(a). (The text, including all proposed revisions, is provided below at page 5.)

The first proposed change would clarify that the focus of a CEQA analysis is the project's effect on the environment.

[4] In reaching this conclusion, the Court declined to characterize the issue as "reverse CEQA": "We find this term misleading and inapt. Because CEQA does sometimes require analysis of the effect of existing conditions on a project's future residents or users, such analysis is not the 'reverse' of what CEQA mandates." (*Id*. at p. 386, fn. 11.)

Second, the proposal adds the words "or risks exacerbating" to the fifth sentence regarding the impacts a project may cause by bringing people or development to the affected area. This addition clarifies that an EIR must analyze not just impacts that a project might cause, but also existing hazards that the project might make worse. This clarification implements the Supreme Court's holding in the *CBIA v. BAAQMD* case. (62 Cal.4th at 377 ("when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users").) In this context, an effect that a project "risks exacerbating" is similar to an "indirect" effect. Describing "indirect effects," the CEQA Guidelines state: "If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment." (CEQA Guidelines, § 15064(d)(2).) Just as with indirect effects, a lead agency should confine its analysis of exacerbating effects to those that are reasonably foreseeable. (*Id*. at subd. (d)(3).)

Notably, by stating that EIRs should analyze effects that a project might "cause <u>or risk exacerbating</u>," this clarification also makes clear that EIRs need not analyze effects that the project does not cause directly or indirectly.

The third change deletes the sentences that the Supreme Court specifically held exceeded CEQA's scope. This change is necessary to implement the Court's holding regarding the scope of analysis that CEQA requires. Notably, however, other laws require analysis of seismic hazards. Public Resources Code section 2697, for example, requires cities and counties to prepare a site-specific geologic report prior to approval of most projects in a seismic hazard zone. Regulations further clarify that such a "project shall be approved only when the nature and severity of the seismic hazards at the site have been evaluated in a geotechnical report and appropriate mitigation measures have been proposed." (Cal. Code Regs, tit. 14, § 3724.) Further, the California Building Code contains provisions requiring all buildings to be designed to withstand some seismic activity. (See, e.g., Cal. Code Regs., tit. 24, § 1613.1.)

The safety elements of local general plans will also describe potential hazards, including: "any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence; liquefaction; and other seismic hazards …, and other geologic hazards known to the legislative body; flooding; and wildland and urban fires." (Gov. Code § 65302(g)(1).) Hazards associated with flooding, wildfire, and climate change require special consideration. (*Id*. at subd. (g)(2)-(g)(4).) Lead agencies must "discuss any inconsistencies between the proposed project and applicable general plans" related to a project's potential environmental impacts in a project's environmental review. (State CEQA Guidelines § 15125(d).) Local governments may regulate land use to protect public health and welfare pursuant to their police power. (Cal. Const., art. XI, § 7; *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 455 ("so long as a land use restriction or regulation bears a reasonable relationship to the public welfare, the restriction or regulation is constitutionally permissible").)

The fourth change clarifies that a project's direct, indirect, and cumulative impacts may affect the hazardous condition, and therefore, must still be evaluated in CEQA. In fact, such effects are particularly important when a project locates in a hazardous location. For example, a project proposed on a

coastline may not itself cause pre-existing erosive forces. However, according to the Court in the *CBIA* case, a lead agency would need to include any relevant hazards in the environmental document's description of the environmental setting. Further, in the case of coastal development, if sea walls or other shoreline structures are necessary to protect the project from erosion, the sea wall may contribute to cumulative erosion impacts nearby on the coast. Such a development might also lead to indirect effects such as dispersion of pollutants from inundation, increased maintenance and repair-related construction, impedance of evacuation routes, increased demand on emergency services, etc. Thus, harm to the project would not mandate a finding of a significant effect; however, any environmental effects that might result from the harm to the project, and predictable responses to that harm, are properly evaluated in a CEQA evaluation.

The final addition clarifies that a lead agency should consider not just existing hazards, but the potential for increasing severity of hazards over time. This change is necessary because certain types of hazards are expected to be more severe in the future due to our changing climate. Examples include increased flooding (resulting from more precipitation falling as rain instead of snow as well as from rising sea levels) and more intense wildfires. These types of climate change impacts may worsen a proposed project's direct, indirect, or cumulative environmental effects in the future. A lead agency need not engage in speculation regarding such effects. Rather, hazard zones may be clearly identified in authoritative maps, such as those found on the Cal-Adapt website, or in locally adopted general plan safety elements and local hazard mitigation plans. Notably, pursuant to new requirements in Government Code section 65302(g)(4), added by Senate Bill 379, general plans will identify "geographic areas at risk from climate change impacts[.]" Focus on both short-term and long-term effects is also necessary to implement express legislative policy. (Pub. Resources Code, §§ 21001(d), (g), 21083(b)(1).)

Consideration of future conditions in determining whether a project's impacts may be significant is consistent with CEQA's rules regarding baseline. "[N]othing in CEQA law precludes an agency … from considering both types of baseline—existing and future conditions—in its primary analysis of the project's significant adverse effects." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 454.) "The key … is the EIR's role as an informational document." (*Id*. at p. 453.)

Text of Proposed Amendments to Section 15126.2(a)

Changes to the text of the existing section are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15126.2. Consideration and Discussion of Significant Environmental Impacts

The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant ~~**environmental**~~ effects of the proposed project **on the environment**. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental

analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause **or risk exacerbating** by bringing development and people into the area affected. For example**~~, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there. Similarly~~**, the EIR should evaluate any potentially significant **direct, indirect or cumulative environmental** impacts of locating development in **~~other~~** areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas)**, including both short-term and long-term conditions,** as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas.

Baseline

Proposed Amendments to Section 15125

Background

The description of the environmental setting plays a key role in the CEQA process by providing the baseline against which the project's potential impacts are measured. Section 15125 of the CEQA Guidelines has for years described the general rule: "normally," the baseline consists of physical environmental conditions "as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced." In recent years, several cases in the courts of appeal and in the California Supreme Court have focused on exceptions to this general rule. OPR's proposed amendments to section 15125 are intended to reflect those decisions, as described in greater detail below.

Explanation of Proposed Amendments

OPR proposes to amend subdivision (a) of section 15125 regarding the environmental setting. Specifically, OPR proposes to add a statement of purpose and three subdivisions to subdivision (a).

Subdivision (a) - Purpose

In the body of subdivision (a), OPR proposes to add a sentence stating that the purpose of defining the environmental setting is to give decision-makers and the public an accurate picture of the project's likely impacts, both near-term and long-term. This sentence paraphrases the Supreme Court's description of the requirement in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439. (See *id*. at p. 455 ("Even when a project is intended and expected to improve conditions in the long term--20 or 30 years after an EIR is prepared--decision makers and members of the public are entitled under CEQA to know the short- and medium-term environmental costs of achieving that desirable improvement. … [¶] … The public and decision makers are entitled to the most accurate information on project impacts practically possible, and the choice of a baseline must reflect that goal"); see also *Communities for a Better Environment v. South Coast Air Quality Management Dist*. (2010) 48 Cal.4th 310).) The purpose of adding this sentence to subdivision (a) is to guide lead agencies in the choice between potential alternative baselines. When in doubt, lead agencies should choose the baseline that most meaningfully informs decision-makers and the public of the project's possible impacts.

Subdivision (a)(1) – General Rule

Proposed subdivision (a)(1) sets forth the general rule: normally, conditions existing at the time of the environmental review should be considered the baseline. The first sentence largely consists of language that was moved from the body of existing subdivision (a) and that states this general rule. The second

sentence provides that a lead agency may look back to historic conditions to establish a baseline where existing conditions fluctuate, provided that it can document such historic conditions with substantial evidence. (See *Communities for a Better Environment, supra,* 48 Cal.4th at pp. 327-328 ("Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods") (quoting *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125); see also *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.)

The third sentence provides that a lead agency may describe both existing conditions as well as future conditions. (*Neighbors*, *supra*, 57 Cal.4th at p. 454 ("nothing in CEQA law precludes an agency . . . from considering both types of baseline--existing and future conditions--in its primary analysis of the project's significant adverse effects").) The Court in the *Neighbors* decision described examples of when it might be appropriate to focus on conditions existing at the time the project commences operations:

> For example, in an EIR for a new office building, the analysis of impacts on sunlight and views in the surrounding neighborhood might reasonably take account of a larger tower already under construction on an adjacent site at the time of EIR preparation. For a large-scale transportation project …, to the extent changing background conditions during the project's lengthy approval and construction period are expected to affect the project's likely impacts, the agency has discretion to consider those changing background conditions in formulating its analytical baseline.

(*Id*. at p. 453.)

Subdivision (a)(2) – Exceptions to the General Rule

Proposed subdivision (a)(2) sets forth the exception to the general rule and the conditions allowing lead agencies to use an alternative baseline. The first sentence explains that existing conditions may be omitted in favor of an alternate baseline where "use of existing conditions would be either misleading or without informative value to decision-makers and the public." (See *Neighbors*, *supra*, 57 Cal.4th at p. 453 ("To the extent a departure from the 'norm[]' of an existing conditions baseline (Guidelines, § 15125(a)) promotes public participation and more informed decisionmaking by providing a more accurate picture of a proposed project's likely impacts, CEQA permits the departure. Thus an agency may forego analysis of a project's impacts on existing environmental conditions if such an analysis would be uninformative or misleading to decision makers and the public").) Notably, the Court in the *Neighbors* case highlighted a useful example of when future conditions might provide a more useful analysis:

> In this illustration, an existing industrial facility currently emits an air pollutant in the amount of 1,000 pounds per day. By the year 2020, if no new project is undertaken at the facility, emissions of the pollutant are projected to fall to 500 pounds per day due to enforcement of regulations already adopted and to turnover in the facility's vehicle fleet. The operator proposes to use the facility for a new project that will emit 750 pounds per day of the pollutant upon implementation and through at least 2020. An

> analysis comparing the project's emissions to existing emissions would conclude the project would reduce pollution and thus have no significant adverse impact, while an analysis using a baseline of projected year 2020 conditions would show the project is likely to increase emissions by 250 pounds per day, a (presumably significant) 50 percent increase over baseline conditions.

(*Neighbors*, *supra*, 57 Cal.4th at p. 453, n 5.)

The first sentence in subdivision (a)(2) also describes the procedural requirement that the lead agency must expressly justify its decision not to use existing conditions as the baseline for environmental analysis, and that justification must be supported with substantial evidence in the record. (See *id*. at 457.) The second sentence provides that if ***future*** conditions are to be used, they must be based on reliable projections grounded in substantial evidence. This provision reflects the court's concern regarding gamesmanship and manipulation as stated in the *Neighbors* decision, as well as the concern that predictive modeling may not be readily understood by the public. (*Id*. at pp. 455-456[5]; see also Pub.

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[5] The Supreme Court explained in some detail the potential drawbacks of using a future conditions baseline:

> In addition, existing environmental conditions have the advantage that they can generally be directly measured and need not be projected through a predictive model. However sophisticated and well designed a model is, its product carries the inherent uncertainty of every long-term prediction, uncertainty that tends to increase with the period of projection. For example, if future population in the project area is projected using an annual growth multiplier, a small error in that multiplier will itself be multiplied and compounded as the projection is pushed further into the future. The public and decision makers are entitled to the most accurate information on project impacts practically possible, and the choice of a baseline must reflect that goal.
>
> Finally, use of existing conditions as a baseline makes the analysis more accessible to decision makers and especially to members of the public, who may be familiar with the existing environment but not technically equipped to assess a projection into the distant future. As an amicus curiae observes, "[a]nyone can review an EIR's discussion of current environmental conditions and determine whether [it] comports with that person's knowledge and experience of the world." But "[i]n a hypothetical future world, the environment is what the statisticians say it is." Quantitative and technical descriptions of environmental conditions have a place in CEQA analysis, but an agency must not create unwarranted barriers to public understanding of the EIR by unnecessarily substituting a baseline of projected future conditions for one based on actual existing conditions. (See Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 392 [253 Cal.Rptr. 426, 764 P.2d 278] [EIR allows the public to "know the basis on which its responsible officials either approve or reject environmentally significant action," thereby promoting "informed self-government"].)

(*Neighbors*, *supra*, 57 Cal.4th at pp. 455-456.)

Resources Code, §§ 21003(b) (CEQA documents shall "be organized and written in a manner that will be meaningful and useful to decision makers and to the public"), 21080(e)(2) ("Substantial evidence" does not include "speculation … or … evidence that is clearly inaccurate or erroneous").)

Subdivision (a)(3) – Hypothetical Conditions

Subdivision (a)(3) specifies that hypothetical conditions may not be used as a baseline. Specifically, this proposed subdivision states that lead agencies may not measure project impacts against conditions that are neither existing nor historic, such as those that might be allowed under existing permits or plans. As the Supreme Court explained in its *CBE* decision: "[a]n approach using hypothetical allowable conditions as the baseline results in 'illusory' comparisons that 'can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts,' a result at direct odds with CEQA's intent." (*Communities for a Better Environment*, *supra*, 48 Cal.4th at p. 322 (quoting *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 358).)

OPR's proposal reflects in large part suggestions submitted by the Association of Environmental Professionals and American Planning Association, and, to a degree, those submitted by the California Building Industry Association. (See "Recommendations for Updating the State CEQA Guidelines American Planning Association, California Chapter; Association of Environmental Professionals; and Enhanced CEQA Action Team (August 30, 2013), at pp. 1-2; see also Letter from the California Building Industry Association, February 14, 2014.) OPR's proposal, however, breaks the new guidance into subdivisions to more clearly identify (1) the general rule, (2) acceptable exceptions to the general rule and conditions for using alternative baselines, and (3) prohibited alternative baselines.

Text of Proposed Amendments to Section 15125

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15125. Environmental Setting

(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project**.** ~~**, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environ-mental analysis is commenced, from both a local and regional perspective.**~~ This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives. **The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts.**

(1) Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, that are supported with substantial evidence. In addition to existing conditions, a lead agency may also use baselines consisting of projected future conditions that are supported by reliable projections based on substantial evidence in the record.

(2) A lead agency may use either a historic conditions baseline or a projected future conditions baseline as the sole baseline for analysis only if it demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-makers and the public. Use of projected future conditions as the only baseline must be supported by reliable projections based on substantial evidence in the record.

(3) A lead agency may not rely on hypothetical conditions, such as those that might be allowed, but have never actually occurred, under existing permits or plans, as the baseline.

(b) When preparing an EIR for a plan for the reuse of a military base, lead agencies should refer to the special application of the principle of baseline conditions for determining significant impacts contained in Section 15229.

(c) Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.

(d) The EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans. Such regional plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area-wide waste treatment and water quality control plans, regional transportation plans, regional housing allocation plans, regional blueprint plans, plans for the reduction of greenhouse gas emissions, habitat conservation plans, natural community conservation plans and regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

(e) Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced as well as the potential future conditions discussed in the plan.

AUTHORITY:

Note: Authority cited: Sections 21083 and 21083.05, Public Resources Code. Reference: Sections 21060.5, 21061 and 21100, Public Resources Code; ***Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439; *Communities for a Better Environment v. South Coast Air Quality Management Dist*. (2010) 48 Cal.4th 310; *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316;** *E.P.I.C. v. County of El Dorado* (1982) 131 Cal.App.3d 350; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307.

Deferral of Mitigation Details

Proposed Amendments to Section 15126.4

Background

When a lead agency identifies a potentially significant environmental impact, it must propose feasible mitigation measures in the environmental document for a project. (Pub. Resources Code, §§ 21002 (duty to mitigate), 21080(c)(2) (mitigated negative declaration), 21100(b)(3) (EIR must include mitigation measures).) The formulation of mitigation measures cannot be deferred until after project approval. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92 ("reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decisionmaking; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment").)

Practical considerations, however, sometimes preclude development of detailed mitigation plans at the time of project consideration. In such cases, courts have permitted lead agencies to defer some of the *details* of mitigation measures provided that the agency commits itself to mitigation and analyzes the different mitigation alternatives that might ultimately be incorporated into the project. (See, e.g., *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028–1030.)

A line of recent cases have addressed more specific rules on what details may or may not be deferred. (See, e.g., *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260; *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899; *City of Maywood v. Los Angeles Unified School Dist.*(2012) 208 Cal.App.4th 362; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70; *Sheryl Gray v. County of Madera* (2008) 167 Cal.App.4th 1099; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261.)

In response to stakeholder suggestions for additional guidance in the CEQA Guidelines, OPR proposes changes, as outlined below, to further clarify when deferral of mitigation details may be permissible.

Explanation of Proposed Amendments

First, the proposed amendments clarify in section 15126.4, subdivision (a)(1)(B), that the lead agency "shall" not defer identification of mitigation measures. This binding requirement is clearly stated in a number of cases. (See, e.g., *Preserve Wild Santee, supra*, 210 Cal.App.4th 260; *Rialto Citizens for Responsible Growth, supra*, 208 Cal.App.4th 899; *City of Maywood, supra*, 208 Cal.App.4th 362; *CBE*, *supra*, 184 Cal.App.4th 70; *Gray v. County of Madera*, *supra*, 167 Cal.App.4th 1099; *San Joaquin Raptor Rescue Center*, *supra*, 149 Cal.App.4th 645; *Endangered Habitats League*, *supra*, 131 Cal.App.4th 777;

Defend the Bay, *supra*, 119 Cal.App.4th 1261.) Therefore, replacing the word 'should' with 'shall' will conform the Guidelines to case law. (State CEQA Guidelines § 15005.)

Second, the proposed amendments describe situations when deferral of the *specific details* of mitigation may be allowable under CEQA, including which commitments the agency should make in the environmental document. Specifically, the proposed amendments would explain that deferral may be permissible when it is impractical or infeasible to fully formulate the details of a mitigation measure at the time of project approval and the agency commits to mitigation. (See, e.g., *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884 (deferral of mitigation was proper where practical considerations prohibited devising mitigation measures early in the planning process, and the agency committed to performance criteria); *Defend the Bay*, *supra*, 119 Cal.App.4th 1261 (deferral of specifics of mitigation measures was permissible where practical considerations prohibited devising such measures for a general plan amendment and zoning change); and *Preserve Wild Santee, supra*, 210 Cal.App.4th 260 (deferral of mitigation details was improper where performance standards were not specified and lead agency did not provide an explanation for why such standards were impractical or infeasible to provide at the time of certification of the EIR).)

Further, OPR proposes to clarify that when deferring the specifics of mitigation, the lead agency should either provide a list of possible mitigation measures, or adopt specific performance standards. The first option is summarized in *Defend the Bay v. City of Irvine, supra*. In that case, the court stated that deferral may be appropriate where the lead agency "lists the alternatives to be considered, analyzed and possibly incorporated into the mitigation plan." (*Defend the Bay, supra*, at p. 1275; see also *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376; *Rialto Citizens for Responsible Growth, supra*, 208 Cal.App.4th 899; *Gray v. County of Madera*, *supra*, 167 Cal.App.4th 1099; *San Joaquin Raptor Rescue Center*, *supra*, 149 Cal.App.4th 645; *Endangered Habitats League*, *supra*, 131 Cal.App.4th 777.)

Alternatively, the lead agency may adopt performance standards in the environmental document, as described by the court in *Rialto Citizens for Responsible Growth v. City of Rialto, supra*. There, the court ruled that where mitigation measures incorporated specific performance criteria and were not so open-ended that they allowed potential impacts to remain significant, deferral was proper. (*Rialto Citizens for Responsible Growth, supra*, 208 Cal.App.4th 899; see also *Laurel Heights*, *supra*, 47 Cal.3d 376; *Preserve Wild Santee, supra*, 210 Cal.App.4th 260; *City of Maywood, supra*, 208 Cal.App.4th 362; *CBE*, *supra*, 184 Cal.App.4th 70; *Gray v. County of Madera*, *supra*, 167 Cal.App.4th 1099; *San Joaquin Raptor Rescue Center*, *supra*, 149 Cal.App.4th 645; *Endangered Habitats League*, *supra*, 131 Cal.App.4th 777.)

Finally, the proposed amendments explain that such deferral may be appropriate "where another regulatory agency will issue a permit for the project and is expected to impose mitigation requirements independent of the CEQA process so long as the EIR included performance criteria and the lead agency committed itself to mitigation." (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 237; see also *Oakland Heritage Alliance*, *supra*, 195 Cal.App.4th 884; *Defend the Bay*, *supra*, 119 Cal.App.4th 1261.)

Text of Proposed Amendments

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15126.4. Consideration and Discussion of Mitigation Measures proposed to Minimize Significant Effects.

(a) Mitigation Measures in General.

(1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.

(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures ~~**should**~~ **shall** not be deferred until some future time. ~~**However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.**~~ **The specific details of a mitigation measure, however, may be deferred when it is impractical or infeasible to include those details during the environmental review and the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) lists the potential actions to be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit process may be identified as a future action in the proper deferral of mitigation details if compliance is mandatory and would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.**

(C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.

(D) If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (*Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)

(2) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.

(3) Mitigation measures are not required for effects which are not found to be significant.

(4) Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

(A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and

(B) The mitigation measure must be "roughly proportional" to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Where the mitigation measure is an ad hoc exaction, it must be "roughly proportional" to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

(5) If the lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. Instead, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency's determination.

(b) Mitigation Measures Related to Impacts on Historical Resources.

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

(2) In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.

(3) Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

(A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

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

1. Planning construction to avoid archaeological sites;

2. Incorporation of sites within parks, greenspace, or other open space;

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

4. Deeding the site into a permanent conservation easement.

(C) When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archaeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code. If an artifact must be removed during project excavation or testing, curation may be an appropriate mitigation.

(D) Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

(c) Mitigation Measures Related to Greenhouse Gas Emissions.
Consistent with section 15126.4(a), lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of greenhouse gas emissions. Measures to mitigate the significant effects of greenhouse gas emissions may include, among others:

(1) Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the lead agency's decision;

(2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F;

(3) Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions;

(4) Measures that sequester greenhouse gases;

(5) In the case of the adoption of a plan, such as a general plan, long range development plan, or plans for the reduction of greenhouse gas emissions, mitigation may include the identification of specific measures that may be implemented on a project-by-project basis. Mitigation may also include the incorporation of specific measures or policies found in an adopted ordinance or regulation that reduces the cumulative effect of emissions.

Note: Authority cited: Sections 21083 and 21083.05, Public Resources Code. Reference: Sections 5020.5, 21002, 21003, 21083.05, 21084.1 and 21100, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011; *San Franciscans Upholding the Downtown Plan v. City & Co. of San Francisco* (2002) 102 Cal.App.4th 656; *Assn. of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383; ~~and~~ *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018**; *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200; *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260; and *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899.**

Responses to Comments

Proposed Amendments to Sections 15087 and 15088

Background

Public review and comment plays an important role in the CEQA process. In brief, the statute requires a lead agency to "consider" and "evaluate" timely comments, and to prepare written responses to comments on an environmental impact report. (Pub. Resources Code, § 21091(d).) A lead agency may, but is not required to, respond to comments submitted after the close of the comment period. Section 21082.1(b) provides that "comments may be submitted in any format[.]"

Case law has further clarified the scope of a lead agency's duty to respond:

> 'The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.' … Thus, a lead agency need not respond to each comment made during the review process, however, it must specifically respond to the most significant environmental questions presented. … Further, the determination of the sufficiency of the agency's responses to comments on the draft EIR turns upon the detail required in the responses. … Where a general comment is made, a general response is sufficient.

(*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 878 (citations omitted).)

Advances in technology have altered the nature of the public's interactions with government agencies. Many public agencies now incorporate the internet and social media into their outreach and public participation strategies. (See, e.g., Office of Planning and Research, Book of Lists (2003), pp. 94-99 (listing local governments that use the internet and e-mail as forms of public engagement); see also Institute for Local Government, "A Local Official's Guide to Online Public Engagement" (2012).) Similarly, the public has expanded its use of the internet and digital storage to provide increasing amounts of data and information to decision-makers.

In recent years, several court cases have grappled with a related set of questions in the context of litigation. For example, one court considered whether a citizens' group fairly raised an issue by submitting voluminous data, without explanation, on a digital video disk ("DVD"). (*Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515 ("*CREED*").) Specifically, the group submitted a "cursory" letter, on the night of the hearing on the project, accompanied by a DVD containing more than 4,000 pages of documents and data without any particular organization. The DVD did not contain a table of contents or any summary of the information contained on the disk. Neither the disk nor the comment letter explained how the information might

relate to the project. (*Id*. at p. 521.) Discussing the way that this information was presented to the lead agency, the court explained:

> Evidence must be presented in a manner that gives the agency the opportunity to respond with countervailing evidence. [Citations omitted.] The City cannot be expected to pore through thousands of documents to find something that arguably supports [a project opponent's] belief the project should not go forward.

(*Id*. at p. 528.) The court thus held that simply submitting information on a DVD, without in any way explaining its contents or how they relate to the project, did not fairly present the information in a way that the lead agency could respond. (*Ibid*.) Therefore, in that case, the petitioner had not exhausted its administrative remedies.

Another case addressed how to treat citations to websites within written comments for the purposes of determining what documents should be considered part of an administrative record. (*Consolidated Irrigation Dist. v. Super. Ct.* (2012) 205 Cal.App.4th 697, 720-725.) In that case, various letters cited to other documents as evidence. Some of the citations included specific URLs that link directly to the cited document. Other websites cited in the letters, on the other hand, were more general and would require searching to locate the specific document referenced in the letters. The court held that, for the purposes of determining the contents of the administrative record, citing general websites is insufficient to "submit" documents or evidence to a lead agency. In reaching its conclusion, the court observed:

> In allocating the burden between lead agency personnel and the commenter, we conclude that lead agency personnel should not be required to spend time searching for documents that the commenter asserts can be found through a general Web site. Presumably when the commenter is reviewing the document on the World Wide Web, it would take little effort to note the URL of the specific Web page where the document is located and include that URL in the comment letter. We do not doubt that some documents can be found easily if a general Web site is given. Conversely, other documents will be difficult to locate. In view of the potential variation from document to document, it is best to adopt a rule that will avoid subjecting lead agency personnel to potentially time-consuming efforts.

Thus, for a document from the internet to be considered "submitted to" a lead agency, a commenter must specifically direct the agency to that document. (*Id*. at p. 724.)

Together, though they relate to litigation, these cases tell us something about the duty of lead agencies to respond to information presented to them. First, if a lead agency is to develop a detailed written response to information presented to it, a comment must explain in some way how the information is relevant to the project and to any potential environmental impacts. Second, a lead agency should not be expected to search out, let alone develop a detailed written response to, information that is only vaguely referenced in a comment. In other words, if a comment is not detailed enough to exhaust or to include in the administrative record, it is not enough to compel a detailed response. (*Consolidated*

Irrigation Dist. v. Superior Court (2012) 205 Cal. App. 4th 697, 720-725; *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 528.)

Explanation of Proposed Amendments

In light of the increasing use of the internet in public engagement, as well as the cases described above, OPR proposes to clarify the scope of a lead agency's duty to respond to comments as described in section 15088. Specifically, OPR proposes to clarify that responses to general comments may be general. Further, OPR proposes to clarify that general responses may be appropriate when a comment does not explain the relevance of information submitted with the comment, and when a comment refers to information that is not included or is not readily available to the agency.

Additionally, OPR proposes to clarify in section 15088(b) that a lead agency may provide proposed responses to public agency comments in electronic form.

Finally, OPR proposes to clarify in section 15087(c)(2) that the lead agency may specify the manner in which it will receive written comments. This clarification is necessary to accommodate those agencies that wish to publicize the availability a draft environmental impact report on the internet or social media, and to make clear that responses will not be prepared for comments made in internet chat-rooms or via social media like Facebook and Twitter.

Text of Proposed Amendments to Sections 15087 and 15088

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15087. Public Review of Draft EIR

(a) The lead agency shall provide public notice of the availability of a draft EIR at the same time as it sends a notice of completion to the Office of Planning and Research. If the United States Department of Defense or any branch of the United States Armed Forces has given the lead agency written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of availability of a draft EIR pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section 15190.5. The public notice shall be given as provided under Section 15105 (a sample form is provided in Appendix L). Notice shall be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing, and shall also be given by at least one of the following procedures:

(1) Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the public agency on and off the site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(b) The alternatives for providing notice specified in subdivision (a) shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this section preclude a public agency from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

(c) The notice shall disclose the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments**, and the manner in which the lead agency will receive those comments**. If the review period is shortened, the notice shall disclose that fact.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project when known to the lead agency at the time of notice.

(4) A list of the significant environmental effects anticipated as a result of the project, to the extent which such effects are known to the lead agency at the time of the notice.

(5) The address where copies of the EIR and all documents referenced in the EIR will be available for public review. This location shall be readily accessible to the public during the lead agency's normal working hours.

(6) The presence of the site on any of the lists of sites enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, hazardous waste disposal sites and others, and the information in the Hazardous Waste and Substances Statement required under subdivision (f) of that Section.

(d) The notice required under this section shall be posted in the office of the county clerk of each county in which the project will be located for a period of at least 30 days. The county clerk shall post such notices within 24 hours of receipt.

(e) In order to provide sufficient time for public review, the review period for a draft EIR shall be as provided in Section 15105. The review period shall be combined with the consultation required under Section 15086. When a draft EIR has been submitted to the State Clearinghouse, the public review

period shall be at least as long as the review period established by the State Clearinghouse. The public review period and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state review period shall be the date that the State Clearing-house distributes the document to state agencies.

(f) Public agencies shall use the State Clearinghouse to distribute draft EIRs to state agencies for review and should use areawide clearinghouses to distribute the documents to regional and local agencies.

(g) To make copies of EIRs available to the public, lead agencies should furnish copies of draft EIRs to public library systems serving the area involved. Copies should also be available in offices of the lead agency.

(h) Public agencies should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(i) Public hearings may be conducted on the environmental documents, either in separate proceedings or in con-junction with other proceedings of the public agency. Public hearings are encouraged, but not required as an element of the CEQA process.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21091, 21092, 21092.2, 21092.3, 21092.6, 21098, 21104, 21152, 21153 and 21161, Public Resources Code.

§ 15088. Evaluation of and Response to Comments

(a) The lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall respond to comments **raising significant environmental issues** received during the noticed comment period and any extensions and may respond to late comments.

(b) The lead agency shall provide a written proposed response**, either in a printed copy or in an electronic format,** to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report.

(c) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice. **The level of detail contained**

in the response, however, may correspond to the level of detail provided in the comment (i.e., responses to general comments may be general). A general response may be appropriate when a comment does not contain or specifically refer to readily available information, or does not explain the relevance of evidence submitted with the comment.

(d) The response to comments may take the form of a revision to the draft EIR or may be a separate section in the final EIR. Where the response to comments makes important changes in the information contained in the text of the draft EIR, the lead agency should either:

(1) Revise the text in the body of the EIR, or

(2) Include marginal notes showing that the information is revised in the response to comments.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections **21091;** 21092.5, 21104 and 21153, Public Resources Code; People v. County of Kern, (1974) 39 Cal. App. 3d 830; *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348**; *Friends of the Eel River v. Sonoma 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, 528; *Consolidated Irrigation Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 720-725.**

Notice of Determination and Notice of Exemption

Proposed Amendments to Sections 15062, 15075, and 15094

Background and Explanation of the Proposed Amendments

In 2011, the Legislature passed, and Governor Brown signed into law, Assembly Bill 320. That law requires a CEQA notice of determination and notice of exemption to identify the person undertaking an activity that receives financial assistance from a public agency (such as a grant, subsidy, or loan) or a person receiving a lease, permit, license, certificate, or other entitlement for use from a public agency. To that end, OPR proposes changes to the CEQA Guidelines relating to notices of determination (CEQA Guidelines Appendix D) and notices of exemption (CEQA Guidelines Appendix E), as outlined below.

Proposed changes to Appendices D and E themselves, which reflect the changes required by Assembly Bill 320, are also included in this section of the package. Electronic versions of the notice of determination and notice of exemption that include identification of the project applicant have been made available on OPR's website as of 2011. Additionally, OPR proposes a technical change to the NOE that would modify the "Lead Agency Contact Person" to "Public Agency Contact Person" to acknowledge that NOEs may be used by lead *and* responsible agencies.

Text of Proposed Amendments to Sections 15062, 15075, and 15094, and Appendices D and E

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15062. Notice of Exemption

(a) When a public agency decides that a project is exempt from CEQA pursuant to Section 15061, and the public agency approves or determines to carry out the project, the agency may, file a notice of exemption. The notice shall be filed, if at all, after approval of the project. Such a notice shall include:

(1) A brief description of the project,

(2) The location of the project (either by street address and cross street for a project in an urbanized area or by attaching a specific map, preferably a copy of a U.S.G.S. 15' or 7-1/2' topographical map identified by quadrangle name),

(3) A finding that the project is exempt from CEQA, including a citation to the State Guidelines section or statute under which it is found to be exempt,

(4) A brief statement of reasons to support the finding, and

(5) The applicant's name, if any.

(6) The identity of the person undertaking an activity which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies, or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use from one or more public agencies.

(b) A notice of exemption may be filled out and may accompany the project application through the approval process. The notice shall not be filed, with the county clerk or OPR until the project has been approved.

(c) When a public agency approves an applicant's project, either the agency or the applicant may file a notice of exemption.

(1) When a state agency files this notice, the notice of exemption shall be filed with the Office of Planning and Research. A form for this notice is provided in Appendix E (Revised 2011). A list of all such notices shall be posted on a weekly basis at the Office of Planning and Research, 1400 Tenth Street, Sacramento, California. The list shall remain posted for at least 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.

(2) When a local agency files this notice, the notice of exemption shall be filed with the county clerk of each county in which the project will be located. Copies of all such notices will be available for public inspection and such notices shall be posted within 24 hours of receipt in the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than 12 months.

(3) All public agencies are encouraged to make postings pursuant to this section available in electronic format on the Internet. Such electronic postings are in addition to the procedures required by these guidelines and the Public Resources Code.

(4) When an applicant files this notice, special rules apply.

(A) The notice filed by an applicant is filed in the same place as if it were filed by the agency granting the permit. If the permit was granted by a state agency, the notice is filed with the Office of Planning and Research. If the permit was granted by a local agency, the notice is filed with the county clerk of the county or counties in which the project will be located.

(B) The notice of exemption filed by an applicant shall contain the information required in subdivision (a) together with a certified document issued by the public agency stating that the agency has found the project to be exempt. The certified document may be a certified copy of an existing document or record of the public agency.

(C) A notice filed by an applicant is subject to the same posting and time requirements as a notice filed by a public agency.

(d) The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.

(e) When a local agency determines that a project is not subject to CEQA under sections 15193, 15194, or 15195, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file a notice with OPR identifying the section under which the exemption is claimed.

Note: Authority cited: Section 21083 and 21108, Public Resources Code. Reference: Sections 21108, 21152 and 21152.1, Public Resources Code.

§ 15075. Notice of Determination on a Project for Which a Proposed Negative or Mitigated Negative Declaration Has Been Approved

(a) The lead agency shall file a notice of determination within five working days after deciding to carry out or approve the project. For projects with more than one phase, the lead agency shall file a notice of determination for each phase requiring a discretionary approval.

(b) The notice of determination shall include:

(1) An identification of the project including the project title as identified on the proposed negative declaration, its location, and the State Clearinghouse identification number for the proposed negative declaration if the notice of determination is filed with the State Clearinghouse.

(2) A brief description of the project.

(3) The agency's name, the applicant's name, if any, and the date on which the agency approved the project.

(4) The determination of the agency that the project will not have a significant effect on the environment.

(5) A statement that a negative declaration or a mitigated negative declaration was adopted pursuant to the provisions of CEQA.

(6) A statement indicating whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted.

(7) The address where a copy of the negative declaration or mitigated negative declaration may be examined.

(8) The identity of the person undertaking an activity which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies, or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use from one or more public agencies.

(c) If the lead agency is a state agency, the lead agency shall file the notice of determination with the Office of Planning and Research within five working days after approval of the project by the lead agency.

(d) If the lead agency is a local agency, the local agency shall file the notice of determination with the county clerk of the county or counties in which the project will be located within five working days after approval of the project by the lead agency. If the project requires discretionary approval from any state agency, the local lead agency shall also, within five working days of this approval, file a copy of the notice of determination with the Office of Planning and Research.

(e) A notice of determination filed with the county clerk shall be available for public inspection and shall be posted by the county clerk within 24 hours of receipt for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period during which it was posted. The local lead agency shall retain the notice for not less than 12 months.

(f) A notice of determination filed with the Office of Planning and Research shall be available for public inspection and shall be posted for a period of at least 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.

(g) The filing of the notice of determination pursuant to subdivision (c) above for state agencies and the filing and posting of the notice of determination pursuant to subdivisions (d) and (e) above for local agencies, start a 30-day statute of limitations on court challenges to the approval under CEQA.

(h) A sample Notice of Determination (Rev. 2011) is provided in Appendix D. Each public agency may devise its own form, but the minimum content requirements of subdivision (b) above shall be met.

Public agencies are encouraged to make copies of all notices filed pursuant to this section available in electronic format on the Internet. Such electronic notices are in addition to the posting requirements of these guidelines and the Public Resources Code.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(c), 21081.6, 21082.1, 21096, **21108** ~~and~~ 21151 **and 21152**, Public Resources Code; *Friends of B Street v. City of Hayward*, (1980) 106 Cal. App. 3d 988.

§ 15094. Notice of Determination

(a) The lead agency shall file a Notice of Determination (Rev. ~~**2011**~~**2017**) within five working days after deciding to carry out or approve the project.

(b) The notice of determination shall include:

(1) An identification of the project including the project title as identified on the draft EIR, and the location of the project (either by street address and cross street for a project in an urbanized area or by attaching a specific map, preferably a copy of a U.S.G.S. 15' or 7-1/2' topographical map identified by quadrangle name). If the notice of determination is filed with the State Clearinghouse, the State Clearinghouse identification number for the draft EIR shall be provided.

(2) A brief description of the project.

(3) The lead agency's name, the applicant's name, if any, and the date on which the agency approved the project. If a responsible agency files the notice of determination pursuant to Section 15096(i), the responsible agency's name, the applicant's name, if any, and date of approval shall also be identified.

(4) The determination of the agency whether the project in its approved form will have a significant effect on the environment.

(5) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.

(6) Whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted.

(7) Whether findings were made pursuant to Section 15091.

(8) Whether a statement of overriding considerations was adopted for the project.

(9) The address where a copy of the final EIR and the record of project approval may be examined.

(10) The identity of the person undertaking an activity which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies, or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use from one or more public agencies.

(c) If the lead agency is a state agency, the lead agency shall file the notice of determination with the Office of Planning and Research within five working days after approval of the project by the lead agency.

(d) If the lead agency is a local agency, the local lead agency shall file the notice of determination with the county clerk of the county or counties in which the project will be located, within five working days after approval of the project by the lead agency. If the project requires discretionary approval from any state agency, the local lead agency shall also, within five working days of this approval, file a copy of the notice of determination with the Office of Planning and Research.

(e) A notice of determination filed with the county clerk shall be available for public inspection and shall be posted within 24 hours of receipt for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period during which it was posted. The local lead agency shall retain the notice for not less than 12 months.

(f) A notice of determination filed with the Office of Planning and Research shall be available for public inspection and shall be posted for a period of at least 30 days. The Office of Planning and Research shall retain each notice, for not less than 12 months.

(g) The filing of the notice of determination pursuant to subdivision (c) above for state agencies and the filing and posting of the notice of determination pursuant to subdivisions (d) and (e) above for local agencies, start a 30-day statute of limitations on court challenges to the approval under CEQA.

(h) A sample notice of determination is provided in Appendix D. Each public agency may devise its own form, but any such form shall include, at a minimum, the information required by subdivision (b). Public agencies are encouraged to make copies of all notices filed pursuant to this section available in electronic format on the Internet. Such electronic notices are in addition to the posting requirements of the Guidelines and the Public Resources Code.

Note: Authority cited: Section 21083 and 21152, Public Resources code. Reference: Sections 21108, 21152 and 21167, Public Resources Code; *Citizens of Lake Murray Area Association v. City Council* (1982) 129 Cal.App.3d 436.

Notice of Determination

To:

☐ Office of Planning and Research

For U.S. Mail:	*Street Address:*
P.O. Box 3044	1400 Tenth St.
Sacramento, CA 95812-3044	Sacramento, CA 95814

☐ County Clerk

County of: _____

Address: _____

_____

From:

Public Agency: _____

Address: _____

_____

Contact: _____

Phone: _____

Lead Agency (if different from above):

_____

Address: _____

_____

Contact: _____

Phone: _____

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): _____

Project Title: _____

Project Applicant: _____

Project Location (include county): _____

Project Description:

1. The project [☐ will ☐ will not] have a significant effect on the environment.
2. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
   ☐ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [☐ were ☐ were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [☐ was ☐ was not] adopted for this project.
5. A statement of Overriding Considerations [☐ was ☐ was not] adopted for this project.
6. Findings [☐ were ☐ were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at:

_____

Signature (Public Agency):_____ Title:_____

Date: _____ Date Received for filing at OPR: _____

Authority cited: Sections 21083, Public Resources Code.

Reference Section 21000-~~21174~~ **21189.57**, Public Resources Code.

Revised ~~2011~~ **2017**

Notice of Exemption

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk
County of:
_____
_____
_____

From: (Public Agency): _____
_____
_____
(Address)

Project Title: _____

Project Applicant: _____

Project Location - Specific:

Project Location – City: _____ Project Location – County _____

Description of Nature, Purpose and Beneficiaries of Project:

Name of Public Agency Approving Project:
Name of Person or Agency Carrying Out Project:

Exempt Status: **(check one):**

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☐ Categorical Exemption. State type and section number: _____
- ☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

~~**Lead**~~ **Public** Agency
Contact Person: _____

Area Code/Telephone/ Extension: _____

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐Yes ☐ No

Signature: _____ Date: _____ Title: _____

- ☐ Signed by ~~**Lead**~~ **Public** Agency
- ☐ Signed by Applicant

Date received for filing at OPR:

Authority cited: Sections 21083**,** ~~**and 21110**~~ **21108, and 21152**, Public Resources Code.

Reference Sections **21083,** 21108, 21152, and 21152.1, Public Resources Code.

Pre-Approval Agreements

Proposed Amendments to Section 15004

Background

If environmental review is to play a meaningful role in shaping a project, review must occur "as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment." (CEQA Guidelines, § 15004(b).) While it is clear that environmental review must occur prior to project approval, determining what project-related activities may proceed prior to project approval is sometimes less clear. For example, the League of Cities explained in briefing on a Supreme Court case that:

> [C]ities often reach purchase option agreements, memoranda of understanding, exclusive negotiating agreements, or other arrangements with potential developers, especially for projects on public land, before deciding on the specifics of a project. Such preliminary or tentative agreements may be needed in order for the project proponent to gather financial resources for environmental and technical studies, to seek needed grants or permits from other government agencies, or to test interest among prospective commercial tenants.

(*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 137.) Such pre-approval activities are not unique to cities. In fact, public agencies throughout the state confront the question of which project-related activities may occur prior to environmental review and project approval.

Explanation of the Proposed Amendments

While the Supreme Court addressed the issue of when CEQA applies to pre-approval activities, it declined to set forth a bright-line rule. (*Save Tara*, *supra*, 45 Cal.4th at p. 138.) Instead, it concluded that several factors are relevant to that determination. (*Id*. at p. 139 ("courts should look not only to the terms of the agreement but to the surrounding circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project").) OPR proposes to add a new subdivision (b)(4) to section 15004 to assist lead agencies in applying the principles identified by the Supreme Court in the *Save Tara* decision.

The first sentence in subdivision (b)(4) acknowledges that pre-approval agreements may fall on a spectrum between mere interest in a project and a commitment to a definite course of action. That sentence also reflects the Supreme Court's holding that circumstances surrounding the activity are

relevant to the determination of whether an agency has, as a practical matter, committed to a project. (*Save Tara*, *supra*, 45 Cal.4th at 139.)

The second sentence provides an example of an agreement that likely could not precede CEQA review (i.e., a development agreement that would grant vested rights). (*Id*. at p. 138; *see also Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4th 1199.)

The third sentence provides examples of characteristics of agreements that may be executed prior to CEQA review. These characteristics include:

- a commitment to compliance with CEQA (*see Save Tara*, *supra*, 45 Cal.4th at p. 139 (a "contract's conditioning of final approval on CEQA compliance is relevant but not determinative" in determining whether an agency has approved a project));
- an absence of terms that bind the agency to a definite course of action (*Ibid* ("If, as a practical matter, the agency has foreclosed any meaningful options to going forward with the project, then for purposes of CEQA the agency has 'approved' the project") (*citing* Remy et al., GUIDE TO THE CAL. ENVIRONMENTAL QUALITY ACT (CEQA) (11th ed. 2006), at p. 71)); and
- an absence of restrictions on the consideration of the full range of mitigation measures and alternatives (*ibid* ("whether the agency has nevertheless effectively circumscribed or limited its discretion with respect to that environmental review").

Text of the Proposed Amendments to Section 15004

Changes to the existing guideline are shown in **bold** type, with additions **<u>underlined</u>** and deletions shown in **~~strikeout~~**.

§ 15004. Time of Preparation

(a) Before granting any approval of a project subject to CEQA, every lead agency or responsible agency shall consider a final EIR or negative declaration or another document authorized by these guidelines to be used in the place of an EIR or negative declaration. See the definition of "approval" in Section 15352.

(b) Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.

(1) With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning. CEQA compliance should be completed prior to acquisition of a site for a public project.

(2) To implement the above principles, public agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance. For example, agencies shall not:

(A) Formally make a decision to proceed with the use of a site for facilities which would require CEQA review, regardless of whether the agency has made any final purchase of the site for these facilities, **except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance**.

(B) Otherwise take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.

(3) With private projects, the Lead Agency shall encourage the project proponent to incorporate environmental considerations into project conceptualization, design, and planning at the earliest feasible time.

(4) While mere interest in, or inclination to support, a project does not constitute approval, a public agency entering into preliminary agreements regarding a project prior to approval shall not, as a practical matter, commit the agency to the project. For example, it shall not grant any vested development entitlements prior to compliance with CEQA. Further, any such agreement should:

(A) Condition the agreement on compliance with CEQA;

(B) Not bind any party, or commit to any definite course of action, prior to CEQA compliance; and

(C) Not restrict the lead agency from considering any feasible mitigation measures and alternatives, including the "no project" alternative.

(c) The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively. When the lead agency is a state agency, the environmental document shall be included as part of the regular project report if such a report is used in its existing review and budgetary process.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21003, 21061 and 21105, Public Resources Code; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247; *Mount Sutro Defense Committee v. Regents of the University of California* (1978) 77 Cal.App.3d 20**; and *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116**.

Lead Agency by Agreement

Proposed Amendments to Section 15051

Background and Explanation of the Proposed Amendments

CEQA defines "lead agency" in Public Resources Code section 21067 as, "the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." Similarly, the CEQA Guidelines define the lead agency as "the public agency which has the principal responsibility for carrying out or approving a project…. Criteria for determining which agency will be the lead agency for a project are contained in section 15051." (Guidelines, § 15367.) Guidelines section 15051, subdivisions (a) and (b), explain which entity will act as lead agency under usual circumstances, and subdivisions (c) and (d) describe circumstances when there may be some discrepancy over who should act as the lead on a project. Stakeholders point out that subdivisions (c) and (d), when read together, are contradictory and essentially render subdivision (d) moot with respect to subdivisions (b) and (c). Thus, OPR proposes to amend section 15051, subdivision (c), to address the existing contradiction and to allow for necessary flexibility in determining the lead agency when two or more agencies have a substantial claim to that role.

Section 15051, subdivision (c), states that, "[w]here more than one public agency equally meet the criteria in subdivision (b), the agency which will act first on the project in question *shall* be the lead agency." (Italics added.) However, subdivision (d) states that "[w]here the provisions of subdivisions (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency…."

As these sections are currently written, where two public agencies equally meet the criteria for lead agency, the agency which will act first must be the lead under subdivision (c), which effectually renders subdivision (d) inapplicable other than with respect to subdivision (a). The existing language prevents two potential lead agencies which meet the criteria in subdivision (b), each with a substantial claim to be the lead, from agreeing to designate one as the lead unless both happen to act at the exact same moment on the project. Changing the word "shall" to "will normally" will clarify that where more than one public agency meets the criteria in subdivision (b), the agencies may agree pursuant to subdivision (d) to designate one entity as the lead.

Text of Proposed Amendments to Section 15051

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15051. Criteria for Identifying the Lead Agency.

Where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria:

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

(b) If the project is to be carried out by a nongovernmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

(1) The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.

(2) Where a city prezones an area, the city will be the appropriate lead agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the prezoning. The local agency formation commission shall act as a responsible agency.

(c) Where more than one public agency equally meet the criteria in subdivision (b), the agency which will act first on the project in question **will normally** ~~**shall**~~ be the lead agency.

(d) Where the provisions of subdivisions (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21165, Public Resources Code.

Common Sense Exemption

Proposed Amendments to Section 15061

Background and Explanation of Proposed Amendments

OPR proposes to amend subdivision (b)(3) of Section 15061. Currently, subdivision (b)(3) states that an activity is covered by the "general rule" and exempt from CEQA if there is no possibility that the activity may have a significant effect on the environment. OPR proposes to replace the phrase "general rule" with the phrase "common sense exception" in order to match the language used by the California Supreme Court when evaluating the application of this CEQA exemption (See *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 389 (used the term "common sense exception" to apply Section 15061).) This clarification is needed to match practitioners' customary use of the term "common sense exception" and to prevent possible confusion for others who see or hear references to the term but cannot find it in the text of the CEQA Guidelines.

Text of Proposed Amendments

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15061. Review for Exemption

(a) Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA.

(b) A project is exempt from CEQA if:

(1) The project is exempt by statute (see, e.g. Article 18, commencing with Section 15260).

(2) The project is exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.

(3) The activity is covered by the ~~**general rule**~~ **common sense exception** that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

(4) The project will be rejected or disapproved by a public agency. (See Section 15270(b)).

(5) The project is exempt pursuant to the provisions of Article 12.5 of this Chapter.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(c), 21080.1,21080.3, 21082.1, 21100 and 21151, Public Resources Code; ***Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372**; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.

Preparing an Initial Study

Proposed Amendments to Section 15063

Background and Explanation of Proposed Amendments

OPR proposes to add a new subsection (4) to section 15063, subdivision (a), to specify the arrangements a lead agency may use to prepare an initial study. The Public Resources Code states that a public agency may prepare a draft environmental impact report or negative declaration directly or under contract to that public agency. (Pub. Resources Code, § 21082.1.) Section 15084 implements the Public Resources Code by allowing lead agencies to prepare a draft environmental impact report directly or under contract. (See CEQA Guidelines, § 15084(d).) The Guidelines do not currently, however, contain a parallel provision for negative declarations or mitigated declarations.

A draft or mitigated negative declaration must include a copy of an initial study. (See CEQA Guidelines, § 15071(d) (stating that a negative declaration circulated for public review must include a copy of the initial study).) Therefore, OPR proposes to add the new subsection to section 15063(a) to match the methods and arrangement used to prepare a draft environmental impact report and increase consistency in report preparation. This addition is necessary to provide consistent guidance for lead agencies preparing environmental documents. (See Pub. Resources Code, § 21082.1 (stating that any draft environmental impact report, negative declaration, etc. "shall be prepared directly by, or under contract to, a public agency"); CEQA Guidelines, § 15084(d) (lists available arrangements for completing a draft environmental impact report).)

Text of Proposed Amendments to Section 15063

Changes to the existing guideline are shown in **bold** type, with additions **<u>underlined</u>** and deletions shown in **~~strikeout~~**.

§ 15063. Initial Study

(a) Following preliminary review, the lead agency shall conduct an initial study determine if the project may have a significant effect on the environment. If the lead agency can determine that an EIR will clearly be required for the project, an initial study is not required but may still be desirable.

(1) All phases of project planning, implementation, and operation must be considered in the initial study of the project.

(2) To meet the requirements of this section, the lead agency may use an environmental assessment or a similar analysis prepared pursuant to the National Environmental Policy Act.

(3) An initial study may rely upon expert opinion supported by facts, technical studies or other substantial evidence to document its findings. However, an initial study is neither intended nor required to include the level of detail included in an EIR.

(4) The lead agency may use any of the arrangements or combination of arrangements described in Section 15084(d) to prepare an initial study.

(b) Results.

(1) If the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the lead agency shall do one of the following:

(A) Prepare an EIR or

(B) Use a previously prepared EIR which the lead agency determines would adequately analyze the project at hand, or

(C) Determine, pursuant to a program EIR, tiering, or another appropriate process, which of a project's effects were adequately examined by an earlier EIR or negative declaration. Another appropriate process may include, for example, a master EIR, a master environmental assessment, approval of housing and neighborhood commercial facilities in urban areas, approval of residential projects pursuant to a specific plan as described in section 15182, approval of residential projects consistent with a community plan, general plan or zoning as described in section 15183, or an environmental document prepared under a State certified regulatory program. The lead agency shall then ascertain which effects, if any, should be analyzed in a later EIR or negative declaration.

(2) The lead agency shall prepare a negative declaration if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

(c) Purposes. The purposes of an initial study are to:

(1) Provide the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration;

(2) Enable an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration;

(3) Assist the preparation of an EIR, if one is required, by:

(A) Focusing the EIR on the effects determined to be significant,

(B) Identifying the effects determined not to be significant,

(C) Explaining the reasons for determining that potentially significant effects would not be significant, and

(D) Identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects.

(4) Facilitate environmental assessment early in the design of a project;

(5) Provide documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment;

(6) Eliminate unnecessary EIRs;

(7) Determine whether a previously prepared EIR could be used with the project.

(d) Contents. An initial study shall contain in brief form:

(1) A description of the project including the location of the project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as an attached map, photographs, or an earlier EIR or negative declaration. A reference to another document should include, where appropriate, a citation to the page or pages where the information is found.

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study.

(e) Submission of Data. If the project is to be carried out by a private person or private organization, the lead agency may require such person or organization to submit data and information which will enable the lead agency to prepare the initial study. Any person may submit any information in any form to assist a lead agency in preparing an initial study.

(f) Format. Sample forms for an applicant's project description and a review form for use by the lead agency are contained in Appendices G and H. When used together, these forms would meet the requirements for an initial study, provided that the entries on the checklist are briefly explained pursuant to subdivision (d)(3). These forms are only suggested, and public agencies are free to devise their own format for an initial study. A previously prepared EIR may also be used as the initial study for a later project.

(g) Consultation. As soon as a lead agency has determined that an initial study will be required for the project, the lead agency shall consult informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether an EIR or a negative declaration should be prepared. During or immediately after preparation of an initial study for a private project, the lead agency may consult with the applicant to determine if the applicant is willing to modify the project to reduce or avoid the significant effects identified in the initial study.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(c), 21080.1,21080.3, 21082.1, 21100 and 21151, Public Resources Code; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal.App.3d 1337.

Consultation with Transit Agencies

Proposed Amendments to Sections 15072 and 15086

Background and Explanation of the Proposed Amendments

OPR proposes to add a sentence to subdivision (e) of section 15072 and subdivision (a)(5) of section 15086 regarding agencies and entities with which a lead agency shall or may consult prior to completing an environmental impact report. (See Pub. Resources Code, § 21104 (stating that the lead agency shall consult with, and obtain comments from each responsible, trustee, or public agency that has jurisdiction over the project).) OPR proposes to clarify in those subdivisions that lead agencies should also consult public transit agencies facilities within one-half mile of the proposed project. This addition is necessary to improve noticing standards by involving affected public transit agencies in the preparation of an environmental impact report, and to ensure environmental transportation impacts are fully considered in accordance to the general statutory mandate under CEQA. (See Pub. Resources Code, § 21092.4 ("Consultation shall be . . . for the purpose of the lead agency obtaining information concerning the project's effect . . . within the jurisdiction of a transportation planning agency…); CEQA Guidelines, § 15003(f) ("CEQA was intended … to afford the fullest possible protection to the environment . . . .).)

Text of the Proposed Amendments to Sections 15072 and 15086

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15072. Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration

(a) A lead agency shall provide a notice of intent to adopt a negative declaration or mitigated negative declaration to the public, responsible agencies, trustee agencies, and the county clerk of each county within which the proposed project is located, sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the public and agencies the review period provided under section 15105.

(b) The lead agency shall mail a notice of intent to adopt a negative declaration or mitigated negative declaration to the last known name and address of all organizations and individuals who have previously requested such notice in writing and shall also give notice of intent to adopt a negative declaration or mitigated negative declaration by at least one of the following procedures to allow the public the review period provided under section 15105:

(1) Publication at least one time by the lead agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the

newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the lead agency on and off site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the project. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(c) The alternatives for providing notice specified in subdivision (b) shall not preclude a lead agency from providing additional notice by other means if the agency so desires, nor shall the requirements of this section preclude a lead agency from providing the public notice at the same time and in the same manner as public notice required by any other laws for the project.

(d) The county clerk of each county within which the proposed project is located shall post such notices in the office of the county clerk within 24 hours of receipt for a period of at least 20 days.

(e) For a project of statewide, regional, or areawide significance, the lead agency shall also provide notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in Section 21092.4(a) of the Public Resources Code. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site and freeways, highways and rail transit service within 10 miles of the project site. **The lead agency should also consult with public transit agencies with facilities within one-half mile of the proposed project.**

(f) If the United States Department of Defense or any branch of the United States Armed Forces has given a lead agency written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the military contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of intent to adopt a negative declaration or a mitigated negative declaration pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section 15190.5. The lead agency shall send the specified military contact office such notice of intent sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the military service the review period provided under Section 15105.

(g) A notice of intent to adopt a negative declaration or mitigated negative declaration shall specify the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments on the proposed negative declaration or mitigated negative declaration. This shall include

starting and ending dates for the review period. If the review period has been is shortened pursuant to Section 15105, the notice shall include a statement to that effect.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project, when known to the lead agency at the time of notice.

(4) The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions developed under Section 15070(b) and all documents referenced in the proposed negative declaration or mitigated negative declaration are available for review. This location or locations shall be readily accessible to the public during the lead agency's normal working hours.

(5) The presence of the site on any of the lists enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, and hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subdivision (f) of that section.

(6) Other information specifically required by statute or regulation for a particular project or type of project.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21091, 21092, 21092.2, 21092.4, 21092.3, 21092.6, 21098 and 21151.8, Public Resources Code.

§ 15086.Consultation Concerning Draft EIR

(a) The lead agency shall consult with and request comments on the draft EIR from:

(1) Responsible agencies,

(2) Trustee agencies with resources affected by the project, and

(3) Any other state, federal, and local agencies which have jurisdiction by law with respect to the project or which exercise authority over resources which may be affected by the project, including water agencies consulted pursuant to section 15083.5.

(4) Any city or county which borders on a city or county within which the project is located.

(5) For a project of statewide, regional, or areawide significance, the transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project. “Transportation facilities” includes: major local arterials and public transit within five miles of the project site, and freeways, highways and rail transit service within 10 miles of the project site. **The lead agency should also consult with public transit agencies with facilities within one-half mile of the proposed project.**

(6) For a state lead agency when the EIR is being prepared for a highway or freeway project, the California Air Resources Board as to the air pollution impact of the potential vehicular use of the highway or freeway and if a non-attainment area, the local air quality management district for a determination of conformity with the air quality management plan.

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

(b) The lead agency may consult directly with:

(1) Any person who has special expertise with respect to any environmental impact involved,

(2) Any member of the public who has filed a written request for notice with the lead agency or the clerk of the governing body.

(3) Any person identified by the applicant whom the applicant believes will be concerned with the environmental effects of the project.

(c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in the project that are within an area of expertise of the agency or which are required to be carried out or approved by the responsible agency. Those comments shall be supported by specific documentation.

(d) Prior to the close of the public review period, a responsible agency or trustee agency which has identified what that agency considers to be significant environmental effects shall advise the lead agency of those effects. As to those effects relevant to its decision, if any, on the project, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for mitigation measures addressing those effects or refer the lead agency to appropriate, readily available guidelines or reference documents concerning mitigation measures. If the responsible or trustee agency is not aware of mitigation measures that address identified effects, the responsible or trustee agency shall so state.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21081.6, 21092.4, 21092.5, 21104 and 21153, Public Resources Code.

Citations in Environmental Documents

Proposed Amendments to Sections 15072 and 15087

Background and Explanation of the Proposed Amendments

CEQA requires a lead agency to provide notice that it is preparing an EIR or a negative declaration, and such notice "shall specify … the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review …." (Pub. Resources Code, § 21092, subds. (a) and (b).) Stakeholders have noted that there is some confusion about the word "referenced" as used in that section and in the CEQA Guidelines. (CEQA Guidelines, §§ 15072, 15087.) Some agencies interpret "referenced" to mean every document that is cited in the environmental document, where others interpret it to mean every document that is incorporated by reference into the document pursuant to section 15150.

For purposes of comparison, while section 21092 requires that the lead agency provide the address where the public can review copies of all documents *referenced* in an environmental document, CEQA section 21061 requires that sources that are *cited* in an EIR must simply be available for inspection at a public place or building. Thus, the Legislature appears to have made a distinction between those documents that are merely cited and those that are more fully referenced in an EIR or negative declaration. However, the statute does not make this distinction clear.

The CEQA Guidelines discuss "incorporation by reference" in section 15150. There, subdivision (a) states that "[a]n EIR or negative declaration may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language shall be considered to be set forth in full as part of the text of the EIR or negative declaration." Subdivision (b) of the same section requires that "[w]here part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR or negative declaration shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated documents shall be made available to the public in an office of the lead agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the lead agency does not have an office in the county." This section only calls out documents that are incorporated by reference to be made available to the public for inspection.

On the other hand, Guidelines sections 15072 and 15087 as they are currently written, do *not* specifically call out either those documents that are incorporated by reference or those that are simply cited, and instead describe documents that are "referenced" generally. OPR proposes to clarify the requirement in these sections by changing the term "referenced" to "incorporated by reference." This change would make clear that a lead agency is not required to make every document that is merely

cited in an EIR or a negative declaration available in its entirety for public review, and instead must only include all documents that are incorporated by reference as described in section 15150 of the Guidelines.

In enacting CEQA, the Legislature declared that "it is the policy of the state that … [a]ll persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner …." (Pub. Resources Code, § 21003(f).) In an EIR or a negative declaration, a lead agency will often cite to a number of documents, including books, maps, and other potentially voluminous and/or obscure references. If the requirement for the lead agency to make documents available for public inspection were to include all documents simply referenced or cited in an EIR or negative declaration, the requirement would be burdensome, unnecessary and unreasonable on lead agencies.

Furthermore, this change would provide internal consistency between sections 15072, 15082, and 15150 of the Guidelines and would clarify that CEQA itself does not mandate that a lead agency include every document cited in an EIR for public review.

Text of Proposed Amendments to Sections 15072 and 15087

Changes to the existing guideline are shown in **bold** type, with additions **<u>underlined</u>** and deletions shown in **~~strikeout~~**.

§ 15072**.** Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration

(a) A lead agency shall provide a notice of intent to adopt a negative declaration or mitigated negative declaration to the public, responsible agencies, trustee agencies, and the county clerk of each county within which the proposed project is located, sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the public and agencies the review period provided under Section 15105.

(b) The lead agency shall mail a notice of intent to adopt a negative declaration or mitigated negative declaration to the last known name and address of all organizations and individuals who have previously requested such notice in writing and shall also give notice of intent to adopt a negative declaration or mitigated negative declaration by at least one of the following procedures to allow the public the review period provided under Section 15105:

(1) Publication at least one time by the lead agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the lead agency on and off site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the project. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(c) The alternatives for providing notice specified in subdivision (b) shall not preclude a lead agency from providing additional notice by other means if the agency so desires, nor shall the requirements of this section preclude a lead agency from providing the public notice at the same time and in the same manner as public notice required by any other laws for the project.

(d) The county clerk of each county within which the proposed project is located shall post such notices in the office of the county clerk within 24 hours of receipt for a period of at least 20 days.

(e) For a project of statewide, regional, or areawide significance, the lead agency shall also provide notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in Section 21092.4(a) of the Public Resources Code. “Transportation facilities” includes: major local arterials and public transit within five miles of the project site and freeways, highways and rail transit service within 10 miles of the project site.

(f) If the United States Department of Defense or any branch of the United States Armed Forces has given a lead agency written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the military contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of intent to adopt a negative declaration or a mitigated negative declaration pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section 15190.5. The lead agency shall send the specified military contact office such notice of intent sufficiently prior to adoption by the lead agency of the negative declaration or mitigated negative declaration to allow the military service the review period provided under Section 15105.

(g) A notice of intent to adopt a negative declaration or mitigated negative declaration shall specify the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments on the proposed negative declaration or mitigated negative declaration. This shall include starting and ending dates for the review period. If the review period has been is shortened pursuant to Section 15105, the notice shall include a statement to that effect.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project, when known to the lead agency at the time of notice.

(4) The address or addresses where copies of the proposed negative declaration or mitigated negative declaration including the revisions developed under Section 15070(b) and all documents **incorporated by reference** ~~**referenced**~~ in the proposed negative declaration or mitigated negative declaration are available for review. This location or locations shall be readily accessible to the public during the lead agency's normal working hours.

(5) The presence of the site on any of the lists enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, and hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under subdivision (f) of that section.

(6) Other information specifically required by statute or regulation for a particular project or type of project.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21091, 21092, 21092.2, 21092.4, 21092.3, 21092.6, 21098 and 21151.8, Public Resources Code.

§ 15087. Public Review of Draft EIR

(a) The lead agency shall provide public notice of the availability of a draft EIR at the same time as it sends a notice of completion to the Office of Planning and Research. If the United States Department of Defense or any branch of the United States Armed Forces has given the lead agency written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of availability of a draft EIR pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section 15190.5. The public notice shall be given as provided under Section 15105 (a sample form is provided in Appendix L). Notice shall be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing, and shall also be given by at least one of the following procedures:

(1) Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(2) Posting of notice by the public agency on and off the site in the area where the project is to be located.

(3) Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. Owners of such property shall be identified as shown on the latest equalized assessment roll.

(b) The alternatives for providing notice specified in subdivision (a) shall not preclude a public agency from providing additional notice by other means if such agency so desires, nor shall the requirements of this section preclude a public agency from providing the public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

(c) The notice shall disclose the following:

(1) A brief description of the proposed project and its location.

(2) The starting and ending dates for the review period during which the lead agency will receive comments. If the review period is shortened, the notice shall disclose that fact.

(3) The date, time, and place of any scheduled public meetings or hearings to be held by the lead agency on the proposed project when known to the lead agency at the time of notice.

(4) A list of the significant environmental effects anticipated as a result of the project, to the extent which such effects are known to the lead agency at the time of the notice.

(5) The address where copies of the EIR and all documents **incorporated by reference** ~~**referenced**~~ in the EIR will be available for public review. This location shall be readily accessible to the public during the lead agency's normal working hours.

(6) The presence of the site on any of the lists of sites enumerated under Section 65962.5 of the Government Code including, but not limited to lists of hazardous waste facilities, land designated as hazardous waste property, hazardous waste disposal sites and others, and the information in the Hazardous Waste and Substances Statement required under subdivision (f) of that Section.

(d) The notice required under this section shall be posted in the office of the county clerk of each county in which the project will be located for a period of at least 30 days. The county clerk shall post such notices within 24 hours of receipt.

(e) In order to provide sufficient time for public review, the review period for a draft EIR shall be as provided in Section 15105. The review period shall be combined with the consultation required under Section 15086. When a draft EIR has been submitted to the State Clearinghouse, the public review period shall be at least as long as the review period established by the State Clearinghouse. The public review period and the state agency review period may, but are not required to, begin and end at the same time. Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies.

(f) Public agencies shall use the State Clearinghouse to distribute draft EIRs to state agencies for review and should use areawide clearinghouses to distribute the documents to regional and local agencies.

(g) To make copies of EIRs available to the public, lead agencies should furnish copies of draft EIRs to public library systems serving the area involved. Copies should also be available in offices of the lead agency.

(h) Public agencies should compile listings of other agencies, particularly local agencies, which have jurisdiction by law and/or special expertise with respect to various projects and project locations. Such listings should be a guide in determining which agencies should be consulted with regard to a particular project.

(i) Public hearings may be conducted on the environmental documents, either in separate proceedings or in conjunction with other proceedings of the public agency. Public hearings are encouraged, but not required as an element of the CEQA process.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21091, 21092, 21092.2, 21092.3, 21092.6, 21098, 21104, 21152, 21153 and 21161, Public Resources Code.

Posting Notices with the County Clerk

Proposed Amendments to Section 15082

Background and Explanation of the Proposed Amendments

OPR proposes to amend subdivision (a) of Section 15082. Currently, subdivision (a) of Section 15082 states that a lead agency must send a notice of preparation, which states that an environmental impact report will be prepared, to the Office of Planning and Research and each responsible and trustee agency involved in the project. OPR proposes to include a statement that the notice must also be filed with the county clerk of each county within which the project is located. This addition is necessary to accurately reflect the procedural requirement stated in the Public Resources Code, which also requires posting with the county clerk. (Pub. Resources Code, § 21092.3 ("The notices … for an environmental impact report shall be posted in the office of the county clerk of each county in which the project will be located…").)

Text of Proposed Amendments to Section 15082

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15082. Notice of Preparation and Determination of Scope of EIR

(a) Notice of Preparation. Immediately after deciding that an environmental impact report is required for a project, the lead agency shall send **a notice of preparation stating that an environmental impact report will be prepared** to the Office of Planning and Research and each responsible and trustee agency ~~**a notice of preparation stating that an environmental impact report will be prepared**~~ **and file with the county clerk of each county in which the project will be located**. This notice shall also be sent to every federal agency involved in approving or funding the project. If the United States Department of Defense or any branch of the United States Armed Forces has given the lead agency written notification of the specific boundaries of a low-level flight path, military impact zone, or special use airspace and provided the lead agency with written notification of the military contact office and address for the military service pursuant to subdivision (b) of Section 15190.5, then the lead agency shall include the specified military contact office in the list of organizations and individuals receiving a notice of preparation of an EIR pursuant to this section for projects that meet the criteria set forth in subdivision (c) of Section 15190.5.

(1) The notice of preparation shall provide the responsible and trustee agencies**,** ~~**and**~~ the Office of Planning and Research **and county clerk** with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response. At a minimum, the information shall include:

(A) Description of the project,

(B) Location of the project (either by street address and cross street, for a project in an urbanized area, or by attaching a specific map, preferably a copy of a U.S.G.S. 15'or 7 1/2'topographical map identified by quadrangle name), and

(C) Probable environmental effects of the project.

(2) A sample notice of preparation is shown in Appendix I. Public agencies are free to devise their own formats for this notice. A copy of the initial study may be sent with the notice to supply the necessary information.

(3) To send copies of the notice of preparation, the lead agency shall use either certified mail or any other method of transmittal that provides it with a record that the notice was received.

(4) The lead agency may begin work on the draft EIR immediately without awaiting responses to the notice of preparation. The draft EIR in preparation may need to be revised or expanded to conform to responses to the notice of preparation. A lead agency shall not circulate a draft EIR for public review before the time period for responses to the notice of preparation has expired.

(b) Response to Notice of Preparation. Within 30 days after receiving the notice of preparation under subdivision (a), each responsible and trustee agency and the Office of Planning and Research shall provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible or trustee agency's area of statutory responsibility that must be included in the draft EIR.

(1) The response at a minimum shall identify:

(A) The significant environmental issues and reasonable alternatives and mitigation measures that the responsible or trustee agency, or the Office of Planning and Research will need to have explored in the draft EIR; and

(B) Whether the agency will be a responsible agency or trustee agency for the project.

(2) If a responsible or trustee agency, or the Office of Planning and Research fails by the end of the 30-day period to provide the lead agency with either a response to the notice or a well-justified request for additional time, the lead agency may presume that none of those entities have a response to make.

(3) A generalized list of concerns not related to the specific project shall not meet the requirements of this section for a response.

(c) Meetings. In order to expedite the consultation, the lead agency, a responsible agency, a trustee agency, the Office of Planning and Research, or a project applicant may request one or more meetings between representatives of the agencies involved to assist the lead agency in determining the scope and content of the environmental information that the responsible or trustee agency may require. Such meetings shall be convened by the lead agency as soon as possible, but no later than 30 days after the meetings were requested. On request, the Office of Planning and Research will assist in convening meetings that involve state agencies.

(1) For projects of statewide, regional or areawide significance pursuant to Section 15206, the lead agency shall conduct at least one scoping meeting. A scoping meeting held pursuant to the National Environmental Policy Act, 42 USC 4321 et seq.(NEPA) in the city or county within which the project is located satisfies this requirement if the lead agency meets the notice requirements of subsection (c)(2) below.

(2) The lead agency shall provide notice of the scoping meeting to all of the following:

(A) any county or city that borders on a county or city within which the project is located, unless otherwise designated annually by agreement between the lead agency and the county or city;

(B) any responsible agency

(C) any public agency that has jurisdiction by law with respect to the project;

(D) any organization or individual who has filed a written request for the notice.

(3) A lead agency shall call at least one scoping meeting for a proposed project that may affect highways or other facilities under the jurisdiction of the Department of Transportation if the meeting is requested by the department. The lead agency shall call the scoping meeting as soon as possible but not later than 30 days after receiving the request from the Department of Transportation.

(d) The Office of Planning and Research. The Office of Planning and Research will ensure that the state responsible and trustee agencies reply to the lead agency within 30 days of receipt of the notice of preparation by the state responsible and trustee agencies.

(e) Identification Number. When the notice of preparation is submitted to the State Clearinghouse, the state identification number issued by the Clearinghouse shall be the identification number for all subsequent environmental documents on the project. The identification number should be referenced

on all subsequent correspondence regarding the project, specifically on the title page of the draft and final EIR and on the notice of determination.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.9, 21080.4**, 21092.3** and 21098, Public Resources Code.

Time Limits for Negative Declarations

Proposed Amendments to Section 15107

Background and Explanation of the Proposed Amendments

OPR proposes to amend section 15107. That section currently states that a negative declaration must be completed and approved within 180 days from the date on which the lead agency accepted the application for a private project involving one or more public agencies. OPR proposes to add a sentence clarifying that a lead agency may extend the 180-day time limit once for a period of no more than 90 days upon the consent of both the lead agency and the applicant. This addition allows the lead agency the same flexibility to extend the deadline for the completion of a negative declaration as is allotted for the completion of an environmental impact report. (CEQA Guidelines, § 15108 (lead agency may extend the deadline for the completion of an environmental impact report "… [O]nce for a period of not more than 90 days upon consent of the lead agency and the applicant").)

Text of the Proposed Amendments to Section 15107

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15107. Completion of Negative Declaration for Certain Private Projects

With private projects involving the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies, the negative declaration must be completed and approved within 180 days from the date when the lead agency accepted the application as complete. **Lead agency procedures may provide that the 180-day time limit may be extended once for a period of not more than 90 days upon consent of the lead agency and the applicant.**

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21100.2 and 21151.5, Public Resources Code.

Project Benefits

Proposed Amendments to Section 15124

Background and Explanation of the Proposed Amendments

OPR proposes to amend subdivision (b) of section 15124. Currently, subdivision (b) states that a project description shall include a statement of objectives sought by the project. OPR proposes to clarify that the general description may also discuss the proposed project's benefits to ensure the project description allows decision makers to balance, if needed, a project's benefit against its environmental cost. (See *County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 192 (determined an accurate project description allows decision makers to balance the proposal's benefit against its environmental cost).)

Text of the Proposed Amendments to Section 15124

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15124. Project Description

The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project **and may discuss the project benefits.**

(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.

(d) A statement briefly describing the intended uses of the EIR.

(1) This statement shall include, to the extent that the information is known to the lead agency,

(A) A list of the agencies that are expected to use the EIR in their decision-making, and

(B) A list of permits and other approvals required to implement the project.

(C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.

(2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080.3, 21080.4, 21165, 21166 and 21167.2, Public Resources Code; *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.

Joint NEPA/CEQA Documents

Proposed Amendments to Section 15222

Background and Explanation of the Proposed Amendments

OPR proposes to amend section 15222. That section currently addresses the preparation of joint documents between the Federal and state lead agencies in situations when the state lead agency will act on the project first. OPR proposes to add a sentence encouraging a lead agency to enter into a Memorandum of Understanding with appropriate Federal agencies. This addition will encourage increased cooperation between the state and Federal agencies to coordinate project requirements, timelines, and reduce duplication under CEQA and NEPA provisions. (See CEQA Guidelines, 15220; 40 C.F.R. Section 1506.2 ("Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements…").) OPR and the White House Council on Environmental Quality prepared a sample Memorandum of Understanding to assist state and Federal agencies in this process.

Text of the Proposed Amendments

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15222. Preparation of Joint Documents

If a lead agency finds that an EIS or finding of no significant impact for a project would not be prepared by the federal agency by the time when the lead agency will need to consider an EIR or negative declaration, the lead agency should try to prepare a combined EIR-EIS or negative declaration-finding of no significant impact. To avoid the need for the federal agency to prepare a separate document for the same project, the lead agency must involve the federal agency in the preparation of the joint document. **The lead agency may also enter into a Memorandum of Understanding with the federal agency to ensure that both federal and state requirements are met.** This involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state agency unless the federal agency was involved in the preparation of the document.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.5 and 21083.7, Public Resources Code; Section 102(2)(D) of NEPA, 43 U.S.C.A. 4322 (2)(D); 40 C.F.R. Part 1506.2.

Using the Emergency Exemption

Proposed Amendments to Section 15269

Background and Explanation of the Proposed Amendments

OPR proposes to amend subdivisions (b) and (c) of section 15269. Currently, subdivisions (b) and (c) state that emergency repairs may be exempt under CEQA and that this exemption does not apply to long-term projects undertaken for the purpose of preventing or mitigating an emergency. OPR proposes to add a sentence to subdivision (b) clarifying that emergency repairs may require planning and qualify under this exemption. Further, OPR proposes to add two subsections under subdivision (c) clarifying how imminent an emergency must be to fall within the statutory exemption. These additions are necessary to clarify the application of this emergency exemption and to maintain consistency with a court of appeal decision stating that an emergency repair may be anticipated. (See *CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal.App.4th 529, 537 (emergency repairs need not be "unexpected" and "in order to design a project to prevent an emergency, the designer must anticipate the emergency").

Text of the Proposed Amendments to Section 15269

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15269. Emergency Projects

The following emergency projects are exempt from the requirements of CEQA.

(a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code. This includes projects that will remove, destroy, or significantly alter an historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property or when the project has received a determination by the State Office of Historic Preservation pursuant to Section 5028(b) of Public Resources Code.

(b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety or welfare. **Emergency repairs include those that require a reasonable amount of planning.**

(c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term**, but this exclusion does not apply (i) if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety or welfare, or (ii) if activities (such as fire or catastrophic risk mitigation or modifications to improve facility integrity) are proposed for existing facilities in response to an emergency at a similar existing facility.**

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

(e) Seismic work on highways and bridges pursuant to Section180.2 of the Streets and Highways Code, Section 180 et seq.

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(b)(2), (3), and (4), 21080.33 and 21172, Public Resources Code; ***CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal.App.4th 529**; *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257; and *Western Municipal Water District of Riverside County v. Superior Court of San Bernardino County* (1987) 187 Cal.App.3d 1104.

When is a Project Discretionary?

Proposed Amendments to Section 15357

Background and Explanation of Proposed Amendments

OPR proposes to amend section 15357. That section currently defines a discretionary project as a project involving the exercise of judgment or deliberation by a public agency. Discretionary projects require environmental review under CEQA. (See Pub. Resources Code, § 21080, subd. (a).) OPR proposes to add a sentence clarifying that a discretionary project is one in which a public agency can shape the project in any way to respond to concerns raised in an environmental impact report. This addition reflects various cases distinguishing the term "discretionary" from the term "ministerial." (See, e.g., *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 267 ("[T]he touchstone is whether the approval process involved allows the government to shape the project in any way that could respond to any of the concerns … in an environmental impact report").) The California Supreme Court and Fourth District Court of Appeal have consistently followed this interpretation. (See, e.g., *Mountain Lion Foundation v. Fish & Game Comm*. (1997) 16 Cal.4th 105, 177; *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 933*; Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 299.) This clarification is necessary to maintain consistency in determining "discretionary" projects and to improve practitioners' ability identify when a project is required to complete environmental review under CEQA.

OPR also proposes to add the words "fixed standards" to the end of the first sentence in the definition. This addition is consistent with the holding in *Health First v. March Joint Powers Authority* (2009) 174 Cal.App.4th 1135. Notably, the definition of "discretionary" in these Guidelines may need to be read in context with other statutes. For example, Government Code sections 65583(a)(4) and 65583.2(h) require that local governments zone specified areas for specified uses for "use by right." In those circumstances, local government review cannot be considered discretionary pursuant to CEQA.

Text of Proposed Amendments to Section 15357

Changes to the existing guideline are shown in **bold** type, with additions **<u>underlined</u>** and deletions shown in **~~strikeout~~**.

§ 15357.Discretionary Project

"Discretionary project" means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, **~~or~~** regulations**<u>, or other fixed standards</u>**. **<u>The key question is whether the approval process involved allows the public agency to shape the project in any way that</u>**

could materially respond to any of the concerns which might be raised in an environmental impact report. A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code Sections 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. Section 21065(c).

AUTHORITY:

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(a), Public Resources Code; *Johnson v. State of California* (1968) 69 Cal.2d 782; *People v. Department of Housing and Community Development* (1975) 45 Cal.App.3d 185; *Day v. City of Glendale* (1975) 51 Cal.App.3d 817; *N.R.D.C. v. Arcata National Corp*. (1976) 59 Cal.App.3d 959**; *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259; *Mountain Lion Foundation v. Fish & Game Comm*. (1997) 16 Cal.4th 105; *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286; *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924.**

Conservation Easements as Mitigation

Proposed Amendments to Section 15370

Background and Explanation of Proposed Amendments

OPR proposes to revise section 15370 to incorporate the First District Court of Appeal holding in *Masonite Corporation v. County of Mendocino* (2013) 218 Cal.App.4th 230. In that case, the court ruled that off-site agricultural conservation easements constitute a potential means to mitigate for direct, in addition to cumulative and indirect, impacts to farmland. The court stated that although such easements do not replace lost onsite resources, they "may appropriately mitigate for the direct loss of farmland when a project converts agricultural land to a nonagricultural use…." (*Masonite Corporation v. County of Mendocino, supra,* 218 Cal.App.4th at p. 238.) Furthermore, the court stated that this preservation of substitute resources fits within the definition of mitigation in section 15370, subdivision (e) of the Guidelines. Therefore, OPR proposes to clarify in the Guidelines that permanent protection of off-site resources through conservation easements constitutes mitigation.

Text of Proposed Amendments to Section 15370

Changes to the existing guideline are shown in **bold** type, with additions **underlined** and deletions shown in ~~**strikeout**~~.

§ 15370. Mitigation.

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments**, including through permanent protection of such resources in the form of conservation easements**.

Note: Authority cited: Section 21083, Public Resources Code.
Reference: Sections 21002,21002.1, 21081 and 21100(c), Public Resources Code***; Masonite Corporation v. County of Mendocino* (2013) 218 Cal.App.4th 230**.

Appendices to the CEQA Guidelines

Proposed Amendments to CEQA Guidelines Appendix C and Appendix M

Background and Explanation of Proposed Amendments

In addition to the comprehensive package of amendments to the CEQA Guidelines, OPR proposes changes to Appendix C (Notice of Completion & Environmental Document Transmittal [NOC]) and Appendix M (Performance Standards for Infill Projects Eligible for Streamlined Review).

OPR proposes to revise the NOC to incorporate the proposed amendments to Appendix G, including changes to the project issues based on recent statutory requirements and adopted amendments to the CEQA Guidelines (e.g., the addition of "Greenhouse Gases" and "Tribal Cultural Resources").

OPR also proposes to revise Appendix M to correct typographical errors in Sections 4.A, 4.C, and 4.E to be consistent with the adopted regulatory text. Specifically, the proposed revision would state the required distances from existing major transit stops or existing stops along high quality transit corridors for certain projects to be eligible for streamlining pursuant to CEQA Guidelines section 15183.3.

Text of Proposed Amendments to Appendix C and Appendix M

Please see the following pages for minor technical changes to Appendix C and Appendix M. Changes to the existing appendices are shown in **bold** type, with additions **<u>underlined</u>** and deletions shown in ~~**strikeout**~~. [*Please note: some of formatting in the following table may be off*.]

Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613

SCH #

For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

Project Title: _____

Lead Agency: _____ Contact Person: _____

Mailing Address: _____ Phone: _____

City: _____ Zip: _____ County: _____

Project Location: County: _____ City/Nearest Community: _____

Cross Streets: _____ Zip Code: _____

Longitude/Latitude (degrees, minutes and seconds): ____° ____′ ____″ N / ____° ____′ ____″ W Total Acres: _____

Assessor's Parcel No.: _____ Section: _____ Twp.: _____ Range: _____

Base: _____

Within 2 Miles: State Hwy #: _____ Waterways: _____

Airports: _____ Railways: _____ Schools: _____

Document Type:

CEQA: ☐ NOP ☐ Draft EIR NEPA: ☐ NOI Other: ☐ Joint Document

☐ Early Cons ☐ Supplement/Subsequent EIR ☐ EA ☐ Final Document

☐ Neg Dec (Prior SCH No.) _____ ☐ Draft EIS ☐ Other: ____

☐ Mit Neg Dec Other: _____ ☐ FONSI

Local Action Type:

☐ General Plan Update ☐ Specific Plan ☐ Rezone ☐ Annexation

☐ General Plan Amendment ☐ Master Plan ☐ Prezone ☐ Redevelopment

☐ General Plan Element ☐ Planned Unit Development ☐ Use Permit ☐ Coastal Permit

☐ Community Plan ☐ Site Plan ☐ Land Division (Subdivision, etc.) ☐ Other: ___

Development Type:

☐ Residential: Units _____ Acres _____

☐ Office: Sq.ft. _____ Acres _____ Employees_____ ☐ Transportation: Type _____

☐ Commercial: Sq.ft. _____ Acres _____ Employees_____ ☐ Mining: Mineral _____

☐ Industrial: Sq.ft. Acres _____ Employees_____ ☐ Power: Type _____ MW ____

☐ Educational: ☐ Waste Treatment: Type MGD

☐ Recreational: ☐ Hazardous Waste: Type

☐ Water Facilities: Type _____ MGD _____ ☐ Other: _____

Project Issues Discussed in Document:

☐ Aesthetic/Visual ☐ Fiscal ☐ Recreation/Parks ☐ Vegetation

☐ Agricultural **and Forestry Resources** ~~**Land**~~ ☐ Schools/Universities ☐ Water Quality

☐ Air Quality ☐ Flood Plain/Flooding ☐ Septic Systems ☐ Water Supply/Groundwater

☐ Forest Land/Fire Hazard ☐ Sewer Capacity ☐ Wetland /Riparian

☐ Archeological/Historical ☐ Geologic/Seismic ☐ Soil Erosion/Compaction/Grading ☐ Wildlife

☐ Biological Resources ☐ **Greenhouse Gas Emissions** ☐ Solid Waste ☐ Growth Inducement

☐ Coastal Zone ☐ Minerals ☐ Toxic/Hazardous ☐ Land Use

☐ Drainage/Absorption ☐ Noise ☐ ~~**Traffic/Circulation**~~**Transportation**

☐ Cumulative Effects

☐ Economic/Jobs ☐ Population/Housing Balance ☐ **Tribal Cultural Resources** ☐ Other: _____

☐ **Energy** ☐ Public Services/Facilities

Present Land Use/Zoning/General Plan Designation:

Project Description: *(please use a separate page if necessary)*

Reviewing Agencies Checklist

Lead Agencies may recommend State Clearinghouse distribution by marking agencies below with and "**X**".

If you have already sent your document to the agency please denote that with an "**S**".

_____ Air Resources Board

_____ Boating & Waterways, Department of

_____ ~~**California Emergency Management Agency**~~

_____ California Highway Patrol

_____ Caltrans District # _____

_____ Caltrans Division of Aeronautics

_____ Caltrans Planning

_____ Central Valley Flood Protection Board

_____ Coachella Valley Mtns. Conservancy

_____ Coastal Commission

_____ Colorado River Board

_____ Conservation, Department of

Corrections, Department of

Delta Protection Commission

Delta Stewardship Council

_____ Education, Department of

_____ Energy Commission

_____ Fish & ~~**Game**~~ **Wildlife** Region #

_____ Office of Historic Preservation

_____ **Office of Emergency Services**

_____ Office of Public School Construction

_____ Parks & Recreation, Department of

_____ Pesticide Regulation, Department of

_____ Public Utilities Commission

_____ Regional WQCB #

_____ **Natural** Resources Agency

_____ Resources Recycling and Recovery, Department of

_____ S.F. Bay Conservation & Development Comm.

_____ San Gabriel & Lower L.A. Rivers & Mtns. Conservancy

_____ San Joaquin River Conservancy

Santa Monica Mtns. Conservancy

State Lands Commission

SWRCB: Clean Water Grants

_____ SWRCB: Water Quality

_____ SWRCB: Water Rights

_____ Tahoe Regional Planning Agency

_____ Food & Agriculture, Department of
_____ Forestry and Fire Protection, Department of
_____ General Services, Department of
_____ Health Services, Department of
_____ Housing & Community Development
_____ Native American Heritage Commission
_____ Toxic Substances Control, Department of
_____ Water Resources, Department of
_____ Other: _____
_____ Other: _____

Local Public Review Period (to be filled in by lead agency)

Starting Date _____ Ending Date _____

Lead Agency (Complete if applicable):

Consulting Firm: _____
Address: _____
City/State/Zip: _____
Contact: _____
Phone: _____

Applicant: _____
Address: _____
City/State/Zip: _____
Phone: _____

Signature of Lead Agency Representative: _____ **Date:** _____

Authority cited: Section 21083, Public Resources Code. Reference: Section 21161, Public Resources Code.

Appendix M: Performance Standards for Infill Projects Eligible for Streamlined Review

I. Introduction

Section 15183.3 provides a streamlined review process for infill projects that satisfy specified performance standards. This appendix contains those performance standards. The lead agency's determination that the project satisfies the performance standards shall be supported with substantial evidence, which should be documented on the Infill Checklist in Appendix N. Section II defines terms used in this Appendix. Performance standards that apply to all project types are set forth in Section III. Section IV contains performance standards that apply to particular project types (i.e., residential, commercial/retail, office building, transit stations, and schools).

II. Definitions

The following definitions apply to the terms used in this Appendix.

"High-quality transit corridor" means an existing corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. For the purposes of this Appendix, an "existing stop along a high-quality transit corridor" may include a planned and funded stop that is included in an adopted regional transportation improvement program.

Unless more specifically defined by an air district, city or county, "high-volume roadway" means freeways, highways, urban roads with 100,000 vehicles per day, or rural roads with 50,000 vehicles per day.

"Low vehicle travel area" means a traffic analysis zone that exhibits a below average existing level of travel as determined using a regional travel demand model. For residential projects, travel refers to either home-based or household vehicle miles traveled per capita. For commercial and retail projects, travel refers to non-work attraction trip length; however, where such data are not available, commercial projects reference either home-based or household vehicle miles traveled per capita. For office projects, travel refers to commute attraction vehicle miles traveled per employee; however, where such data are not available, office projects reference either home-based or household vehicle miles traveled per capita.

"Major Transit Stop" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with frequencies of service intervals of 15 minutes or less during the morning and afternoon peak commute periods. For the purposes of this Appendix, an "existing major transit stop" may include a planned and funded stop that is included in an adopted regional transportation improvement program.

"Office building" generally refers to centers for governmental or professional services; however, the lead agency shall have discretion in determining whether a project is "commercial" or "office building" for the purposes of this Appendix based on local zoning codes.

"Significant sources of air pollution" include airports, marine ports, rail yards and distribution centers that receive more than 100 heavy-duty truck visits per day, as well as stationary sources that are designated major by the Clean Air Act.

A "Traffic Analysis Zone" is an analytical unit used by a travel demand model to estimate vehicle travel within a region.

III. Performance Standards Related to Project Design

To be eligible for streamlining pursuant to Section 15183.3, a project must implement all of the following:

Renewable Energy. All non-residential projects shall include on-site renewable power generation, such as solar photovoltaic, solar thermal and wind power generation, or clean back-up power supplies, where feasible. Residential projects are also encouraged to include such on-site renewable power generation.

Soil and Water Remediation. If the project site is included on any list compiled pursuant to Section 65962.5 of the Government Code, the project shall document how it has remediated the site, if remediation is completed. Alternatively, the project shall implement the recommendations provided in a preliminary endangerment assessment or comparable document that identifies remediation appropriate for the site.

Residential Units Near High-Volume Roadways and Stationary Sources. If a project includes residential units located within 500 feet, or other distance determined to be appropriate by the local agency or air district based on local conditions, of a high volume roadway or other significant sources of air pollution, the project shall comply with any policies and standards identified in the local general plan, specific plan, zoning code or community risk reduction plan for the protection of public health from such sources of air pollution. If the local government has not adopted such plans or policies, the project shall include measures, such as enhanced air filtration and project design, that the lead agency finds, based on substantial evidence, will promote the protection of public health from sources of air pollution. Those measure may include, among others, the recommendations of the California Air Resources Board, air districts, and the California Air Pollution Control Officers Association.

IV. Additional Performance Standards by Project Type

In addition to the project features described above in Section III, specific eligibility requirements are provided below by project type.

Several of the performance standards below refer to “low vehicle travel areas”. Such areas can be illustrated on maps based on data developed by the regional Metropolitan Planning Organization (MPO) using its regional travel demand model.

Several of the performance standards below refer to distance to transit. Distance should be calculated so that at least 75 percent of the surface area of the project site is within the specified distance.

A. Residential

To be eligible for streamlining pursuant to Section 15183.3, a project must satisfy one of the following:

Projects achieving below average regional per capita vehicle miles traveled (VMT). A residential project is eligible if it is located in a “low vehicle travel area” within the region.

Projects located within ~~¾~~ ½ mile of an Existing Major Transit Stop or High Quality Transit Corridor. A residential project is eligible if it is located within ~~½~~ ½ mile of an existing major transit stop or an existing stop along a high quality transit corridor.

Low-Income Housing. A residential or mixed-use project consisting of 300 or fewer residential units all of which are affordable to low income households is eligible if the developer of the development project provides sufficient legal commitments to the lead agency to ensure the continued availability and use of the housing units for lower income households, as defined in Section 50079.5 of the Health and Safety Code, for a period of at least 30 years, at monthly housing costs, as determined pursuant to Section 50053 of the Health and Safety Code.

B. Commercial/Retail

To be eligible for streamlining pursuant to Section 15183.3, a project must satisfy one of the following:

Regional Location. A commercial project with no single-building floor-plate greater than 50,000 square feet is eligible if it locates in a "low vehicle travel area."

Proximity to Households. A project with no single-building floor-plate greater than 50,000 square feet located within one-half mile of 1800 households is eligible.

C. Office Building

To be eligible for streamlining pursuant to Section 15183.3, a project must satisfy one of the following:

Regional Location. Office buildings, both commercial and public, are eligible if they locate in a low vehicle travel area.

Proximity to a Major Transit Stop. Office buildings, both commercial and public, within ~~⅜~~ ½ mile of an existing major transit stop, or ~~¼~~ ¼ mile of an existing stop along a high quality transit corridor, are eligible.

D. Transit

Transit stations, as defined in Section 15183.3(e)(1), are eligible.

E. Schools

Elementary schools within one mile of fifty percent of the projected student population are eligible. Middle schools and high schools within two miles of fifty percent of the projected student population are eligible. Alternatively, any school within ~~⅜~~ ½ mile of an existing major transit stop or an existing stop along a high quality transit corridor is eligible.

Additionally, in order to be eligible, all schools shall provide parking and storage for bicycles and scooters and shall comply with the requirements in Sections 17213, 17213.1 and 17213.2 of the California Education Code.

F. Small Walkable Community Projects

Small walkable community projects, as defined in Section 15183.3, subdivision (e)(6), that implement the project features described in Section III above are eligible.

G. Mixed-Use Projects

Where a project includes some combination of residential, commercial and retail, office building, transit station, and/or schools, the performance standards in this Section that apply to the predominant use shall govern the entire project.