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Proposed State CEQA Guideline Section 15183.3. Streamlining for Infill Projects

(a) Purpose. The purpose of this section is to expedite the review environmental review process for infill projects that provide environmental benefits. Infill projects that satisfy the performance standards specified in Appendix M and the provisions of this section are eligible for streamlined environmental review pursuant to this section. The effects of an infill project will not require additional review under two circumstances. First, if an effect was addressed as a significant effect in a prior EIR for a planning level decision, then, with some exceptions, that effect need not be analyzed again for an individual infill project. Second, even if an effect was not analyzed in a prior EIR or is more significant than previously analyzed, further analysis of such effects is not required if uniformly applicable development policies or standards, adopted by the lead agency or a city or county, apply to the infill project and would substantially mitigate that effect. Depending on the effects addressed in the prior EIR and the availability of uniformly applicable development policies or standards that apply to the eligible infill project, streamlining under this section will range from a complete exemption, to an obligation to prepare a narrowed, project-specific environmental document. This section prescribes the streamlined procedure applicable to infill projects.

(b) Eligibility. To be eligible for the streamlining procedures prescribed in this section, an infill project must:

(1) Be located in an urban area on a site that either has been previously developed or is surrounded at least seventy-five percent by qualified urban uses that are immediately adjacent, or would be immediately adjacent but are separated from the infill project by an improved public right-of-way;

(2) Satisfy the statewide performance standards for the infill project type provided in Appendix M; and

(3) Be 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, except as provided in subdivisions (b)(3)(A) or (b)(3)(B) below.

(A) Where an infill project is proposed within the boundaries of a metropolitan planning organization and a sustainable communities strategy or an alternative planning strategy is not yet in effect, a residential infill project must have a density of at least 20 units per acre, and a retail or commercial infill project must have a floor area ratio of at least 0.75.

(B) Where an infill project is proposed outside of the boundaries of a metropolitan planning organization, the infill project may be eligible for the procedures in this section if it meets the definition of a small community walkable project in subdivision (e)(6), below.

(c) Procedure. A lead agency's determinations pursuant to this section shall be supported with substantial evidence. Following preliminary review of an infill project pursuant to Section 15060, the lead agency may prepare a written checklist to evaluate which of the infill project's potential adverse environmental effects, if any, will be subject to further environmental review. The purpose of a written checklist prepared pursuant to this section is to document the substantial evidence supporting the lead agency's determinations regarding the applicability of the streamlining procedure for infill projects. The sample written checklist provided in Appendix N may be used for this purpose.

(1) Written Checklist. A written checklist prepared pursuant to this section shall do all of the following:

(A) Document whether the infill project satisfies the applicable performance standards in Appendix M.

(B) Explain whether a prior EIR analyzed the potentially significant effects of the infill project, and if so, whether the effects of the infill project fall within the scope of effects analyzed in the prior EIR. An effect was "analyzed" in a prior EIR if the prior EIR examined the nature and magnitude of the effect at the plan level and included measures to mitigate the effect to the extent feasible; however, such measures need not have reduced such effects to a less than significant level. The written checklist shall cite the specific portions of the prior EIR, including page and section references, containing the analysis of the infill project's significant effects. The written checklist shall also indicate whether the infill project incorporates all applicable mitigation measures from the prior EIR. The written checklist shall incorporate the prior EIR by reference as provided in Section 15150.

(C) Explain whether the effects of the infill project are specific to the project or project site and were not analyzed in a prior EIR, and whether those effects may be significant. For the purposes of this section, the phrase "new specific effect" shall be synonymous with the phrase "an effect that is specific to the project or project site." An effect of the infill project that is consistent with the nature and magnitude of effects analyzed in the prior EIR is not a new specific effect. An effect is a new specific effect if new information, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified, shows that new mitigation measures could substantially reduce the significant effects described in the prior EIR, but such measures are not included in the project. An effect is also a new specific effect if an applicable mitigation measure was adopted in connection with a planning level decision, but the lead agency determines that it is not feasible for the infill project to implement that measure. Where the prior EIR specifically deferred analysis of an effect that would result from an infill project, such an effect would also be a new specific effect.

(D) Indicate whether substantial new information shows that the effects of the infill project are more significant than described or analyzed in the prior EIR. For the purpose of this subdivision, "more significant" means the project would substantially increase the severity of a significant effect described in the prior EIR.

(E) If the written checklist indicates that the infill project will cause new specific effects or effects that are more significant than analyzed in a prior EIR, the written checklist shall include a statement as to whether uniformly applicable development policies will substantially mitigate those effects. For the purpose of this section, “substantially mitigate” means that the policy or policies will substantially lessen the effect, but not necessarily below the level of significance. The written checklist shall specifically identify the uniformly applicable development policy or standard and explain how it will substantially mitigate the effects of the infill project.

(2) Environmental Document. Following preparation of written checklist pursuant to this section, the lead agency shall determine what type of environmental document shall be prepared for the infill project.

(A) No Further Review. A lead agency may determine that no additional environmental review is required if the written checklist establishes that the infill project would not cause any new specific effects or effects that are more significant than previously analyzed, or that uniformly applicable development policies would substantially mitigate such effects. In this circumstance, those effects are not subject to CEQA and the lead agency should file a Notice of Exemption as provided in Section 15062. Where the lead agency finds that uniformly applicable development policies substantially mitigate a significant effect of an infill project, the lead agency shall make the finding described in subdivision (c)(2)(D).

(B) Negative Declaration, Mitigated Negative Declaration or Sustainable Communities Environmental Assessment. If the written checklist shows that the infill project would result in new specific effects, and that uniformly applicable development policies would not substantially mitigate such effects, those effects shall be subject to CEQA. If the written checklist shows that such new effects are less than significant, the lead agency may prepare a negative declaration. If those effects can be mitigated to a less than significant level through project changes agreed to prior to circulation of the written checklist, the lead agency may prepare a mitigated negative declaration. In this circumstance, the lead agency shall follow the procedure set forth in Sections 15072 to 15075. Alternatively, if the infill project is a transit priority project, the lead agency may follow the procedures in Section 21155.2 of the Public Resources Code. In either instance, the written checklist shall clearly state which effects are new, and are subject to CEQA, and those effects that have been previously analyzed and are not subject to further environmental review. Where the lead agency finds that uniformly applicable development policies substantially mitigate a significant effect of an infill project, the lead agency shall make the finding described in subdivision (c)(2)(D).

(C) Infill EIR. If the written checklist shows that the infill project would result in new specific effects, and that uniformly applied development policies would not substantially mitigate such effects, those effects shall be subject to CEQA. With respect to those effects that are subject to CEQA, the lead agency shall prepare an infill EIR if the written checklist shows that the effects of the infill project would be potentially significant. In this circumstance, the lead agency shall prepare an infill EIR as provided in subdivision (d) and, except as otherwise provided in this section, shall follow the procedures in Article 7. Where the lead agency finds that uniformly

applicable development policies substantially mitigate a significant effect of an infill project, the lead agency shall make the finding described in subdivision (c)(2)(D).

(D) Findings. Any findings or statement of overriding considerations required by Sections 15091 or 15093 shall be limited to those effects analyzed in an infill EIR. Findings for such effects shall incorporate by reference any findings made in connection with a planning level decision. Where uniformly applicable development policies substantially mitigate the significant effects of an infill project, the lead agency shall also make a written finding, supported with substantial evidence and accompanied by a brief explanation of the rationale for the finding.

(d) Infill EIR Contents. An infill EIR shall analyze only those significant effects that uniformly applicable development policies do not substantially mitigate, and that are either new specific effects or are more significant than a prior EIR analyzed. All other effects of the infill project shall be described in the written checklist as provided in subdivision (b)(1), and that written checklist shall be circulated for public review along with the infill EIR. The written checklist shall clearly set forth those effects that are new specific effects, and are subject to CEQA, and those effects which have been previously analyzed and are not subject to further environmental review. The analysis of alternatives in an infill EIR need not address alternative locations, densities, or building intensities. An infill EIR need not analyze growth inducing impacts. Except as provided in this subdivision, an infill EIR shall contain all elements described in Article 9.

(e) Terminology. The following definitions apply to this subdivision:

(1) "Infill project" includes the whole of an action consisting of residential, commercial, retail, transit station, school, or public office building uses, or any combination of such uses that meet the eligibility requirements set forth in subdivision (b). No more than one half of the project area of projects consisting of commercial and retail uses may be used for parking.

(2) "Planning level decision" means the enactment or amendment of a general plan, community plan, specific plan, or zoning code.

(3) "Previously developed" means that a substantial portion of the site has been mechanically altered for purposes authorized in a local zoning code. Developed open space and parcels that are, or have been, in agricultural production shall not be considered to be previously developed for the purposes of this section.

(4) "Prior EIR" means the environmental impact report certified for a planning level decision, as supplemented by any subsequent or supplemental environmental impact reports, negative declarations, or addenda to those documents.

(5) "Qualified urban use" is defined in Public Resources Code Section 21072.

(6) "Small community walkable project" means a project that is all of the following:

(A) In an incorporated city that is not within the boundary of a metropolitan planning organization;

(B) Within an area of approximately one-quarter mile diameter of contiguous land that includes a residential area adjacent to a retail downtown area and that is designated by the city for infill development consisting of residential and commercial uses. A city may designate such an area within its general plan, zoning code, or by any legislative act creating such a designation, and may make such designation concurrently with project approval; and

(C) Either a residential project that has a density of at least eight units to the acre or a commercial project with a floor area ratio of at least 0.5, or both.

(7) The terms “sustainable communities strategy” and “alternative planning strategy” refer to a strategy for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization’s determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

(8) “Uniformly applicable development policies or standards” are policies or standards adopted or enacted by a city or county, or by a lead agency, that reduce one or more adverse environmental effects. Examples of uniformly applicable development policies or standards include, but are not limited to:

(A) Regulations governing construction activities, including noise regulations, dust control, provisions for discovery of archeological and paleontological resources, stormwater runoff treatment and containment, recycling of construction and demolition waste, temporary street closure and traffic rerouting, and similar regulations.

(B) Requirements in locally adopted building, grading and stormwater codes.

(C) Design guidelines.

(D) Requirements for protecting residents from air pollution associated with high volume roadways.

(E) Impact fee programs to provide public improvements, police, fire, parks, libraries and other public services and infrastructure.

(F) Traffic impact fees.

(9) “Urban area” is defined in Public Resources Code Section 21094.5(e)(5).