



Date: June 14, 2006

To: Mailing List for CEQA Guidelines Updates

Re: Past Proposals for Revisions to CEQA Guidelines

In November 2004, we informed you that pursuant to section 21083 [then section 21087] of the Public Resources Code, we intended to update the Guidelines to include all statutory and case law changes affecting the Guidelines. We also stated that we were interested in your input regarding any amendments that you believed would improve the Guidelines.

We received and reviewed many helpful suggestions regarding possible future amendments to the Guidelines. We want to express our appreciation to those of you who took the time to provide thoughtful comments. However, for a number of reasons, we needed to limit this year's rulemaking effort to ensuring that the Guidelines reflect statutory changes that have been enacted in recent years. Accordingly, it was not possible to begin moving forward to explore the many suggestions we received for broader modifications to the Guidelines.

Nevertheless, we have retained the ideas that were submitted in response to our November 2004 letter. These ideas will be available for Resources Agency and the Governor's Office of Planning and Research to consider in connection with a more comprehensive review of the existing Guidelines in the future.

Thank you again for assisting the Governor's Office of Planning and Research and the Resources Agency in this effort.

1416 Ninth Street, Suite 1311, Sacramento, CA 95814 Ph. 916.653.5656 Fax 916.653.8102 <http://resources.ca.gov>

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San Gabriel & Lower Los Angeles Rivers & Mountains Conservancy • San Joaquin River Conservancy
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CALIFORNIA RESOURCES AGENCY

NOTICE OF PROPOSED ACTION AMENDING GUIDELINES IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT June 2006

The California Resources Agency ("the Resources Agency") is proposing to update certain guidelines implementing the California Environmental Quality Act ("CEQA"), which is found in sections 21000-21177 of the Public Resources Code ("PRC"), in order to reflect certain legislative changes to CEQA. These guidelines are promulgated in the California Code of Regulations, title 14, sections 15000-15387 (the "Guidelines"). This action consists of the adoption of amendments to and the repeal of existing sections of the Guidelines, and the adoption of new sections of the Guidelines, as described below.

STATUTORY AUTHORITY

PRC Section 21083 requires the adoption of the Guidelines to explain and implement CEQA. PRC section 21083, subdivision (f) requires the Resources Agency, in consultation with the Governor's Office of Planning and Research ("OPR"), to certify, adopt and amend the Guidelines at least once every two years.

PROPOSED ACTION

The proposed action clarifies and updates the Guidelines to reflect recent legislative changes to CEQA, specifically legislation: (i) amending sections 21083.9, 21090, 21091, 21151, 21151.4, 21151.8, 21151.9, 21157.6, and 21165 of the Public Resources Code; (ii) adding sections 21098, 21152.1, 21159.20-21159.26 of the Public Resources Code; (iii) amending sections 10910, 10911, 10912, and 10914 of the Water Code; and (iv) repealing section 10913 of the Water Code. The changes to the Guidelines proposed in this action are as follows:

Add Guidelines sections: 15155, 15190.5 and Article 12.5, which includes sections 15191, 15192, 15193, 15194, 15195, 15196.

Amend Guidelines sections: 15053, 15061, 15062, 15072, 15073, 15074, 15082, 15087, 15105, 15179, 15180, 15186.

Repeal Guidelines section: 15083.5.

PUBLIC HEARING

A public hearing is not scheduled. Any interested person or his or her duly authorized representative may request a public hearing, in writing, no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to the changes in this action to the Resources Agency. Written comments must be received by the Resources Agency no later than 5:00 p.m. on July 31, 2006 in order to be considered. Written comments may be delivered, mailed, or transmitted by facsimile or electronic mail. Written comments should be addressed as follows:

Sandra Ikuta, Deputy Secretary and General Counsel
The Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
Fax: (916) 653-8123

cc: Caryn Holmes, Staff Counsel
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
Fax: (916) 654-3843
Electronic mail: ceqa.rulemaking@resources.ca.gov

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Resources Agency is proposing this action to update the Guidelines to reflect certain legislative changes to CEQA.

CEQA requires public agencies to review the environmental impacts of proposed projects, to prepare and review environmental impact reports (EIRs), negative declarations, and mitigated negative declarations, and to consider feasible alternatives and mitigation measures that would substantially reduce significant adverse environmental effects. As noted above, Section 21083 of the Public Resources Code requires the Secretary for Resources, in consultation with OPR, to periodically update the Guidelines. The Resources Agency reviewed the existing Guidelines and determined that in some cases, the Guidelines had not been updated to reflect legislative changes to CEQA that had been enacted during the period from 2001 through 2005. The broad objective of this proposed action is to clarify and update the Guidelines to be consistent with these recent legislative enactments that have modified CEQA. Any specific objectives are explained in the summaries below.

The changes proposed in this action will affect twenty-one sections of the Guidelines. The summaries set forth below describe the existing laws and regulations related to the changes proposed in this action and explain the effect of the proposed action.

The proposed action does not duplicate or conflict with any federal statutes or regulations. CEQA is similar in some respects to the National Environmental Policy Act ("NEPA"), 42 U.S.C. sections 4321-4343, but NEPA requires environmental review of federal actions by federal agencies while CEQA requires environmental review of state and local projects by state and local agencies in California. Moreover, although both NEPA and CEQA require an analysis of environmental impacts, the substantive and procedural requirements of the two statutes are different. Most significantly, CEQA requires feasible mitigation of environmental impacts, while NEPA does not require mitigation. A state or local agency must complete a CEQA review even for those projects for which NEPA review is also applicable, although Guidelines sections 15220-15229 allow state, local and federal agencies to coordinate a review when projects are subject to both CEQA and NEPA. Because a state or local agency cannot avoid CEQA review, and because CEQA and NEPA are not identical, guidelines for CEQA are necessary and do not duplicate the Code of Federal Regulations.

15053. DESIGNATION OF LEAD AGENCY BY THE OFFICE OF PLANNING AND RESEARCH

Guidelines section 15053 describes the process that agencies may use to submit a dispute to OPR for resolution and designation of a lead agency.

The proposed amendments to subdivisions (a) and (c) of Guidelines section 15053, and the proposed addition of subdivision (b) to Guidelines section 15053, implement and make specific the provisions of Senate Bill ("SB") 648 (Chapter 267, Statutes of 2005), which amended PRC section 21165. As amended, PRC section 21165 defines the term "dispute" and provides that OPR shall not designate a lead agency in the absence of such a dispute. The proposed amendments to subdivisions (a) and (c) of Guidelines section 15053, and the proposed addition of subdivision (b) of Guidelines section 15053, reflect the amendments to PRC section 21165. Additionally, non-substantive changes to the numbering within this section are proposed.

The authority for the adoption of the proposed amendments and addition is PRC section 21083.

15061. REVIEW OF EXEMPTION

Guidelines section 15061 describes when a project or activity is exempt from CEQA.

The proposed addition of subdivision (b)(5) to Guidelines section 15061 implements and make specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002). SB 1925 added PRC sections 21159.20-21159.26, which set forth statutory exemptions from CEQA for agricultural employee housing, low-income housing (affordable housing), and residential infill projects under specified circumstances. The proposed addition of subdivision (b)(5) to Guidelines section 15061 reflects the additional exemptions from CEQA provided due to the enactment of PRC sections 21159.21, 21159.22, 21159.23, and 21159.24.

The proposed addition of subdivision (e) to Guidelines section 15061 implements and makes specific the provisions of SB 1393 (Chapter 1121, Statutes of 2002), amending PRC section 21151. As amended, PRC section 21151 provides that a decision by a non-elected decisionmaking body of a local lead agency to certify an EIR, approve a negative declaration or mitigated negative declaration, or determine that a project is exempt from CEQA, may be appealed to the agency's elected decisionmaking body. The proposed addition of subdivision (e) to Guidelines section 15061 reflects the change in PRC section 21151 with respect to projects exempt from CEQA.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed additions is PRC section 21083.

15062. NOTICE OF EXEMPTION

Guidelines section 15062 describes the use and required content of the notice of exemption when a public agency approves or determines to carry out a project that is exempt from CEQA.

The proposed amendment of subdivision (a) to Guidelines section 15062 clarifies the applicability of that section by a cross-reference to Guidelines section 15061. The proposed addition of subdivision (e) to Guidelines section 15062 implements and makes specific the provisions of Assembly Bill ("AB") 677 (Chapter 837, Statutes of 2003), which added PRC section 21152.1. PRC section 21152.1 requires a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The proposed addition of subdivision (e) to Guidelines section 15062 reflects the requirements set forth within PRC section 21152.1.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed amendment and addition is PRC section 21083.

15072. NOTICE OF INTENT TO ADOPT A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION

Guidelines section 15072 describes a lead agency's obligations to provide notices of intent to specified recipients before the lead agency adopts a negative declaration or a mitigated negative declaration.

The proposed addition of subdivision (f) to Guidelines section 15072 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), which added PRC section 21098. PRC section 21098 provides that if the U.S. Department of Defense or a military service provides notice to a lead agency identifying specified areas of concern, such lead agency must submit a notice of preparation of an EIR, a notice of availability of a draft EIR, or a notice of intent to adopt a negative declaration or mitigated negative declaration to that military agency for certain projects located within the specified areas of concern.

The proposed addition of subdivision (f) to Guidelines section 15072 reflects the requirements of PRC section 21098 with respect to notices of intent to adopt negative declarations or mitigated negative declarations.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed addition is PRC section 21083.

15073. PUBLIC REVIEW OF A PROPOSED NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION

Guidelines section 15073 requires a state lead agency to provide a public review period when a negative declaration or mitigated negative declaration and initial study are submitted to the State Clearinghouse.

The proposed amendment to subdivision (b) of Guidelines section 15073 implements and makes specific the provisions of SB 648 (Chapter 267, Statutes of 2005), which amended PRC section 21091. As amended, PRC section 21091 specifies the time for commencing the public review period and the state agency review period for draft EIRs, proposed negative declarations, and proposed mitigated negative declarations, specifies how the state agency review period must be calculated, and specifies the time frame for the State Clearinghouse's distribution of CEQA documents.

The proposed amendment to subdivision (b) of Guidelines section 15073 reflects the changes to PRC section 21091.

The authority for the adoption of the proposed amendment is PRC section 21083.

15074. CONSIDERATION AND ADOPTION OF A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION

Guidelines section 15074 describes the process by which a negative declaration or mitigated negative declaration should be considered and, if applicable, adopted by a decisionmaking body.

The proposed addition of subdivision (f) to Guidelines section 15074 implements and makes specific the provisions of SB 1393 (Chapter 1121, Statutes of 2002), amending PRC section 21151. As amended, PRC section 21151 provides that a decision by a non-elected decisionmaking body of a local lead agency to certify an EIR, approve a negative declaration or mitigated negative declaration, or determine that a project is exempt from CEQA, may be appealed to the agency's elected decisionmaking body. The proposed addition of subdivision (f) to Guidelines section 15074 reflects the change in PRC section 21151 with respect to negative declarations and mitigated negative declarations.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed addition is PRC section 21083.

15082. NOTICE OF PREPARATION AND DETERMINATION OF SCOPE OF EIR

Guidelines section 15082 describes the consultation process (commonly referred to as “scoping”), including the use of a notice of preparation of a draft EIR, among a lead agency and responsible and trustee agencies where the lead agency is preparing an EIR that will be used by these agencies in reviewing and approving a project.

The proposed amendment to subdivision (a) of Guidelines section 15082 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), adding PRC section 21098. PRC section 21098 provides that if the U.S. Department of Defense or a military service provides notice to a lead agency identifying specified areas of concern, such lead agency must submit a notice of preparation of an EIR, a notice of availability of a draft EIR, or a notice of intent to adopt a negative declaration or mitigated negative declaration to that military agency for certain projects located within the specified areas of concern. The proposed amendment to subdivision (a) of Guidelines section 15082 reflects the requirements of PRC section 21098 with respect to notices of preparation of an EIR.

The proposed amendment to subdivision (c)(1) of Guidelines section 15082 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), amending PRC section 21083.9. As amended, PRC section 21083.9 states that any scoping meeting conducted in the city or county in which a project is located pursuant to NEPA will satisfy the state scoping meeting requirement for projects of statewide, regional or areawide significance provided certain additional requirements are met. The proposed amendment to subdivision (c)(1) of Guidelines section 15082, reflects the changes to PRC section 21083.9. Non-substantive changes to the format and layout of subdivisions (c)(1)-(c)(3) of Guidelines section 15082 and non-substantive clarifying changes to the numbering were also made.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed amendments is PRC section 21083.

15083.5. CITY OR COUNTY CONSULTATION WITH WATER AGENCIES [Repeal]

The existing Guidelines section 15083.5 generally addresses analyses and determinations regarding water supply availability that must be undertaken by lead agencies for specified projects. The existing Guidelines section 15083.5 was based on SB 901 (Chapter 881, Statutes of 1995), which enacted, among other things, PRC section 21151.9 and Government Code sections 10910-10915. SB 901 was amended by SB 610 (Chapter 643, Statutes of 2001). Among other things, SB 610 amended PRC section 21151.9 of the Public Resources Code, sections 10910, 10912, 10915 of the Water Code, and repealed section 10913 of the Water Code. The proposed change would delete Guidelines section 15083.5 and replace it with proposed new Guidelines section 15155 to reflect the changes enacted in SB 610. Proposed new Guidelines section 15155 will be discussed below.

The authority for the adoption of the proposed repeal of this section is PRC section 21083.

15087. PUBLIC REVIEW AND DRAFT EIR

Guidelines section 15087 sets forth procedures for public notice and public review of draft EIRs.

The proposed amendment to subdivision (a) of Guidelines section 15087 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), which added PRC section 21098. PRC section 21098 provides that if the U.S. Department of Defense or a military service provides notice to a lead agency identifying specified areas of concern, such lead agency must submit a notice of preparation of an EIR, a notice of availability of a draft EIR, or a notice of intent to adopt a negative declaration or mitigated negative declaration to that military agency for certain projects located within the specified areas of concern. The proposed amendment to subdivision (a) of Guidelines section 15087 reflects the requirements of PRC section 21098 with respect to notices of availability of a draft EIR.

The proposed amendment to subdivision (e) of Guidelines section 15087 implements and makes specific the provisions of SB 648 (Chapter 267, Statutes of 2005), which amended PRC section 21091. As amended, PRC section 21091 specifies the time for commencing the public review period and the state agency review period for draft EIRs, proposed negative declarations, and proposed mitigated negative declarations, specifies how the state agency review period must be calculated, and specifies the time frame for the State Clearinghouse's distribution of CEQA documents. The proposed amendment to subdivision (e) of Guidelines section 15087 reflects the changes to PRC section 21091.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed amendments is PRC section 21083.

15105. PUBLIC REVIEW PERIOD FOR A DRAFT EIR OR A PROPOSED NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION

Guidelines section 15105 describes the time periods required for the public review of a draft EIR, proposed negative declaration, or mitigated negative declaration.

The proposed amendment to subdivision (c) of Guidelines section 15105, and the proposed addition of subdivision (e) to Guidelines section 15105, implement and make specific the provisions of SB 648 (Chapter 267, Statutes of 2005), which amended PRC section 21091. As amended, PRC section 21091 specifies the time for commencing the public review period and the state agency review period for draft EIRs, proposed negative declarations, and proposed mitigated negative declarations, specifies how the state agency review period must be calculated, and specifies the time frame for the State Clearinghouse's distribution of CEQA documents. The proposed amendment to subdivision (c) of Guidelines section 15105, and the proposed addition of subdivision (e) to Guidelines section 15105, reflect the changes to PRC section 21091.

The authority for the adoption of the proposed amendment and addition is PRC section 21083.

15155. CITY OR COUNTY CONSULTATION WITH WATER AGENCIES [New Section]

The existing Guidelines section 15083.5 generally addresses analyses and determinations regarding water supply availability that must be undertaken by lead agencies for specified projects. The existing Guidelines section 15083.5 was based on SB 901 (Chapter 881, Statutes of 1995), which enacted, among other things, PRC section 21151.9 and Government Code sections 10910-10915. SB 901 was amended by SB 610 (Chapter 643, Statutes of 2001). Among other things, SB 610 amended PRC section 21151.9 of the Public Resources Code, sections 10910, 10912, 10915 of the Water Code, and repealed section 10913 of the Water Code. These amendments revised the requirements imposed on city or county lead agencies with respect to the development of a water supply assessment for specified types of projects and required the inclusion of the water supply assessment and other information in any environmental document

prepared for the project. Proposed Guidelines section 15155 implements and makes specific the provisions of SB 610 (Chapter 643, Statutes of 2001).

The proposed addition of Guidelines section 15155 reflects the amended PRC sections 21151.9 as well as the amended Water Code sections 10910, 10911, 10912, and 10914, and the repeal of Water Code section 10913, as they apply to a lead agency's obligations under CEQA.

The authority for the adoption of the proposed addition is PRC section 21083.

15179. LIMITATIONS ON THE USE OF THE MASTER EIR

Guidelines section 15179 specifies limitations on the use of a Master EIR. The proposed amendments to subdivisions (a) and (b) of Guidelines section 15179 implement and make specific the provisions of AB 2922 (Chapter 684, Statutes of 2004), which amended PRC section 21157.6. As amended, PRC section 21157.6 revises one of the limitations on the use of a Master EIR and allows a Master EIR that was certified more than 5 years prior to the filing of an application for the subsequent project to be used if the lead agency takes specified steps. The proposed amendments to subdivisions (a) and (b) of Guidelines section 15179 reflect the changes to PRC section 21157.6. The Resources Agency is also proposing to remove the discussion section that follows this Guideline because the proposed amendments make this discussion section outdated. These discussion sections are potentially sources of confusion, because it is not clear whether discussion sections are part of the Guidelines or have any legal effect. Therefore, the Resources Agency has decided to remove these discussion sections when the Guideline section to which they refer is changed. Additionally, non-substantive changes to the numbering within this section are proposed.

The authority for the adoption of the proposed amendments is PRC section 21083.

15180. REDEVELOPMENT PROJECTS

Guidelines section 15180 describes special environmental review considerations for redevelopment projects.

The proposed addition of subdivisions (a) and (c) to Guidelines section 15180, and the proposed amendment of subdivision (b) of Guidelines section 15180, implement and make specific the provisions of SB 649 (Chapter 625, Statutes of 2002), amending PRC section 21090. As amended, PRC section 21090 provides that an EIR for a redevelopment project may be a master, program or project EIR, and the EIR must state the type of EIR that is being prepared for the redevelopment project. The proposed addition of subdivisions (a) and (c) to Guidelines section 15180, and the proposed amendment of subdivision (b) to Guidelines section 15180, reflects the changes to PRC section 21090.

The Resources Agency is also proposing to remove the discussion section that follows this Guideline because the proposed amendments make this discussion section outdated. These discussion sections are potentially sources of confusion, because it is not clear whether the discussion sections are part of the Guidelines or have any legal effect. Therefore, the Resources Agency has decided to remove these discussion sections when the Guideline section to which they refer is changed. Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed amendment and additions is PRC section 21083.

15186. SCHOOL FACILITIES

Guidelines section 15186 provides special CEQA requirements that apply to school projects and projects located near schools.

The proposed amendments to subdivisions (b), (c), and (e) of Guidelines section 15186 implement and make specific the provisions of SB 945 (Chapter 689, Statutes of 2004) and SB 352 (Chapter 668, Statutes of 2003). SB 945 amended PRC section 21151.4 to change the term “acutely hazardous materials” to “extremely hazardous substances.” SB 352 amended PRC section 21151.8 to require an EIR or negative declaration to disclose specified information relative to the location of a proposed school site and precludes a lead agency from approving certain school projects in specified locations unless certain findings are made. The proposed amendments to subdivisions (b), (c), and (e) to Guidelines section 15186 reflects the changes made to PRC sections 21151.4 and 21151.8.

The Resources Agency is also proposing to remove the discussion section that follows this Guideline because the proposed amendments make this discussion section outdated. These discussion sections are potentially sources of confusion, because it is not clear whether discussion sections are part of the Guidelines or have any legal effect. Therefore, the Resources Agency has decided to remove these discussion sections when the Guideline section to which they refer is changed. Additionally, non-substantive changes to the numbering within this section are proposed.

The authority for the adoption of the proposed amendments is PRC section 21083.

15190.5. DEPARTMENT OF DEFENSE NOTIFICATION REQUIREMENT **[New Section]**

The proposed new section implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), which added PRC section 21098. PRC section 21098 provides that if the U.S. Department of Defense or a military service provides notice to a lead agency identifying specified areas of concern, such lead agency must submit a notice of preparation of an EIR, a notice of availability of a draft EIR, or a notice of intent to adopt a negative declaration or mitigated negative declaration to that military agency for certain projects located within the specified areas of concern.

The proposed addition of Guidelines section 15190.5 reflects the language set forth in new PRC section 21098.

The authority for the adoption of the proposed new section is PRC section 21083.

15191-15196. ARTICLE 12.5 EXEMPTIONS FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS **[New Article]**

The proposed new Article 12.5 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002) and AB 677 (Chapter 837, Statutes of 2003). SB 1925 added PRC sections 21159.20-21159.26, which set forth statutory exemptions from CEQA for agricultural employee housing, low-income housing (affordable housing), and residential infill projects under specified circumstances. AB 677 amended PRC section 21152.1 to require that an agency notify OPR when it determines that a project is exempt from CEQA under one of the preceding exemptions.

Article 12.5 organizes and sets forth new Guidelines sections 15191-15196 which implement PRC sections 21159.20-21159.26, as discussed in more detail below.

The authority for the adoption of the proposed new article is PRC section 21083.

15191. DEFINITIONS

[New Section]

The proposed addition of Guidelines section 15191 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002). Among other things, SB 1925 added PRC sections 21159.20-21159.26, which set forth statutory exemptions from CEQA for agricultural employee housing, low-income housing (affordable housing), and residential infill projects under specified circumstances.

The proposed Guidelines section 15191 sets forth the definitions of terms used in the regulations implementing the new statutory exemptions enacted by SB 1925. These definitions are set forth in PRC section 21159.20, as well as in various subdivisions of PRC sections 21061.3, 21064.3, 21065.3, 21087, and 21159.21-21159.24.

The authority for the adoption of the proposed new section is PRC section 21083.

15192. THRESHOLD REQUIREMENTS FOR EXEMPTIONS FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS

[New Section]

The proposed Guidelines section 15192 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002), described above. The proposed addition of Guidelines section 15192 establishes the threshold requirements for the exemptions identified in this Article and reflects the language set forth in new PRC sections 21159.21.

The authority for the adoption of the proposed new section is PRC section 21083.

15193. AGRICULTURAL HOUSING EXEMPTION

[New Section]

The proposed Guidelines section 15193 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002), described above. The proposed addition of Guidelines section 15193 establishes specific requirements for the agricultural housing exemption and reflects the language set forth in new PRC section 21159.22.

The authority for the adoption of the proposed new section is PRC section 21083.

15194. AFFORDABLE HOUSING EXEMPTION

[New Section]

The proposed Guidelines section 15194 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002), described above. The proposed addition of Guidelines section 15194 establishes specific requirements for the affordable housing exemption and reflects the language set forth in new PRC section 21159.23.

The authority for the adoption of the proposed new section is PRC section 21083.

15195. RESIDENTIAL INFILL EXEMPTION **[New Section]**

The proposed Guidelines section 15195 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002), described above. The proposed addition of Guidelines section 15195 establishes specific requirements for the residential infill exemption and reflects the language set forth in new PRC section 21159.24.

The authority for the adoption of the proposed new section is PRC section 21083.

15196. NOTICE OF EXEMPTION FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS **[New Section]**

The proposed Guidelines section 15196 implements and makes specific the provisions of AB 677 (Chapter 837, Statutes of 2003), which added PRC section 21152.1. PRC section 21152.1 requires a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The proposed addition of Guidelines section 15196 reflects the language set forth in new PRC sections 21152.1.

The authority for the adoption of the proposed new section is PRC section 21083.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Resources Agency has made the following initial determinations concerning the proposed changes to the Guidelines:

Mandates on Local Agencies and School Districts

The Resources Agency has initially determined that the proposed changes to the Guidelines will not impose a mandate on local agencies or school districts. The Resources Agency is aware that certain of the statutory changes enacted by the Legislature that are reflected in this proposed action impose mandates on local agencies and school districts. Among other things, PRC section 21098 (reflected in proposed changes to Guidelines sections 15072, 15082, 15087, and 15190.5) requires a lead agency to submit additional notices to military agencies under specified circumstances. PRC section 21151 (reflected in Guidelines sections 15061 and 15074) requires a local agency's elected decisionmaking body to hear an appeal under certain circumstances. SB 610 (reflected in Guidelines section 15155) revises the requirements imposed on cities and counties to prepare or obtain certain analyses relating to water availability, and requires the inclusion of these analyses in any environmental document prepared for the project, under specified circumstances. PRC sections 21151.4 and 21151.8 (reflected in Guidelines section 15186) require certain public agencies and certain school districts to make a number of specified determinations relating to air quality in the vicinity of a school or proposed school site before approving certain projects. The proposed changes to the Guidelines merely reflect these legislative mandates. The proposed action clarifies and updates the Guidelines to be consistent with these recent legislative enactments, but does not create any new requirements. Therefore, the proposed action does not itself impose a mandate on local agencies or school districts.

Costs or Savings to Local Agencies and School Districts or Federal Funding to the State of California

The proposed changes to the Guidelines do not impose additional requirements or costs on local agencies and school districts. As noted above, certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could impose costs on local agencies and school districts. However, the proposed changes to the Guidelines merely reflect these legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself impose any costs on local agencies or school districts. The proposed changes do not result in any savings to local agencies and school districts, and do not result in any costs or savings in federal funding to the state.

Significant Adverse Economic Impacts on Business

The Resources Agency has initially determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Resources Agency is aware that certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could have an economic effect on business. Among other things, project proponents could incur additional costs in assisting lead agencies to comply with SB 610 (reflected in Guidelines section 15155), which revises the requirements imposed on cities and counties to prepare or obtain certain analyses relating to water availability and to require the inclusion in these analyses in any environmental document prepared for the project, under specified circumstances. In addition, project proponents could incur additional costs in assisting lead agencies to comply with PRC sections 21151.4 and 21151.8 (reflected in Guidelines section 15186), which require certain public agencies and certain school districts to make a number of determinations relating to air quality in the vicinity of a school or proposed school site before approving certain projects. However, the proposed changes to the Guidelines merely reflect these legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not impose any new requirements. Therefore, the proposed action does not itself have a significant, statewide adverse economic impact directly affecting business.

Cost Impacts on a Representative Person or Business

The Resources Agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action because the proposed changes clarify and update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but do not impose any new requirements. As noted above, certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could impose costs on project proponents. However, the proposed changes to the Guidelines merely reflect the legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself impose any costs on a representative private person or business.

Effect on Housing Costs

The Resources Agency has made an initial determination that the changes proposed in this action will not have an adverse impact on housing costs because the proposed changes clarify and update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not impose any new requirements. As noted above, certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could impose costs on project proponents. However, the proposed changes to the Guidelines merely reflect the legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action will not itself have an adverse impact on housing costs.

Assessment of Potential to Create or Eliminate Jobs or Businesses within the State of California

The Resources Agency has assessed the potential for the proposed action to adversely affect California business enterprises and individuals, including whether it will affect the creation or elimination of jobs or the creation, elimination or expansion of businesses, as required by subdivision (b) of Government Code section 11346.3. The proposed action is not expected to have a positive or adverse effect on the creation or elimination of jobs or businesses within California because the proposed changes clarify and update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but do not impose any new requirements. For the same reason, the Resources Agency has also initially concluded that the proposed changes will not affect the expansion of businesses currently doing business within the state. Finally, the proposed action does not require any business to prepare a report.

As noted above, certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could potentially affect project proponents. In addition, provisions of SB 610 (reflected in new Guidelines section 15155) may require a public water system to prepare a report. However, the proposed changes to the Guidelines merely reflect the legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself adversely affect California business enterprises and individuals or require any business to prepare a report.

The Resources Agency's complete Economic and Fiscal Impact Statement (Form Std 399) for the proposed action is part of the rulemaking file, and it is available from the Resources Agency contact persons named in this notice.

Effect on Small Businesses

The proposed actions will not affect small business because the proposed changes clarify and update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but do not impose any new requirements. As noted above, certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could potentially affect project proponents. However, the proposed changes to the Guidelines merely reflect the legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself adversely affect small businesses.

Economic and Fiscal Impact

Pursuant to subdivision (a)(6) of section 11346.5 of the Government Code, the Resources Agency is required to provide "an estimate, prepared in accordance with instructions adopted by the Department of

Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state. . . .”

The Resources Agency has provided this estimate in its complete Economic and Fiscal Impact Statement (Form Std 399) for the proposed action. This Economic and Fiscal Impact Statement is part of the rulemaking file, and is available from the Resources Agency contact persons named in this notice. The Form Std 399 provides information regarding costs or savings to any state agency, local agency or school district and cost or savings in federal funding to the state. As stated within Form Std 399, the Resources Agency has initially determined that most of the proposed changes in this action have no or de minimis impacts on state agencies, local agencies or school districts. The Resources Agency is aware that certain of the statutory changes enacted by the Legislature that are reflected in this proposed action impose costs on public agencies. The Resources Agency is not aware of any savings that would result from any of the statutory changes enacted by the Legislature that are reflected in this proposed action. However, with respect to any costs or savings, the proposed changes to the Guidelines merely reflect the legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself impose any costs on, or result in any savings for, any state agency, local agency or school district. Moreover, as stated within Form Std 399, the Resources Agency has initially determined that the proposed action does not result in any cost or savings in federal funding to the state.

CONSIDERATION OF ALTERNATIVES

In accordance with subsection 11346.5(a)(13) of the Government Code, the Resources Agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

INQUIRIES AND ADDITIONAL INFORMATION INCLUDING AVAILABILITY OF CHANGED OR MODIFIED TEXT

Inquiries relating to the proposed administrative action may be directed to Sandra Ikuta, Deputy Secretary and General Counsel, or Mary Akens, Assistant General Counsel, at (916) 653-5656.

The Resources Agency has prepared an Initial Statement of Reasons for the proposed action that provides an explanation of the purpose and justification for the proposed action. Anyone may view and print a copy of the statement or the text of the proposed changes by accessing the following page on the Resources Agency’s Internet website: www.ceres.ca.gov/ceqa/index.html. Copies of the initial statement and text of the guidelines are also available upon request from Mary Akens, Assistant General Counsel, at (916) 653-5656. The entire rulemaking file is available for public inspection at 1416 Ninth Street, Suite 1311, Sacramento, California 95814.

The Resources Agency will post the Final Statement of Reasons and any future notices related to the proposed action on the Agency’s Internet website www.ceres.ca.gov/ceqa/index.html. Anyone wishing to receive future notices related to the proposed action and/or receive a copy of the Final Statement of Reasons once it has been prepared should submit a written request containing his or her postal mailing address to Mary Akens, Assistant General Counsel, Resources Agency, State of California, 1416 Ninth Street, Suite 1311, Sacramento, California 95814. These requests can also be submitted by fax at (916) 653-8123.

If the Resources Agency makes changes in the text of any proposed changed guideline, from that which was originally made available, the revised text will be available to the public at least fifteen (15) days prior to the date when the Resources Agency considers the proposed guidelines for adoption, amendment, or repeal, unless the change is “(1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.” (Govt. Code, sec. 11346.8, subd. (c).) As further stated in section 11346.8, subdivision (c) of the Government Code:

“If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Any written comments received regarding the change must be responded to in the final statement of reasons. . . .”

(Govt. Code, sec. 11346.8, subd. (c).) The Resources Agency will comply with these requirements. This information will also be made available on the Resources Agency website at www.ceres.ca.gov/ceqa/index.html.

PLAIN ENGLISH DETERMINATION AND AVAILABILITY OF TEXT

The proposed final guidelines were prepared pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirements of Government Code sections 11342.580 and 11346.2, subdivision (a)(1). The proposed changes to the guidelines are considered non-technical and were written to be easily understood by the parties that will use them. The purpose of the proposed changes to the Guidelines is to interpret the requirements of CEQA and to provide a comprehensive point of reference for those who are affected by CEQA’s mandates, both in government and the private sector. Specifically, the proposed changes will make it more clear what lead agencies and project applicants must do to comply with CEQA.

The text of the proposed changes to the Guidelines has been drafted, and is available in plain English. The text is available through the contact address and telephone number listed herein or on the CEQA website at www.ceres.ca.gov/ceqa/index.html.

**CALIFORNIA RESOURCES AGENCY
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION**

June 2006

INTRODUCTION

The California Resources Agency ("the Resources Agency") is proposing this action to update certain guidelines implementing the California Environmental Quality Act, sections 21000 - 21177 of the Public Resources Code ("CEQA"), in order to reflect certain legislative changes to CEQA.

CEQA requires public agencies to review the environmental impacts of proposed projects, to prepare and review environmental impact reports (EIRs), negative declarations, and mitigated negative declarations, and to consider feasible alternatives and mitigation measures that would substantially reduce significant adverse environmental effects. Section 21083 of the Public Resources Code requires the adoption of guidelines to provide public agencies and members of the public with guidance about the procedures and criteria for implementing CEQA. The guidelines required by section 21083 of the Public Resources Code are promulgated in the California Code of Regulations, title 14, sections 15000-15387 (the "Guidelines"). At present, public agencies, project proponents, and third parties who wish to enforce the requirements of CEQA, rely on the Guidelines to provide a comprehensive guide to how a lead agency's obligations under CEQA should be fulfilled. Subdivision (f) of section 21083 requires the Resources Agency, in consultation with the Office of Planning and Research, to certify, adopt and amend the Guidelines at least once every two years.

In proposing this action, the Resources Agency reviewed the Guidelines and determined that in some cases, the Guidelines had not been updated to reflect legislative changes to CEQA that had been enacted during the period from 2001 through 2005. The purpose of the proposed action is to clarify and update the Guidelines to be consistent with these recent legislative enactments that have modified CEQA. The Resources Agency proposes the following changes to the Guidelines:

Add sections: 15155, 15190.5 and Article 12.5, which includes sections 15191, 15192, 15193, 15194, 15195, and 15196.

Amend sections: 15053, 15061, 15062, 15072, 15073, 15074, 15082, 15087, 15105, 15179, 15180, and 15186.

Repeal section: 15083.5.

In certain cases, the Resources Agency is proposing to include language in the Guidelines that is similar or identical to the language of the recently enacted legislation. The Resources Agency took this step to ensure the Guidelines would best serve their function of providing a comprehensive guide to public agencies, project proponents, and third parties who want to enforce the requirements of CEQA. The Guidelines provide a

carefully organized, step-by-step guide to the environmental review process. If the Guidelines did not include all requirements imposed by CEQA, the Guidelines would be incomplete. Users of the Guidelines could become confused if certain statutory requirements were not contained in the Guidelines, and the Guidelines themselves would be unclear. Accordingly, the Resources Agency determined that it was necessary to overlap or duplicate portions of the recent legislative enactments in certain instances in order to ensure that the meaning of the Guidelines would be easily understood by those persons directly affected by them.

This action does not mandate the use of specific technologies or equipment. Because this proposed action implements and reflects recent statutory changes, the Secretary did not rely upon any technical, theoretical, or empirical study, report or similar document in proposing this action.

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no additional substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the recent statutory requirements.

The Resources Agency has also initially determined that the proposed action will not have a significant adverse economic impact on business. The Resources Agency has initially determined that most of the proposed changes in this action have no or de minimis impacts on project proponents. However, the Resources Agency is aware that certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could have an economic impact on project proponents, including businesses. Among other things, project proponents could incur additional costs in assisting lead agencies to comply with SB 610 (reflected in Guidelines section 15155), which revises the requirements imposed on cities and counties to prepare or obtain certain analyses relating to water availability and requires the inclusion of the water supply assessment and other information in any environmental document prepared for the project under specified circumstances. In addition, project proponents could incur additional costs in assisting lead agencies to comply with PRC sections 21151.4 and 21151.8 (reflected in Guidelines section 15186), which require certain public agencies and certain school districts to make a number of determinations relating to air quality in the vicinity of a school or proposed school site before approving certain projects. However, the proposed changes to the Guidelines merely reflect these legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not

impose any new requirements. Therefore, the proposed action does not itself have a significant, adverse economic impact on business.

The proposed action does not duplicate or conflict with any federal statutes or regulations. CEQA is similar in some respects to the National Environmental Policy Act ("NEPA"), 42 U.S.C. sections 4321-4343, but NEPA requires environmental review of federal actions by federal agencies while CEQA requires environmental review of state and local projects by state and local agencies in California. Moreover, although both NEPA and CEQA require an analysis of environmental impacts, the substantive and procedural requirements of the two statutes are different. Most significantly, CEQA requires feasible mitigation of environmental impacts, while NEPA does not require mitigation. A state or local agency must complete a CEQA review even for those projects for which NEPA review is also applicable, although Guidelines sections 15220-15229 allow state, local and federal agencies to coordinate a review when projects are subject to both CEQA and NEPA. Because a state or local agency cannot avoid CEQA review, and because CEQA and NEPA are not identical, guidelines for CEQA are necessary and do not duplicate the Code of Federal Regulations.

Following are the Resources Agency's proposed amendments and additions to the Guidelines:

SECTION 15053. DESIGNATION OF LEAD AGENCY BY THE OFFICE OF PLANNING AND RESEARCH

Specific Purposes of the Amendment

Guidelines section 15053 describes the process that agencies may use to submit a dispute to OPR for resolution and designation of a lead agency. The proposed amendments to subdivisions (a) and (c) of Guidelines section 15053, and the proposed addition of subdivision (b) to Guidelines section 15053, implement and make specific the provisions of Senate Bill ("SB") 648 (Chapter 267, Statutes of 2005), which amended PRC section 21165. As amended, PRC section 21165 defines the term "dispute" and provides that OPR shall not designate a lead agency in the absence of such a dispute. The purpose of the proposed amendments to subdivisions (a) and (c) of Guidelines section 15053, and the proposed addition of subdivision (b) to Guidelines section 15053, is to reflect the amendments to PRC section 21165. Additionally, the proposed action makes non-substantive clarifying changes to the numbering.

Necessity

The proposed amendments to subdivisions (a) and (c) of Guidelines section 15053 and the proposed addition of subdivision (b) to Guidelines section 15053 are reasonably necessary to reflect the legislative changes. The updated language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the

use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15061. REVIEW OF EXEMPTION.

Specific Purposes of the Amendment

Guidelines section 15061 describes when a project or activity is exempt from CEQA. The proposed addition of subdivision (b)(5) to Guidelines section 15061 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002). SB 1925 added PRC sections 21159.20-21159.26, which set forth statutory exemptions from CEQA for agricultural employee housing, low-income housing (affordable housing), and residential infill projects under specified circumstances. The purpose of the proposed addition of subdivision (b)(5) to Guidelines section 15061 is to reflect the additional exemptions from CEQA provided due to the enactment of PRC sections 21159.20-21159.26.

The proposed addition of subdivision (e) to Guidelines section 15061 implements and makes specific the provisions of SB 1393 (Chapter 1121, Statutes of 2002), amending PRC section 21151. As amended, PRC section 21151 provides that a decision by a non-elected decisionmaking body of a local lead agency to certify an EIR, approve a negative declaration or mitigated negative declaration, or determine that a

project is exempt from CEQA, may be appealed to the agency's elected decisionmaking body. The purpose of the proposed addition of subdivision (e) to Guidelines section 15061 is to reflect the change to PRC section 21151 with respect to projects exempt from CEQA.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

Necessity

The proposed additions of subdivisions (b)(5) and (e) to Guidelines section 15061 are reasonably necessary to reflect the legislative changes. The updated language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15062. NOTICE OF EXEMPTION

Specific Purposes of the Amendment

Guidelines section 15062 describes the use and required content of the notice of exemption when a public agency approves or determines to carry out a project that is exempt from CEQA.

The purpose of the proposed amendment to subdivision (a) of Guidelines section 15062 is to clarify the applicability of Guidelines section 15062 by a cross-reference to Guidelines section 15061.

The proposed addition of subdivision (e) to Guidelines section 15062 implements and makes specific the provisions of Assembly Bill ("AB") 677 (Chapter 837, Statutes of 2003), which added PRC section 21152.1. PRC section 21152.1 requires a local agency or project proponent to file notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The purpose of the proposed amendment to Guidelines section 15062, subdivision (e), is to reflect the requirements set forth within PRC section 21152.1.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

Necessity

The proposed amendment to subdivision (a) of Guidelines section 15062 is reasonably necessary to clarify the applicability of Guidelines section 15062 by a cross-reference to Guidelines section 15061. The proposed addition of subdivision (e) to Guidelines section 15062 is reasonably necessary to reflect the legislative changes. The new language in subdivision (e) overlaps the legislative language in PRC section 21152.1 to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative

because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15072. NOTICE OF INTENT TO ADOPT A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION

Specific Purposes of the Amendment

Guidelines section 15072 describes a lead agency's obligations to provide notices of intent to specified recipients before the lead agency adopts a negative declaration or a mitigated negative declaration.

The proposed addition of subdivision (f) to Guidelines section 15072 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), which added PRC section 21098. PRC section 21098 provides that if the U.S. Department of Defense or a military service provides notice to a lead agency identifying specified areas of concern, such lead agency must submit a notice of preparation of an EIR, notice of availability of a draft EIR, or a notice of intent to adopt a negative declaration or mitigated negative declaration to that military agency for certain projects located within the specified areas of concern. The purpose of the proposed addition of subdivision (f) to Guidelines section 15072 is to reflect the requirements of PRC section 21098 with respect to notices of intent to adopt negative declarations or mitigated negative declarations.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

Necessity

The proposed addition of subdivision (f) to Guidelines section 15072 is reasonably necessary to reflect the legislative changes. The updated language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15073. PUBLIC REVIEW OF A PROPOSED NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION

Specific Purposes of the Amendment

Guidelines section 15073 requires a lead agency to provide a public review period when a negative declaration or mitigated negative declaration and initial study are submitted to the State Clearinghouse. The proposed amendments to subdivision (b) of Guidelines section 15073 are to implement and make specific the provisions of SB 648 (Chapter 267, Statutes of 2005), which amended PRC section 21091. As amended, PRC section 21091 specifies the time for commencing the public review period and the state agency review period for draft EIRs, proposed negative declarations, and proposed mitigated negative declarations, specifies how the state agency review period must be calculated, and specifies the time frame for the State Clearinghouse's distribution of CEQA documents. The purpose of the proposed amendments to Guidelines section 15073 is to reflect the changes to PRC section 21091.

Necessity

The proposed amendments to subdivision (b) of Guidelines section 15073 are reasonably necessary to reflect the legislative changes. The updated language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15074. CONSIDERATION AND ADOPTION OF A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION

Specific Purposes of the Amendment

Guidelines section 15074 describes the process by which a negative declaration or mitigated negative declaration should be considered and, if applicable, adopted by a decisionmaking body. The proposed addition of subdivision (f) to Guidelines section 15074 implements and makes specific the provisions of SB 1393 (Chapter 1121, Statutes of 2002), amending PRC section 21151. As amended, PRC section 21151 provides that a decision by a non-elected decisionmaking body of a local lead agency to certify an EIR, approve a negative declaration or mitigated negative declaration, or

determine that a project is exempt from CEQA, may be appealed to the agency's elected decisionmaking body.

The purpose of the proposed addition of subdivision (f) to Guidelines section 15074 is to reflect the change in PRC section 21151 with respect to negative declarations and mitigated negative declarations.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

Necessity

The proposed addition of subdivision (f) to Guidelines section 15074 is reasonably necessary to reflect the legislative changes. The new language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15082. NOTICE OF PREPARATION AND DETERMINATION OF SCOPE OF EIR

Specific Purposes of the Amendment

Guidelines section 15082 describes the consultation process (commonly referred to as “scoping”), including the use of a notice of preparation of a draft EIR, among a lead agency and responsible and trustee agencies where the lead agency is preparing an EIR that will be used by these agencies in reviewing and approving a project.

The proposed amendment to subdivision (a) of Guidelines section 15082 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), adding PRC section 21098. PRC section 21098 provides that if the U.S. Department of Defense or a military service provides notice to a lead agency identifying specified areas of concern, such lead agency must submit a notice of preparation of an EIR, notice of availability of a draft EIR, or a notice of intent to adopt a negative declaration or mitigated negative declaration to that military agency for certain projects located within the specified areas of concern. The purpose of the proposed amendment to subdivision (a) of Guidelines section 15082, is to reflect the requirements of PRC section 21098 with respect to notices of preparation of an EIR.

The proposed amendment to subdivision (c)(1) of Guidelines section 15082 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), amending PRC section 21083.9. As amended, PRC section 21083.9 states that any scoping meeting conducted in the city or county in which a project is located pursuant to NEPA will satisfy the state scoping meeting requirement for projects of statewide, regional or areawide significance provided certain additional requirements are met. The purpose of the proposed amendment to subdivision (c)(1) of Guidelines section 15082 is to reflect the changes to PRC section 21083.9. Non-substantive changes to the format and layout of subdivisions (c)(1)-(c)(3) of Guidelines section 21083.9 and non-substantive clarifying changes to the numbering were also made.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

Necessity

The proposed amendments to subdivisions (a) and (c)(1) of Guidelines section 15082 are reasonably necessary to reflect the legislative changes. The updated language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15083.5. CITY OR COUNTY CONSULTATION WITH WATER AGENCIES [Repeal]

Specific Purposes of the Amendment

The existing Guidelines section 15083.5 generally addresses analyses and determinations regarding water supply availability that must be undertaken by lead agencies for specified projects. The existing Guidelines section 15083.5 was based on SB 901 (Chapter 881, Statutes of 1995), which enacted, among other things, PRC section 21151.9 and Government Code sections 10910-10915. SB 901 was amended by SB 610 (Chapter 643, Statutes of 2001). Among other things, SB 610 amended PRC section 21151.9 of the Public Resources Code and sections 10910, 10912, 10915 of the Water Code, and repealed section 10913 of the Water Code. Because SB 610 made extensive revisions to the statutes which were enacted by SB 901 and reflected in existing Guidelines section 15083.5, the Resources Agency determined that deleting the existing Guidelines section 15083.5 in its entirety and replacing it with proposed new Guidelines section 15155 would provide greater clarity and be more helpful to the public than making extensive revisions to existing Guidelines section 15083.5. In addition, because SB 610 made the requirement to include a water supply analysis applicable to all CEQA documents (not just to EIRs), the Resources Agency concluded that it would

be more helpful to the public if this section were relocated from Article 7 (EIR Process) to Article 10 (Considerations in Preparing EIRs and Negative Declarations). The purpose of this action is to delete Guidelines section 15083.5 and to replace it with proposed new Guidelines section 15155 to reflect the changes enacted in SB 610. Proposed new Guidelines section 15155 will be discussed below.

Necessity

The proposed repeal of Guidelines section 15083.5 (and its replacement by the proposed addition of Guidelines section 15155) is reasonably necessary to reflect the legislative change described above.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15087. PUBLIC REVIEW AND DRAFT EIR

Specific Purposes of the Amendment

Guidelines section 15087 sets forth procedures for public notice and public review of draft EIRs.

The proposed amendment to subdivision (a) of Guidelines section 15087 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), which added PRC section 21098. PRC section 21098 provides that if the U.S. Department of Defense or a military service provides notice to a lead agency identifying

specified areas of concern, such lead agency must submit a notice of preparation of an EIR, notice of availability of a draft EIR, or a notice of intent to adopt a negative declaration or mitigated negative declaration to that military agency for certain projects located within the specified areas of concern. The purpose of the proposed amendment to Guidelines section 15087 is to reflect the requirements of PRC section 21098 with respect to notices of availability of a draft EIR.

The proposed amendment to subdivision (e) of Guidelines section 15087 implements and makes specific the provisions of SB 648 (Chapter 267, Statutes of 2005), which amended PRC section 21091. As amended, PRC section 21091 specifies the time for commencing the public review period and the state agency review period for draft EIRs, proposed negative declarations, and proposed mitigated negative declarations, specifies how the state agency review period must be calculated, and specifies the time frame for the State Clearinghouse's distribution of CEQA documents. The purpose of the proposed amendment to subdivision (e) of Guidelines section 15087 is to reflect the changes to PRC section 21091.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

Necessity

The proposed amendments to subdivisions (a) and (e) of Guidelines section 15087 are reasonably necessary to reflect the legislative changes. The updated language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15105. PUBLIC REVIEW PERIOD FOR A DRAFT EIR OR A PROPOSED NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION

Specific Purposes of the Amendment

Guidelines section 15105 describes the time periods required for the public review of a draft EIR, proposed negative declaration, or mitigated negative declaration. The proposed amendment to subdivision (c) of Guidelines section 15105, and the proposed addition of subdivision (e) to Guidelines section 15105, implement and make specific the provisions of SB 648 (Chapter 267, Statutes of 2005), which amended PRC section 21091. As amended, PRC section 21091 specifies the time for commencing the public review period and the state agency review period for draft EIRs, proposed negative declarations, and proposed mitigated negative declarations, specifies how the state agency review period must be calculated, and specifies the time frame for the State Clearinghouse's distribution of CEQA documents. The purpose of the proposed amendment to subdivision (c) of Guidelines section 15105, and the proposed addition of subdivision (e) to Guidelines section 15105, is to reflect the changes to PRC section 21091.

Necessity

The proposed amendment to subdivision (c) of Guidelines section 15105, and the proposed addition of subdivision (e) to Guidelines section 15105 are reasonably necessary to reflect the legislative changes. The updated language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative

enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

15155. CITY OR COUNTY CONSULTATION WITH WATER AGENCIES [New Section]

Specific Purposes of the Amendment

The proposed addition of Guidelines section 15155 implements and makes specific the provisions of SB 610 (Chapter 643, Statutes of 2001). Guidelines section 15155 would replace existing Guidelines section 15083.5, which is proposed to be repealed. The existing Guidelines section 15083.5 generally addresses analyses regarding water supply availability that must be undertaken by lead agencies for specified projects. The existing Guidelines section 15083.5 was based on SB 901 (Chapter 881, Statutes of 1995), which enacted, among other things, PRC section 21151.9 and Government Code sections 10910-10915. SB 901 was amended by SB 610 (Chapter 643, Statutes of 2001). Among other things, SB 610 amended PRC section 21151.9 of the Public Resources Code and sections 10910, 10912, 10915 of the Water Code, and repealed section 10913 of the Water Code. Because SB 610 made extensive revisions to the statutes which were enacted by SB 901 and reflected in existing Guidelines section 15083.5, the Resources Agency determined that deleting the existing Guidelines section 15083.5 in its entirety and replacing it with proposed new Guidelines section 15155 would provide greater clarity and be more helpful to the public than making extensive revisions to existing Guidelines section 15083.5. In addition, because SB 610 made the requirement to include a water supply analysis applicable to all CEQA documents (not just to EIRs), the Resources Agency concluded that it would be more helpful to the public if this section were relocated from Article 7 (EIR Process) to Article 10 (Considerations in Preparing EIRs and Negative Declarations).

The purpose of the proposed addition of Guidelines section 15155 is to reflect the changes to PRC sections 21151.9 as well as the changes to Water Code sections 10910, 10911, 10912, and 10914, and the repeal of Water Code section 10913, as they apply to a lead agency's obligations under CEQA.

Necessity

The proposed addition of Guidelines section 15155 (replacing 15083.5) is reasonably necessary to reflect the legislative changes. The language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15179. LIMITATIONS ON THE USE OF THE MASTER EIR

Specific Purposes of the Amendment

Guidelines section 15179 specifies limitations on the use of a Master EIR. The proposed amendment to subdivisions (a) and (b) of Guidelines section 15179 implement and make specific the provisions of AB 2922 (Chapter 684, Statutes of 2004), which amended PRC section 21157.6. As amended, PRC section 21157.6 revises one of the limitations on the use of a Master EIR and allows a Master EIR that was certified more than 5 years prior to the filing of an application for the subsequent project to be used if the lead agency takes specified steps. The purpose of the proposed amendments to subdivisions (a) and (b) of Guidelines section 15179 is to reflect the changes to PRC section 21157.6. In addition, the purpose of this action is to remove the discussion section that follows this Guideline because the proposed action

makes this discussion section outdated. These discussion sections are potentially sources of confusion, because it is not clear whether discussion sections are part of the Guidelines or have any legal effect. Additionally, the proposed amendments make non-substantive clarifying changes to the numbering.

Necessity

The proposed amendments to subdivisions (a) and (b) of Guidelines section 15179 are reasonably necessary to reflect the legislative changes. The updated language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15180. REDEVELOPMENT PROJECTS

Specific Purposes of the Amendment

Guidelines section 15180 describes special environmental review considerations for redevelopment projects. The proposed addition of subdivisions (a) and (c) of Guidelines section 15180, and the proposed amendment to subdivision (b) of Guidelines section 15180, implements and makes specific the provisions of SB 649

(Chapter 625, Statutes of 2002), amending PRC section 21090. As amended, PRC section 21090 provides that an EIR for a redevelopment project may be a master, program or project EIR, and the EIR must state the type of EIR that is being prepared for the redevelopment project. The purpose of the proposed addition of subdivisions (a) and (c) of Guidelines section 15180, and the proposed amendment to subdivision (b) of Guidelines section 15180, is to reflect the changes to PRC section 21090.

In addition, the purpose of this action is to remove the discussion section that follows this Guideline because the proposed action makes this discussion section outdated. These discussion sections are potentially sources of confusion, because it is not clear whether discussion sections are part of the Guidelines or have any legal effect. Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

Necessity

The proposed addition of subdivisions (a) and (c) of Guidelines section 15180, and the proposed amendment to subdivision (b) of Guidelines section 15180, is reasonably necessary to reflect the legislative changes. The updated language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15186. SCHOOL FACILITIES

Specific Purposes of the Amendment

Guidelines section 15186 provides special CEQA requirements that apply to school projects and projects located near schools. The proposed amendments to subdivisions (b), (c), and (e) of Guidelines section 15186 implement and make specific the provisions of SB 945 (Chapter 689, Statutes of 2004) and SB 352 (Chapter 668, Statutes of 2003). SB 945 amended PRC section 21151.4 to change the term “acutely hazardous materials” to “extremely hazardous substances.” SB 352 amended PRC section 21151.8 to require an EIR or negative declaration to disclose specified information relative to the location of a proposed school site and precludes a lead agency from approving certain school projects in specified locations unless certain findings are made. The purpose of the proposed amendments to subdivisions (b), (c), and (e) of Guidelines section 15186 is to reflect the changes made to PRC sections 21151.4 and 21151.8.

In addition, the purpose of this action is to remove the discussion section that follows this Guideline because the proposed amendments make this discussion section outdated. These discussion sections are potentially sources of confusion, because it is not clear whether discussion sections are part of the Guidelines or have any legal effect. Additionally, the proposed amendments make non-substantive clarifying changes to the numbering.

Necessity

The proposed amendments to subdivisions (b), (c), and (e) of Guidelines section 15186 are reasonably necessary to reflect the legislative changes. The updated language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency’s determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative

because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

15190.5. DEPARTMENT OF DEFENSE NOTIFICATION REQUIREMENT [New Section]

Proposed addition of Guidelines section 15190.5 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), which added PRC section 21098. PRC section 21098 provides that if the U.S. Department of Defense or a military service provides notice to a lead agency identifying specified areas of concern, such lead agency must submit a notice of preparation of an EIR, a notice of availability of a draft EIR, or a notice of intent to adopt a negative declaration or mitigated negative declaration to that military agency for certain projects located within the specified areas of concern. The purpose of the proposed addition of Guidelines section 15190.5 is to reflect the language set forth in new PRC section 21098.

Necessity

The proposed addition of Guidelines section 15190.5 is reasonably necessary to reflect the legislative changes. The language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no

alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTIONS 15191-15196. ARTICLE 12.5 EXEMPTIONS FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS [New Article and New Sections]

Specific Purposes of the Amendments

The proposed new Article 12.5 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002) and AB 677 (Chapter 837, Statutes of 2003). SB 1925 added PRC sections 21159.20-21159.26, which set forth statutory exemptions from CEQA for agricultural employee housing, low-income housing (affordable housing), and residential infill projects under specified circumstances. AB 677 amended PRC section 21152.1 to require that an agency notify OPR when it determines that a project is exempt from CEQA under one of the preceding exemptions. The purpose of the proposed addition of Article 12.5 is to organize and set forth new Guidelines sections 15191-15196 which implement and make specific PRC sections 21159.20-21159.26. The specific purpose of each Guidelines section is explained below.

Necessity

The proposed addition of Article 12.5 is reasonably necessary to organize and set forth new Guidelines sections 15191-15196.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered the no action alternative, but did not identify any alternative that would lessen any adverse impact on small business. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. No alternative considered by the Resources Agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected small businesses than the proposed action. Furthermore, there are no alternatives available that would lessen any impacts, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15191. DEFINITIONS **[New Section]**

The proposed addition of Guidelines section 15191 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002). The purpose of the proposed addition of Guidelines section 15191 is to set forth the definitions provided in various subdivisions of section 21159.20-21159.26. In addition, the purpose of Guidelines section 15191 is to enhance the clarity and ease of use of PRC sections 21159.20 - 21159.23 by clarifying and making more certain the key definitions used in sections 21159.21-21159.24.

Guidelines section 15191, subdivision (a), reflects PRC section 21159.22, which provides that “agricultural employee” has the same meaning as defined by subdivision (b) of section 1140.4 of the Labor Code. Section 15191, subdivision (a), includes the relevant components of this section of the Labor Code.

Guidelines section 15191, subdivision (b), reflects PRC section 21159.20, subdivision (a), which provides the statutory definition of the term “census-defined place.”

Guidelines section 15191, subdivision (c), reflects PRC section 21159.20, subdivision (b), which provides the statutory definition of the term “community-level environmental review.”

Guidelines section 15191, subdivision (d), reflects PRC section 21159.21, subdivision (i)(2) and (3), which provide the statutory definition of the term “developed open space.”

Guidelines section 15191, subdivision (e), reflects PRC section 21061.3, which provide the statutory definition of the term “infill site.”

Guidelines section 15191, subdivision (f), reflects PRC section 21159.20, subdivision (d), which defines the term “low-and moderate-income households” by reference to sections 50093 of the Health and Safety Code. Guidelines section 15191, subdivision (f), includes the relevant components of this section of the Health and Safety Code.

Guidelines section 15191, subdivision (g), reflects PRC section 21159.20, subdivision (c), which defines the term “low income households” by reference to sections 50093 and 50105 of the Health and Safety Code. Guidelines section 15191, subdivision (g), includes the relevant components of these sections of the Health and Safety Code.

Guidelines section 15191, subdivision (h), reflects PRC section 21159.23, subdivision (a)(1), which defines the term “lower income households” by reference to section 50079.5 of the Health and Safety Code. Guidelines section 15191, subdivision (h), includes the relevant components of this section of the Health and Safety Code.

Guidelines section 15191, subdivision (i), reflects PRC section 21064.3, which defines the term “major transit stop.”

Guidelines section 15191, subdivision (j), reflects PRC section 21065.3, which defines the term “project-specific effect.”

Guidelines section 15191, subdivision (k), reflects PRC section 21072 which defines the term “qualified urban use.”

Guidelines section 15191, subdivision (l), reflects PRC sections 21159.23 and 21159.24, which provide the statutory definition of the “residential.”

Guidelines section 15191, subdivision (m), reflects PRC section 21071, which provides the statutory definition of the term “urbanized area.”

Necessity

The proposed addition of Guidelines section 15191 is reasonably necessary to reflect the legislative changes. The language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency’s determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative

because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15192. THRESHOLD REQUIREMENTS FOR EXEMPTIONS FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS **[New Section]**

The proposed addition of Guidelines section 15192 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002), described above. The purpose of proposed Guidelines section 15192 is to reflect the language set forth in new PRC sections 21159.21 regarding the threshold requirements of availability of the exemptions identified in this Article.

Necessity

The proposed addition of Guidelines section 15192 is reasonably necessary to reflect the legislative changes. The language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15193. AGRICULTURAL HOUSING EXEMPTION [New Section]

The proposed addition of Guidelines section 15193 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002), described above, with respect to the agricultural housing exemption set forth in new PRC section 21159.22. The purpose of proposed Guidelines section 15193 is to reflect the language set forth in new PRC section 21159.22.

Necessity

The proposed addition of Guidelines section 15193 is reasonably necessary to reflect the legislative changes. The language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15194. AFFORDABLE HOUSING EXEMPTION [New Section]

The proposed addition of Guidelines section 15194 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002), described above, with respect to the affordable housing exemption set forth in new PRC section 21159.23. The purpose of proposed addition of Guidelines section 15194 is to reflect the language set forth in new PRC section 21159.23.

Necessity

The proposed addition of Guidelines section 15194 is reasonably necessary to reflect the legislative changes. The language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15195. RESIDENTIAL INFILL EXEMPTION [New Section]

The proposed addition of Guidelines section 15195 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002), described above, with respect to the residential infill exemption set forth in new PRC section 21159.23. The purpose of proposed Guidelines section 15195 is to reflect the language set forth in new PRC section 21159.24.

Necessity

The proposed addition of Guidelines section 15195 is reasonably necessary to reflect the legislative changes. The language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

SECTION 15196. NOTICE OF EXEMPTION FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS **[New Section]**

The proposed addition of Guidelines section 15196 implements and makes specific the provisions of AB 677 (Chapter 837, Statutes of 2003), which added PRC section 21152.1. PRC section 21152.1 requires a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The purpose of proposed Guidelines section 15196 is to reflect the language set forth in new PRC sections 21152.1.

Necessity

The proposed addition of Guidelines section 15196 is reasonably necessary to reflect the legislative changes. The language of this section of the Guidelines overlaps the legislative language to ensure the Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

Reasonable Alternatives to the Regulation, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the new statutory requirements.

Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business

The proposed action implements and clarifies existing statutory requirements. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

TITLE 14. NATURAL RESOURCES

DIVISION 6. RESOURCES AGENCY

CHAPTER 3. GUIDELINES FOR IMPLEMENTATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

ARTICLE 4. LEAD AGENCY

§ 15053. Designation of Lead Agency by the Office of Planning and Research.

(a) If there is a dispute over which of several agencies should be the Lead Agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to the Office of Planning and Research. If an agreement cannot be reached, any of the disputing public agency-agencies, or the applicant if a private project is involved, may submit the dispute to the Office of Planning and Research for resolution.

(b) For purposes of this section, a "dispute" means a contested, active difference of opinion between two or more public agencies as to which of those agencies shall prepare any necessary environmental document. A dispute exists where each of those agencies claims that it either has or does not have the obligation to prepare that environmental document.

(bc) The Office of Planning and Research shall designate a Lead Agency within 21 days after receiving a completed request to resolve a dispute. The Office of Planning and Research shall not designate a lead agency in the absence of a dispute.

(ed) Regulations adopted by the Office of Planning and Research for resolving Lead Agency disputes may be found in Title 14, California Code of Regulations, Sections 16000 et seq.

(de) Designation of a Lead Agency by the Office of Planning and Research shall be based on consideration of the criteria in Section 15051 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21165, Public Resources Code; California Code of Regulations, Title 14, Sections 16000-16041.

ARTICLE 5. PRELIMINARY REVIEW OF PROJECTS AND CONDUCT OF INITIAL STUDY

§ 15061. Review for Exemption.

[(a): no changes]

(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 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.

[(c) – (d): no changes]

(e) When a non-elected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, the decision that the project is exempt may be appealed to the local lead agency's elected decisionmaking body, if one exists. A local lead agency may establish procedures governing such appeals.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b), 21151, and 21152(b), and 21159.21, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68.

§ 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) - (4): no changes]

[(b) - (d): no changes]

(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, Public Resources Code. Reference: Sections 21108, ~~and~~ 21152, and 21152.1, Public Resources Code.

ARTICLE 6. NEGATIVE DECLARATION PROCESS

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

[(a) - (e): no changes]

(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.

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

[(1) – (6): no changes]

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.

§ 15073. Public Review of a Proposed Negative Declaration or Mitigated Negative Declaration.

[(a): no changes]

(b) When a proposed negative declaration or mitigated negative declaration and initial study have been submitted to the State Clearinghouse for review by state agencies, 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. the public review period shall be at least as long as the review period established by the State Clearinghouse. Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies.

[(c) – (e): no changes]

Note: Authority cited: Section 21083, Public Resources Code. References: Sections 21000(e), 21003(b), 21080(c), 21081.6, 21091, and 21092.5, Public Resources Code; *Plaggmier v. City of San Jose* (1980) 101 Cal.App.3d 842.

§ 15074. Consideration and Adoption of a Negative Declaration or Mitigated Negative Declaration.

[(a) – (e): no changes]

(f) When a non-elected official or decisionmaking body of a local lead agency adopts a negative declaration or mitigated negative declaration, that adoption may be appealed to the agency's elected decisionmaking body, if one exists. For example, adoption of a negative declaration for a project by a city's planning commission may be appealed to the city council. A local lead agency may establish procedures governing such appeals.

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

ARTICLE 7. EIR PROCESS

§ 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 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. 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) – (4): no changes]

[(b): no changes]

(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) – (D): no changes]

(23) 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) – (e) no changes]

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.9, and 21080.4, and 21098, Public Resources Code.

~~§ 15083.5. — City or County Consultation with Water Agencies.~~

~~This guideline addresses consultation between a city or county and affected water agencies at the notice of preparation stage of environmental review.~~

~~(a) This guideline shall apply only to projects which meet all of the following criteria:~~

~~(1) The project consists of any of the following activities for which an application has been submitted to a city or county:~~

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

~~(B) A shopping center or business establishment that will employ more than 1,000 persons or have more than 500,000 square feet of floor space.~~

~~(C) A commercial office building that will employ more than 1,000 persons or have more than 250,000 square feet of floor space.~~

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

~~(E) An industrial, manufacturing, or processing plant, or industrial park intended 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) Any mixed-use project that would demand an amount of water equal to, or greater than, the amount of water needed to serve a 500-dwelling-unit project.~~

~~(2) As part of approval of the project, any of the following are required:~~

~~(A) An amendment to, or revision of, the land use element of a general plan or a specific plan, which would result in a net increase in the stated population density or building intensity to provide for additional development.~~

(B) The adoption of a specific plan, unless the city or county has previously complied with this section for the project.

Notwithstanding the foregoing provisions of this subdivision (a)(2), when a project is identified in connection with the revision of any part of a general plan, that project is subject to the requirements of this section only if the project results in a net increase in the stated population density or building intensity, and if the city or county has not previously complied with the requirements of this section for the project in question.

(3) A city or county has determined that an environmental impact report is required in connection with the project.

(b) For projects subject to this guideline, a city or county shall identify any water system that is, or may become, a public water system, as defined in Section 10912 of the Water Code, that may supply water for the project. When a city or county releases a notice of preparation for review, it shall send a copy of the notice to each public water system which serves or would serve the proposed project and request that the system both indicate whether the projected water demand associated with the proposed project was included in its last urban water management plan and assess whether its total projected water supplies available during normal, single dry, and multiple dry water years as included in the 20-year projection contained in its urban water management plan will meet the projected water demand associated with the proposed project, in addition to the system's existing and planned future uses.

(c) The governing body of a public water system shall approve and submit its water supply assessment to the city or county not later than 30 days after the date on which the request and notice of preparation were received. If the public water system fails to submit its assessment within the allotted time, the lead agency may assume, unless there has been a request for a specific extension of time from the public water system, that the public water system has no information to submit. If a public water system concludes there would be insufficient water to serve the proposed project, it shall provide the city or county with its plans for acquiring additional water supplies.

(d) The lead agency shall include within the EIR the public water system's assessment and any other information provided by the water agency, up to a maximum of ten typewritten pages. The assessment and information may only exceed that length with the approval of the lead agency. The lead agency may independently evaluate the water system's information and shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the proposed project, in addition to existing and planned future uses. If the lead agency determines that water supplies will not be sufficient, the lead agency must include that determination in its findings for the project pursuant to Sections 15091 and 15093.

(e) For purposes of this section, "public water system" means a system as defined in Section 10912 of the Water Code with 3,000 or more service connections.

(f) This section does not apply to the County of San Diego and the cities in the county as provided in Section 10915 of the Water Code.

~~Note: Authority cited: Section 21083, Public Resources Code; References: Section 21151.9, 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 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. Theis 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) – (3): no changes]

[(b) – (d): no changes]

(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. the public review period shall be at least as long as the review period established by the Clearinghouse.

[(f) – (i): no changes]

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.

ARTICLE 8. TIME LIMITS

§ 15105. Public Review Period for a Draft EIR or a Proposed Negative Declaration or Mitigated Negative Declaration.

[(a) – (b): no changes]

(c) If a draft EIR or proposed negative declaration or mitigated negative declaration has been submitted to the State Clearinghouse for review by state agencies, 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. ~~the public review period shall be at least as long as the review period established by the State Clearinghouse.~~

[(d): no changes]

(e) The State Clearinghouse shall distribute a draft EIR or proposed negative declaration or mitigated negative declaration within three working days after the date of receipt if the submittal is determined by the State Clearinghouse to be complete.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21091 and 21092, Public Resources Code; *People v. County of Kern* (1974) 39 Cal.App.3d 830.

ARTICLE 10. CONSIDERATIONS IN PREPARING EIRS AND NEGATIVE DECLARATIONS

§ 15155. 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.

Note: Authority Cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code, Sections 10910-10915 of the Water Code.

ARTICLE 11.5. MASTER ENVIRONMENTAL IMPACT REPORT

§ 15179. Limitations on the Use of the Master EIR.

(a) The certified Master EIR shall not be used for a subsequent project described in the Master EIR in accordance with this article if either:

(i1) The Master EIR it was certified more than five years prior to the filing of an application for a later subsequent project except as set forth in subsection (b) below, or

(ii2) After the certification of the Master EIR, a project not identified described in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR for any subsequent project that was described in the Master EIR unless the lead agency does one of the following:

(b) A Master EIR that was certified more than five years prior to the filing of an application for a subsequent project described in the Master EIR may be used in accordance with this article to review such a subsequent project if the lead agency reviews the adequacy of the Master EIR and takes either of the following steps:

(a1) Reviews the Master EIR and f Finds that no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, or that there is no new available information which was not known and could not have been known at the time the Master EIR was certified; or

(b2) Prepares an initial study and, pursuant to the findings of the initial study, does either (A) or (B) below:

(A) certifies a subsequent or supplemental EIR that updates or revises the Master EIR and which either:

(i)1. is incorporated into the previously certified Master EIR, or

(ii)2. references any deletions, additions or other modifications to the previously certified Master EIR;

(B) approves a mitigated negative declaration that addresses substantial changes that have occurred with respect to the circumstances under which the Master EIR was certified or the new information that was not known and could not have been known at the time the Master EIR was certified.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21157.6, Public Resources Code.

ARTICLE 12. SPECIAL SITUATIONS

§ 15180. Redevelopment Projects.

(a) An EIR for a redevelopment plan may be a Master EIR, a program EIR, or a project EIR. An EIR for a redevelopment plan must specify whether it is a Master EIR, a program EIR, or a project EIR.

(b) If the EIR for a redevelopment plan is a project EIR, All public and private activities or undertakings pursuant to or in furtherance of a the redevelopment plan shall constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

~~(b) If a project EIR has been certified for the An EIR on a redevelopment plan, shall be treated as a program EIR with no subsequent EIRs are required for individual components of the redevelopment plan unless a subsequent EIR or a supplement to an EIR would be required by Section 15162 or 15163.~~

(c) If the EIR for a redevelopment plan is a Master EIR, subsequent projects which the lead agency determines as being within the scope of the Master EIR will be subject to the review required by Section 15177. If the EIR for a redevelopment plan is a program EIR, subsequent activities in the program will be subject to the review required by Section 15168.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21090 and 21166, Public Resources Code.

§ 15186. School Facilities.

[(a): no changes]

(b) Before certifying an EIR or adopting a negative declaration for~~When a project~~ located within one-fourth mile of a school that involves the construction or alteration of a facility ~~which that~~ might reasonably be anticipated to emit hazardous ~~air emissions or acutely hazardous air emissions~~, or ~~which that~~ would handle ~~acutely an extremely hazardous material substance~~ or a mixture containing ~~acutely extremely hazardous material substances~~ in a quantity equal to or greater than ~~that specified in subdivision (a) of Section 25536 of the Health and Safety Code, which the state threshold quantity specified in subdivision (j) of Section 25532 of the Health and Safety Code~~, that may impose a health or safety hazard to persons who would attend or would be employed at the school, the lead agency must do both of the following:

(1) Consult with the affected school district or districts regarding the potential impact of the project on the school; ~~and when circulating the proposed negative declaration or draft EIR for review.~~

(2) Notify the affected school district or districts of the project, in writing, not less than 30 days prior to approval or certification of the negative declaration or EIR. ~~This subdivision does not apply to projects for which an application was submitted prior to January 1, 1992.~~

(c) When the project involves the purchase of a school site or the construction of a secondary or elementary school by a school district, the negative declaration or EIR prepared for the project shall not be ~~approved~~ adopted or certified ~~by the school board~~ unless:

(1) The negative declaration, mitigated negative declaration, or EIR contains sufficient information to determine whether the property is:

[(A) – (C): no changes]

(D) Within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

[(2): no changes]

(3) The school ~~board~~ district makes, on the basis of substantial evidence, one of the following written findings:

[(A): no changes]

(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:

[1. – 2.: no changes]

3. For a school site with boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the school district determines, through a health risk assessment pursuant to subdivision (b)(2) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in subsection (c)(2) exist, but conditions in subdivisions (c)(3)(B)(1), (2) or (3) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the school district makes this finding, the school board shall prepare an EIR and adopt a statement of overriding considerations.

This finding shall be in addition to any findings which may be required pursuant to Sections 15074, 15091 or 15093.

[(d): no changes]

(e) The following definitions shall apply for the purposes of this section:

[(1) – (2): no changes]

(3) "Extremely hazardous substance," is as defined in subdivision (g)(2)(B) of Section 25532 of the Health and Safety Code and listed in Section 2770.5, Table 3, of Title 19 of the California Code of Regulations.

(4) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(5) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000

vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

(6) "Handle" means to use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous material in any fashion.

(37) "Hazardous air emissions," is as defined in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(48) "Hazardous substance," is as defined in Section 25316 of the Health and Safety Code.

(59) "Hazardous waste," is as defined in Section 25117 of the Health and Safety Code.

(610) "Hazardous waste disposal site," is as defined in Section 25114 of the Health and Safety Code.

Note: Authority cited: Section 21083, Public Resources Code. References: Sections 21151.4 and 21151.8, Public Resources Code.

§ 15190.5. Department Of Defense Notification Requirement.

(a) For purposes of this section, the following definitions are applicable.

(1) "Low-level flight path" means any flight path for any aircraft owned, maintained, or that is under the jurisdiction of the United States Department of Defense that flies lower than 1,500 feet above ground level, as indicated in the United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)" published by the United States National Imagery and Mapping Agency, or its successor, as of the date the military service gives written notification to a lead agency pursuant to subdivision (b).

(2) "Military impact zone" means any area, including airspace, that meets both of the following criteria:

(A) Is within two miles of a military installation, including, but not limited to, any base, military airport, camp, post, station, yard, center, homeport facility for a ship, or any other military activity center that is under the jurisdiction of the United States Department of Defense; and

(B) Covers greater than 500 acres of unincorporated land, or greater than 100 acres of city incorporated land.

(3) "Military service" means the United States Department of Defense or any branch of the United States Armed Forces.

(4) "Special use airspace" means the land area underlying the airspace that is designated for training, research, development, or evaluation for a military service, as that land area is established by the United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)" published by the United States National Imagery and Mapping Agency, or its successor, as of the date the military service gives written notification to a lead agency pursuant to subdivision (b).

(b) A military service may give written notification to a lead agency of the specific boundaries of a low-level flight path, military impact zone, or special use airspace, and provide the lead agency, in writing, the military contact office and address for the military service. If the notice references the specific boundaries of a low-level flight path, such notification must include a copy of the applicable United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)." If the notice references the specific boundaries of a special use airspace, such notification must include a copy of the applicable United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)."

(c) If a military service provides the written notification specified in subdivision (b) of this section, a lead agency must 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 Section 15072, in the list of organizations and individuals receiving a notice of preparation of an EIR pursuant to Section 15082, and in the list of organizations and individuals receiving a notice of availability of a draft EIR pursuant to Section 15087 for any project that meets all of the criteria specified below:

(1) The project to be carried out or approved by the lead agency is within the boundaries specified in subdivision (b).

(2) The project is one of the following:

(A) a project that includes a general plan amendment; or

(B) a project that is of statewide, regional, or areawide significance;
or

(C) a project that relates to a public use airport and the area surrounding such airport which is required to be referred to the airport land use commission, or appropriately designated body, pursuant to Sections 21670-21679.5 of the Public Utilities Code.

(3) The project is not one of the actions described below. A lead agency does not need to send to the specified military contact office a notice of intent to adopt a negative declaration or a mitigated negative declaration, a notice of preparation of an EIR, or a notice of availability of a draft EIR for such actions.

(A) a response action taken pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(B) a response action taken pursuant to Chapter 6.85 (commencing with Section 25396) of Division 20 of the Health and Safety Code.

(C) a project undertaken at a site in response to a corrective action order issued pursuant to Section 25187 of the Health and Safety Code.

The lead agency shall send the specified military contact office a notice of intent or a notice of availability sufficiently prior to adoption or certification of the environmental documents by the lead agency to allow the military service the review period provided under Section 15105.

(d) The effect or potential effect that a project may have on military activities does not itself constitute an adverse effect on the environment for the purposes of CEQA.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21098, Public Resources Code.

Article 12.5. Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects

§ 15191. Definitions.

For purposes of this Article 12.5 only, the following words shall have the following meanings:

(a) "Agricultural employee" means a person engaged in agriculture, including: farming in all its branches, and, among other things, includes: (1) the cultivation

and tillage of the soil, (2) dairying, (3) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), (4) the raising of livestock, bees, furbearing animals, or poultry, and (5) any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market. This definition is subject to the following limitations:

This definition shall not be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code), and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code).

This definition shall not apply, or be construed to apply, to any employee who performs work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management Relations Act, 29 U.S.C. Sec. 158(e)) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above. As used in this definition, "land leveling" shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage or preparation of land for cultivation.

(b) "Census-defined place" means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

(c) "Community-level environmental review" means either of the following:

(1) An EIR certified on any of the following:

(A) A general plan.

(B) A revision or update to the general plan that includes at least the land use and circulation elements.

(C) An applicable community plan.

(D) An applicable specific plan.

(E) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.

(2) A negative declaration or mitigated negative declaration adopted as a subsequent environmental review document, following and based upon an EIR on a general plan, an applicable community plan, or an applicable specific plan, provided that the subsequent environmental review document is allowed by CEQA following a master EIR or a program EIR, or is required pursuant to Section 21166.

(d) "Developed open space" means land that meets all of the following criteria:

(1) land that is publicly owned, or financed in whole or in part by public funds,

(2) is generally open to, and available for use by, the public, and

(3) is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ball fields, enclosed child play areas, and picnic facilities.

Developed open space may include land that has been designated for acquisition by a public agency for developed open space but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(e) "Infill site" means a site in an urbanized area that meets one of the following criteria:

(1) The site has been previously developed for qualified urban uses; or

(2) The site has not been developed for qualified urban uses but all immediately adjacent parcels are developed with existing qualified urban uses; or

(3) The site has not been developed for qualified urban uses, no parcel within the site has been created within the past 10 years, and the site is situated so that:

(A) at least 75 percent of the perimeter of the site is adjacent to parcels that are developed with existing qualified urban uses at the time the lead agency receives an application for an approval; and

(B) the remaining 25 percent of the perimeter of the site adjoins parcels that had been previously developed for qualified urban uses.

(f) "Low- and moderate-income households" means "persons and families of low or moderate income" as defined in Section 50093 of the Health and Safety Code to mean persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the Department of Housing and Community Development, in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

(g) "Low-income households" means households of persons and families of very low and low income, which are defined in Sections 50093 and 50105 of the Health and Safety Code as follows:

(1) "Persons and families of low income" or "persons of low income" is defined in Section 50093 of the Health & Safety Code to mean persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to this division.

(2) "Very low income households" is defined in Section 50105 of the Health & Safety Code to mean persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. "Very low income households" includes extremely low income households, as defined in Section 50106 of the Health & Safety Code.

(h) "Lower income households" is defined in Section 50079.5 of the Health and Safety Code to mean any of the following:

(1) "Lower income households," which means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(2) "Very low income households," which means persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(3) "Extremely low income households," which means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as established and amended from time to time by the Secretary of Housing and Urban Development and defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations.

(i) "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 a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(j) "Project-specific effect" means all the direct or indirect environmental effects of a project other than cumulative effects and growth-inducing effects.

(k) "Qualified urban use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(l) "Residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

(m) "Urbanized area" means either of the following:

(1) An incorporated city that either by itself or in combination with two contiguous incorporated cities has a population of at least 100,000 persons; or

(2) An unincorporated area that meets the requirements set forth in subdivision (m)(2)(A) and subdivision (m)(2)(B) below.

(A) The unincorporated area must meet one of the following location or density requirements:

1. The unincorporated area must be: (i) completely surrounded by one or more incorporated cities, (ii) have a population of at least 100,000 persons either by itself or in combination with the surrounding incorporated city or cities, and (iii) have a population density that at least equals the population density of the surrounding city or cities; or

2. The unincorporated area must be located within an urban growth boundary and have an existing residential population of at least 5,000 persons per square mile. For purposes of this subparagraph, an "urban growth boundary" means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.

(B) The board of supervisors with jurisdiction over the unincorporated area must have taken the following steps:

1. The board has prepared a draft document by which the board would find that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that: (i) encourage compact development in a manner that promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing, and (ii) protects the environment, open space, and agricultural areas.

2. The board has submitted the draft document to OPR and allowed OPR thirty days to submit comments on the draft findings to the board.

3. No earlier than thirty days after submitting the draft document to OPR, the board has adopted a final finding in substantial conformity with the draft finding described in the draft document referenced in subdivision (m)(2)(B)(1) above.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21159.20, 21159.21, 21159.22, 21159.23, 21159.24, Public Resources Code.

§ 15192. Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

In order to qualify for an exemption set forth in sections 15193, 15194 or 15195, a housing project must meet all of the threshold criteria set forth below.

(a) The project must be consistent with:

(1) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete; and

(2) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete, unless the zoning of

project property is inconsistent with the general plan because the project property has not been rezoned to conform to the general plan.

(b) Community-level environmental review has been adopted or certified.

(c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(d) The site of the project:

(1) Does not contain wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations.

(2) Does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(3) Does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(4) Does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps have been taken in response to the results of this assessment:

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure

shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code.

(h) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(i) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project site is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

(l) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(m) The project site is not located on developed open space.

(n) The project site is not located within the boundaries of a state conservancy.

(o) The project has not been divided into smaller projects to qualify for one or more of the exemptions set forth in sections 15193 to 15195.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.21, 21159.27, Public Resources Code.

§ 15193. Agricultural Housing Exemption.

CEQA does not apply to any development project that meets the following criteria.

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project site meets the following size criteria:

(1) The project site is located in an area with a population density of at least 1,000 persons per square mile and is two acres or less in area; or

(2) The project site is located in an area with a population density of less than 1,000 persons per square mile and is five acres or less in area.

(c) The project meets the following requirements regarding location and number of units.

(1) If the proposed development project is located on a project site within city limits or in a census-defined place, it must meet the following requirements:

(A) The proposed project location must be within one of the following:

1. Incorporated city limits; or
2. A census defined place with a minimum population density of at least 5,000 persons per square mile; or
3. A census-defined place with a minimum population density of at least 1,000 persons per square mile, unless a public agency that is carrying out or approving the project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impacts of successive projects of the same type in the same area, over time, would be significant.

(B) The proposed development project must be located on a project site that is adjacent, on at least two sides, to land that has been developed.

(C) The proposed development project must meet either of the following requirements:

1. Consist of not more than 45 units, or
2. Consist of housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(2) If the proposed development project is located on a project site zoned for general agricultural use, it must meet either of the following requirements:

(A) Consist of not more than 20 units, or

(B) Consist of housing for a total of 20 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(d) The project meets the following requirements regarding provision of housing for agricultural employees:

(1) The project must consist of the construction, conversion, or use of residential housing for agricultural employees.

(2) If the project lacks public financial assistance, then:

(A) The project must be affordable to lower income households; and

(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years.

(3) If public financial assistance exists for the project, then:

(A) The project must be housing for very low, low-, or moderate-income households; and

(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least 15 years.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.22, Public Resources Code.

§ 15194. Affordable Housing Exemption.

CEQA does not apply to any development project that meets the following criteria:

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project meets the following size criteria: the project site is not more than five acres in area.

(c) The project meets both of the following requirements regarding location:

(1) The project meets one of the following location requirements relating to population density:

(A) The project site is located within an urbanized area or within a census-defined place with a population density of at least 5,000 persons per square mile.

(B) If the project consists of 50 or fewer units, the project site is located within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(C) The project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile and there is no reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

(2) The project meets one of the following site-specific location requirements:

(A) The project site has been previously developed for qualified urban uses; or

(B) The parcels immediately adjacent to the project site are developed with qualified urban uses.

(C) The project site has not been developed for urban uses and all of the following conditions are met:

1. No parcel within the site has been created within 10 years prior to the proposed development of the site.

2. At least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses.

3. The existing remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses.

(d) The project meets both of the following requirements regarding provision of affordable housing.

(1) The project consists of the construction, conversion, or use of residential housing consisting of 100 or fewer units that are affordable to low-income households.

(2) The developer of the project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 30 years, at monthly housing costs deemed to be "affordable rent" for lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.23, Public Resources Code.

§ 15195. Residential Infill Exemption.

(a) Except as set forth in subdivision (b), CEQA does not apply to any development project that meets the following criteria:

(1) The project meets the threshold criteria set forth in section 15192; provided that with respect to the requirement in section 15192(b) regarding community-level environmental review, such review must be certified or adopted within five years of the date that the lead agency deems the application for the project to be complete pursuant to Section 65943 of the Government Code.

(2) The project meets both of the following size criteria:

(A) The site of the project is not more than four acres in total area.

(B) The project does not include any single level building that exceeds 100,000 square feet.

(3) The project meets both of the following requirements regarding location:

(A) The project is a residential project on an infill site.

(B) The project is within one-half mile of a major transit stop.

(4) The project meets both of the following requirements regarding number of units:

(A) The project does not contain more than 100 residential units.

(B) The project promotes higher density infill housing. The lead agency may establish its own criteria for determining whether the project promotes higher density infill housing except in either of the following two circumstances:

1. A project with a density of at least 20 units per acre is conclusively presumed to promote higher density infill housing.

2. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density infill housing unless the preponderance of the evidence demonstrates otherwise.

(5) The project meets the following requirements regarding availability of affordable housing: The project would result in housing units being made available to moderate, low or very low income families as set forth in either A or B below:

(A) The project meets one of the following criteria, and the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units as set forth below at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

1. At least 10 percent of the housing is sold to families of moderate income, or

2. Not less than 10 percent of the housing is rented to families of low income, or

3. Not less than 5 percent of the housing is rented to families of very low income.

(B) If the project does not result in housing units being available as set forth in subdivision (A) above, then the project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(b) A project that otherwise meets the criteria set forth in subdivision (a) is not exempt from CEQA if any of the following occur:

(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.

(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.

(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project that was not known, and could not have been known at the time that community-level environmental review was certified or adopted.

If a project is not exempt from CEQA due to subdivision (b), the analysis of the environmental effects of the project covered in the EIR or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to subdivisions (b)(2) and (3).

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.24, Public Resources Code.

§ 15196. Notice of Exemption for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

(a) When a local agency determines that a project is not subject to CEQA under Section 15193, 15194, or 15195, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file the notice required by Section 21152.1 of the Public Resources Code, pursuant to Section 15062.

(b) Failure to file the notice required by this section does not affect the validity of a project.

(c) Nothing in this section affects the time limitations contained in Section 21167.

Note: Authority cited: Section 21083, Public Resources Code. Reference: 21152.1, Public Resources Code.

**UPDATED INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW
For Adoption of Guidelines Implementing
The California Environmental Quality Act**

CALIFORNIA RESOURCES AGENCY

June 11, 2007

Government Code sections 11346.9, subd. (b) and 11347.3, subd. (b)(2) require the California Resources Agency ("the Resources Agency") to submit an updated informative digest in the final rulemaking file. The Notice of Proposed Action contained an informative digest.

The only information that has changed since the publication of the Notice of Proposed Action is in regard to the removal of discussion sections at Guidelines sections 15179, 15180 and 15186 and each section which is accompanied by a discussion. After publication of the NOPA, the Resources Agency determined that the discussion sections are not a part of the Guidelines and do not therefore require the Resources Agency to use the rulemaking provisions of the Administrative Procedure Act to remove the discussion sections from its website.

On April 23, 2007, the Resources Agency sent a notice of modifications to the Originally-Proposed Changes to the Guidelines Implementing the California Environmental Quality Act for a 15-day comment period. Even though modifications to the originally-proposed changes to the Guidelines were made, the modifications to the originally-proposed changes to the Guidelines are consistent with the policies in the initial digest/policy statement within the Notice of Proposed Action.

FINAL STATEMENT OF REASONS

California Resources Agency CEQA Guidelines Amendments (OAL Notice File Number Z06-0606-01)

June 11, 2007

Government Code, sections 11346.9, subd. (a) and 11347.3, subd. (b)(2) require the Resources Agency to submit a Final Statement of Reasons with the adopted regulations. This document contains the information required by those sections.

I. UPDATE OF INFORMATION CONTAINED IN THE INITIAL STATEMENT OF REASONS

Government Code, section 11346.9, subd. (a)(1) requires this Final Statement of Reasons to include an update of the information contained in the Initial Statement of Reasons. The general information presented in the Initial Statement of Reasons has not changed since it was published. The originally-proposed changes to the guidelines ("Guidelines") implementing the California Environmental Quality Act ("CEQA") were adopted by the Resources Agency with changes identified in the Modifications to the Originally-Proposed Changes to the Guidelines Implementing CEQA. The changes to the Guidelines proposed in the Initial Statement of Reasons are referred to hereafter as "the originally-proposed changes to the Guidelines." The changes to the originally-proposed changes are referred to hereafter as the "Modifications" or "15-Day Language." The information supporting those changes was described in the Notice of the Modifications to the Originally-Proposed Changes to the Guidelines Implementing the California Environmental Quality Act dated April 23, 2007.

A. NOTICE OF MODIFICATIONS TO ORIGINALLY-PROPOSED CHANGES TO THE GUIDELINES IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (APRIL 23, 2007)

After the comment period for the originally-proposed changes to the Guidelines closed on July 31, 2006, the Resources Agency made Modifications to Guidelines, sections 15061, 15062, 15155, 15179, and 15192. The Modifications to the originally-proposed changes to the Guidelines and the reasons for the Modifications are set forth below. Although the Resources Agency found that the Modifications to the originally-proposed changes to the Guidelines were nonsubstantial and that notice was therefore not required pursuant to Government Code, section 11346.8, subdivision (c), the Resources Agency decided to inform all persons on the service list and provide them an opportunity to comment. The Resources Agency also notes that all of the Modifications are closely related to the originally-proposed changes to the Guidelines, and that the

original notice informed the public that these types of changes could result from the originally-proposed regulatory action. Section IV, Summaries and Responses to Comments Received on the Originally-Proposed Changes to the Guidelines Proposed June 16, 2006, shows the originally-proposed changes to the Guidelines marked in underline/strikeout format, and Modifications in double underline/double strikeout format.

B. ADDITIONAL NON-SUBSTANTIVE AMENDMENTS

A few formatting and clerical errors in the Modifications have subsequently been identified:

In the Note to Guidelines, section 15061, "21151" should have been underlined. This section was underlined in the originally-proposed changes to the Guidelines.

In Guidelines, section 15155, subdivision (a)(1)(E), "...~~of~~ floor area[]" should read "**or** floor area." The subdivision reads correctly in the full text within the Modifications.

In Guidelines, section 15515, subdivision (a)(1)(H)1, there should be a period after the number for the subdivision.

In Guidelines, section 15155, subdivision (b)(1) within the Modifications, "of the Water Code" should follow "commencing with section 10610."

Finally, in Guidelines, section 15195, subd. (b)(2), there should be a period at the end of the sentence instead of a colon.

These errors have been determined to be non-substantive and have been corrected in the final version of the adopted Guidelines included in the rulemaking file.

As noted in the originally-proposed changes to the Guidelines, the Resources Agency has determined to remove discussion sections from Guidelines sections 15179, 15180, and 15186. These discussion sections are not a part of the published Guidelines and are therefore not a part of the APA process. The final version of the adopted Guidelines included in the rulemaking file has no discussion sections.

C. REASONABLE ALTERNATIVES TO THE REGULATION, INCLUDING ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS, AND THE RESOURCES AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the statutory requirements.

The Resources Agency has determined that the proposed actions will not affect small business because the proposed changes clarify and update the Guidelines to be consistent with recent legislatively enacted statutory changes that have modified CEQA, but do not impose any new requirements. Certain statutory changes enacted by the Legislature that are reflected in this proposed action could potentially affect project proponents. However, the proposed changes to the Guidelines merely reflect the statutory requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself adversely affect small businesses.

D. TECHNICAL, THEORETICAL, OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENTS (Gov. Code, § 11347.3, subd. (b)(7).)

The Secretary for the Resources Agency did not rely upon any technical, theoretical, or empirical study, report or similar document in proposing any of the amendments or adoptions.

E. EVIDENCE SUPPORTING THE INITIAL DETERMINATION THAT THE ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The Resources Agency has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Resources Agency is aware that certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could have an economic effect on

business. Among other things, project proponents could incur additional costs in assisting lead agencies to comply with SB 610 (reflected in Guidelines section 15155), which revises the requirements imposed on cities and counties to prepare or obtain certain analyses relating to water availability and to require the inclusion in these analyses in any environmental document prepared for the project, under specified circumstances. In addition, project proponents could incur additional costs in assisting lead agencies to comply with Public Resources Code sections 21151.4 and 21151.8 (reflected in Guidelines section 15186), which require certain public agencies and certain school districts to make a number of determinations relating to air quality in the vicinity of a school or proposed school site before approving certain projects. However, the proposed changes to the Guidelines merely reflect these existing statutory requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not impose any new requirements. Therefore, the proposed action does not itself have a significant, statewide adverse economic impact directly affecting business.

II. LOCAL MANDATE DETERMINATION

Government Code, section 11346.9, subd. (a)(2) requires the Final Statement of Reasons to include a determination as to whether the adoptions and amendments of the Guidelines impose a mandate on local agencies or school districts.

The Resources Agency has determined that the proposed action does not, itself, impose a mandate on local agencies or school districts. The Resources Agency is aware that certain of the statutory changes enacted by the Legislature that are reflected in this proposed action impose mandates on local agencies and school districts. Among other things, Public Resources Code, section 21098 (reflected in proposed changes to Guidelines sections 15072, 15082, 15087 and 15190.5) requires a lead agency to submit additional notices to military agencies under specific circumstances. Public Resources Code, section 21151 (reflected in Guidelines sections 15061 and 15074) requires a local agency's elected decisionmaking body to hear an appeal under certain circumstances. SB 610 (reflected in Guidelines section 15155) revises the requirements imposed on cities and counties to prepare or obtain certain analyses relating to water availability, and requires the inclusion of these analyses in any environmental document prepared for the project, under specified circumstances. Public Resources Code, sections 21151.4 and 21151.8 (reflected in Guidelines section 15186) require certain public agencies and certain school districts to make a number of specified determinations relating to air quality in the vicinity of a school or proposed school site before approving certain projects. However, the proposed changes to the Guidelines merely reflect these statutory mandates. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself impose any costs on local government or school districts.

III. ECONOMIC AND FISCAL IMPACT ESTIMATE (Gov. Code, § 11347.3, subd. (b)(5).)

Pursuant to subdivision (a)(6) of section 11346.5 of the Government Code, the Resources Agency is required to provide "an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state...."

The Resources Agency has provided this estimate in its complete Economic and Fiscal Impact Statement (Form Std. 399) for the proposed action. This Economic and Fiscal Impact Statement is included in this rulemaking file. The Form Std. 399 provides information regarding costs or savings to any state agency, local agency or school district and cost or savings in federal funding to the state. As stated within Form Std. 399, the Resources Agency has determined that most of the proposed changes in this action have no or de minimis impacts on state agencies, local agencies or school districts. The Resources Agency is aware that certain of the statutory changes enacted by the Legislature that are reflected in this proposed action impose costs on public agencies. The Resources Agency is not aware of any savings that would result from any of the statutory changes enacted by the Legislature that are reflected in this proposed action. However, with respect to any costs or savings, the proposed changes to the Guidelines merely reflect the statutory requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself impose any costs on, or result in any savings for, any state agency, local agency or school district. Moreover, as stated within Form Std. 399, the Resources Agency has initially determined that the proposed action does not result in any cost or savings in federal funding to the state.

IV. SUMMARIES AND RESPONSES TO COMMENTS RECEIVED ON THE ORIGINALLY-PROPOSED CHANGES TO THE GUIDELINES PROPOSED JUNE 16, 2006

The summaries and responses below satisfy Government Code sections 11346.8, subd. (c) and 11346.9, subd. (a)(3) requirements that the Resources Agency summarize relevant objections and recommendations received during the public comment period and state the responses of the Resources Agency to the comment or recommendation.

This section provides a summary of the public comments the Resources Agency received on the originally-proposed changes to the Guidelines that the Resources Agency proposed on June 16, 2006. By way of background, the Resources Agency filed a Notice of Proposed Action for its originally-proposed changes to the Guidelines with the Office of Administrative Law (OAL) on June 6, 2006. OAL published the notice

in the California Regulatory Notice Registry on June 16, 2006. By June 16, 2006, the Notice of Proposed Action was mailed to all persons on the service list or emailed to those persons who specifically requested email notification for this proceeding. No public hearings were held. All written comments are included in the rulemaking file.

As stated above, the Resources Agency made Modifications to the originally-proposed changes to the Guidelines pursuant to section 11346.8, subd. (c) of the Government Code. On April 23, 2007, these Modifications were made available for additional public review and comment. The second comment period closed on May 8, 2007. All written comments to the Modifications are included in the rulemaking file.

§ 15053. Designation of Lead Agency by the Office of Planning and Research.

Summary of Text: The originally-proposed changes to the Guidelines at section 15053 state:

(a) If there is a dispute over which of several agencies should be the Lead Agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to the Office of Planning and Research. If an agreement cannot be reached, any of the disputing public agency agencies, or the applicant if a private project is involved, may submit the dispute to the Office of Planning and Research for resolution.

Commenter: **Metropolitan Water District of Southern California (MWD), July 31, 2006**

Comment Summary: MWD states:

... [T]he existing State CEQA guidelines do not explicitly state the opportunity of having co-lead designations. The statute clearly alludes to this type of arrangement in Section 15051(d): "...An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices." The Governor's Office of Planning and Research has also acknowledged such a designation in a letter dated May 4, 1999, to Mr. Gerald R. Zimmerman of the Colorado River Board of California: "Furthermore, the CEQA Guidelines, in Section 151051(d), provide for two or more public agencies with a substantial claim to the Lead Agency role to cooperatively act as Lead Agency, through contract, joint exercise of powers, or similar devices."

Occasions have arisen where Metropolitan has sought co-lead agency designations with other public agencies, only to encounter unwillingness

by such agencies to do so because such designation is not explicitly stated in the State CEQA Guidelines. They are concerned with the legal ramifications of such relationships without what they view as an explicit nexus in the guidelines to the statute. They further assume that under potential litigation by opponents on the environmental documents, the courts would favor the plaintiffs due to the question on the validity of co-lead agency designation.

Given the timing of this section's revision, it would be beneficial for public agencies to have more explicit language in the guidelines to allow for co-lead agency arrangements, when applicable.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15053. Guidelines, section 15050, subd. (a) states: "where a project is to be carried out or approved by more than one public agency, *one* public agency shall be responsible for preparing an EIR or negative declaration for the project. This agency shall be called the lead agency." (*Emphasis added*). Similarly, Guidelines, section 15051, subd. (d) states: "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*." (*Emphasis added*.) Also, current Guidelines, section 15053 (proposed Guidelines, section 15053, subd. (c) states: " . . . (b) [t]he Office of Planning and Research shall designate a lead agency . . . (d) Designation of a lead agency . . . " (*Emphasis added*.) The explicit requirement for a single lead agency set forth in the foregoing provisions are not superseded by Subdivision (d) of section 15051, which only states: "An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices." The Resources Agency finds that Guidelines, section 15051, subd. (d) does not allude to the allowance for co-lead agency designation.

§ 15061. Review for Exemption.

Summary of Text: The originally-proposed changes to the Guidelines, at section 15061, subdivision (e) state:

(e)When a non-elected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, that decision may be appealed to the local lead agency's elected decisionmaking body, if one exists. A local lead agency may establish procedures governing such appeals.

Commenter: California Building Industry Association ("CBIA"), July 31, 2006

Comment Summary: CBIA states:

"This Guideline should specify that local lead agencies may establish time limits governing such appeals." CBIA also recommends that the phrase "and time limits" be added to the last sentence of subdivision (e).

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15061. This change is not necessary as the proposed language in subdivision (e) states: "A local agency may establish procedures governing such appeals." Time limits governing such appeals could be one of the procedural requirements, but the Resources Agency finds it would be difficult to list all potential procedures and confusing to only list a subset.

Commenter: MWD, July 31, 2006

Comment Summary: MWD states that the amendments to subdivision (e) of this section should allow for an agency to establish an appeals procedure.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15061 which already states: "A local agency may establish procedures governing such appeals."

Commenter: MWD, July 31, 2006

Comment Summary: MWD states:

... [T]he new amendment does not take into account Section 15025 (Delegation of Responsibilities) where a public agency may assign specific functions to its staff to assist in administering CEQA including determining whether a project is exempt. Clarification of this part of the amendment to this section by cross-referencing the delegation of authority to staff as permitted under Section 15025 of the State CEQA Guidelines should be sufficient.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15061. Even where a non-elected official or decisionmaking body of a local Lead Agency utilizes the provisions of section 15025 in administering CEQA, the non-elected official or decisionmaking body retains all the authority to determine whether the project is exempt. In other words, assigning staff to assist in that determination does not shift the authority for the final determination to the staff. Thus, the originally-proposed changes to the Guidelines at section 15061 appropriately refer to determinations by a non-elected official or decisionmaking body of a local lead agency. Cross-referencing section

15025 would be confusing, as the staff of a lead agency does not have the authority to make the determination that is the subject of the proposed addition of subdivision (e) to section 15061.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

This section deals with an appeal of a decision made by a non-elected body that a project is exempt from CEQA. CBIA believes that this section should clarify that the decision to exempt the project from CEQA, not the project, is subject to appeal pursuant [sic] this Guideline. In addition, this Guideline should specify that local lead agencies may establish time limits governing such appeals.

CBIA recommends specific language.

Response to Comment: More than one commenter stated that it is not clear whether the phrase "that decision" in the originally-proposed changes to the Guidelines refers to the decision that the project is exempt from CEQA or the decision to approve the project. The Resources Agency agrees that the Guidelines should distinguish between a decision about whether the project is subject to CEQA and a decision to approve the project, and has modified the originally-proposed changes to the Guidelines to provide that clarity.

In response to commenter's comment regarding local lead agencies establishing time limits governing such appeals, see response to MWD's comment on Guidelines, section 15061, subd. (e).

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines at section 15061, subd. (e) as follows:

§ 15061. Review for Exemption.

[(a): no changes]

(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 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.

[(c) – (d): *no changes*]

(e) When a non-elected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, ~~that the decision that the project is exempt~~ may be appealed to the local lead agency's elected decisionmaking body, if one exists. A local lead agency may establish procedures governing such appeals.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b), 21151, and 21152(b), and 21159.21, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68.

Commenter: County of San Diego, July 26, 2006

Comment Summary: County of San Diego states:

...[T]he term "that decision" is unclear. Does it mean the decision that the project is exempt from CEQA or the decision to approve the project? This confusion can be eliminated by changing "that decision" to "the decision that the project is exempt." With this change, the last phrase would read, "...the decision that the project is exempt may be appealed to the local lead agency's elected decision making body, if one exists."

Response to Comment: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines at section 15061, subd. (e). See also response to CBIA's comment to Guidelines, section 15061, subd. (e).

§ 15062. Notice of Exemption.

Summary of Text: The originally-proposed changes to the Guidelines, at section 15062, subdivision (e) state:

(e) When a local agency determines that a project is not subject to CEQA under subdivision 15192, 15193, or 15194, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file a notice of the determination with OPR.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

Although the statute uses the term "notice of determination" it is confusing to use that term in the Guideline, because the notice that is posted following use of one of these statutory exemptions will be a notice of exemption, and this provisions is included within the Guideline on notices of exemption.

CBIA suggests using the phrase "Notice of Exemption", instead.

Response to Comment: Several commenters found use of the term "notice of determination" confusing. They note that this provision is included within the Guidelines section addressing notices of exemption and that the notice that is posted pursuant to this section will be a notice that an exemption is being claimed, not a determination. In addition, lead agencies also file notices that are specifically called Notices of Determination when they decide to approve or carry out a project after preparation of an Initial Study/Negative Declaration or an environmental impact report ("EIR").

The Resources Agency is sympathetic to the commenters' concern about confusion in the titles of various notices that are prepared during the CEQA process. Projects may be exempt from CEQA for a variety of reasons, all of which are identified in section 15061 of the Guidelines. For projects identified in subdivisions (b)(1) – (4) of that section, preparing a Notice of Exemption as described in this section is optional. However, for that subset of projects identified in subdivision (b)(5) of Section 15061 - projects that are eligible for an exemption pursuant to Article 12.5 of the Guidelines -- a separate requirement for notice is imposed. (See Pub. Resources Code, § 21152.1.) The notice required by this statutory section is not the same as the optional Notice of Exemption described in subdivisions (a) – (c) of this Section.

Therefore, although the statute itself refers to this notice as "notice of the determination" (Pub. Resources Code, § 21151, subd. (a)), using a different phrase to describe the notice is appropriate for the Guidelines, and the Resources Agency

has modified the originally-proposed changes to the Guidelines to remedy the potential confusion. In addition, the originally-proposed changes to the Guidelines contain a typographical error. Specifically, it incorrectly references "subdivisions 15192, 15193, and 15194." The correct references are "sections 15193, 15194, and 15195."

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines at section 15062, subd. (e) as follows:

§ 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) - (4): no changes]

[(b) - (d): no changes]

(e) When a local agency determines that a project is not subject to CEQA under ~~subdivision sections 15192, 15193, or 15194~~ 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 ~~of the determination~~ with OPR identifying the section under which the exemption is claimed.

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

Commenter: County of San Diego, July 26, 2006

Comment Summary: County of San Diego states:

Sections 15062, 15191-15196, requires [sic] a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The County of San Diego requests that OPR accept electronic NOEs when having to file with OPR. Filing electronically will save time and resources.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15062. There is currently no formal system in place at OPR for electronic NOE filing. However, OPR is

currently considering creating a system whereby electronic filing of notices will be possible. See also responses to County of San Diego's comments on Guidelines, sections, 15191, 15192, 15193, 15194, and 15195.

Commenter: Sandra Genis, July 31, 2006

Comment Summary: Ms. Genis asks whether "Section 15062 [is] intended to refer to a Notice of Exemption?"

Proposed Response to Comment: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines at section 15062, subd. (e). See response to CBIA's comment to Guidelines, section 15062, subd. (e).

Commenter: MWD, July 31, 2006

Comment Summary: MWD states:

Using the phrase 'a notice of the determination' might be confused with 'Notice of Determination,' the form used when project approval has occurred where the action was supported by an environmental impact report or a negative declaration. To be explicitly clear, it is recommended that that phrase be replaced with 'a Notice of Exemption.' While the proposed phrase is exactly what is stated in the statute, there is no reason why in the State CEQA Guidelines they have to be duplicated exactly with that of the statute. It would be better to be clear on this issue to avoid having the Lead Agency make a mistake and file the wrong form.

Response to Comment: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines at section 15062, subd. (e). See response to CBIA's comment on Guidelines, section 15062, subd. (e).

§ 15073. Public Review of a Proposed Negative Declaration or Mitigated Negative Declaration.

Summary of Text: The originally-proposed changes to the Guidelines at section 15073, subdivision (b) state:

When a proposed negative declaration or mitigated negative declaration and initial study have been submitted to the State Clearinghouse for review by state agencies, 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. ~~the public review period~~

shall be at least as long as the review period established by the State Clearinghouse. Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

We are concerned that these sections leave the state review period open-ended, indefinitely delaying the CEQA review period. We suggest that language be added to the end of these[] sections to clarify and resolve these concerns. . . .

CBIA suggests that language be added stating that the State Clearinghouse shall be deemed to have distributed the environmental document within three working days unless the State Clearinghouse has provided written notification to the lead agency that the environmental document was incomplete and has specified the additional needed information.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15073. The purpose of this rulemaking is to clarify and update the Guidelines to be consistent with the recent legislative enactments that have modified CEQA. The benefit to the public of having a complete environmental document outweighs the benefit to the public of the change expressed by the commenter. Additionally, the State Clearinghouse is required to distribute a complete submittal within three-working days. (Pub. Resources Code, § 21091, subd. (c)(3).)

Commenter: MWD, July 31, 2006

Comment Summary: MWD requested that the following language be added to clarify the end date for the public review process:

The end date established for state review does not affect the end date for public review provided the public review period is at least equal in duration to the state review period.

Response to Comment: The commenter's remarks do not warrant a change to originally-proposed changes to the Guidelines at section 15073. The originally-proposed changes to the Guidelines state that the two review periods may, but are not required to, begin and end at the same time. In addition, subdivision (b) of this section states that, "the public review period shall be at least as long as the review period established by the State Clearinghouse." Thus, the commenter's proposed language would duplicate both the existing and proposed language in the originally-

proposed changes to the Guidelines. As a result, no additional changes are proposed.

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

Proposed Guidelines sections 15073(b), 15087(e), and 15105(c) have been revised to explain exactly when the time period commences for the state agencies' review period. Sierra Club would like to see language added to these section[s] to state that '[d]ay one of the public review period shall be the date that the lead agency distributes the document to interested members of the public who have timely requested inclusion in the distribution list' or similar words.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15073. Both the statute (Pub. Resources Code, § 21091) and the regulation require actual notice, and it is not necessary to mandate a specific procedure to accomplish actual notice. Rather, the means by which actual notice is provided is appropriately left to the discretion of the lead agency.

§ 15087. Public Review of a Draft EIR.

Summary of Text: The originally-proposed changes to the Guidelines at section 15087, subdivision (e), state:

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. the public review period shall be at least as long as the review period established by the Clearinghouse." This language is identical to that proposed for subdivision (b) of Section 15073.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA provided the same comment on this section as it did for section 15073.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15073. See response to CBIA's comment on Guidelines, section 15073.

Commenter: MWD, July 31, 2006

Comment Summary: MWD provided the same comment on this section as it did for section 15073.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15073. See response to MWD's comment on Guidelines, section 15073.

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club provided the same comment on this section as it did for section 15073.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15073. See response to Sierra Club's comment on Guidelines, section 15073.

§ 15105. Public Review Period for a Draft EIR or a Proposed Negative Declaration or Mitigated Negative Declaration.

Summary of Text: The originally-proposed changes to the Guidelines, at section 15105 at subdivision (e) state:

(e) The State Clearinghouse shall distribute a draft EIR or proposed negative declaration or mitigated negative declaration within three working days after the date of receipt if the submittal is determined by the State Clearinghouse to be complete.

Commenter: California Department of Transportation ("Cal Trans"), July 28, 2006

Comment Summary: Cal Trans states that the proposed language in subdivision (e) is ambiguous, and would like language added which defines the word complete, specifically proposing language that defines completeness in terms of the numbers of copies of the environmental document that are submitted to the State Clearinghouse.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15105. The commenter's

statement implies "complete" refers to the number of copies of the environmental document submitted. This interpretation is not supported by a reading of the complete statutory language, which includes the sentence, "The State Clearinghouse shall specify the information that will be required in order to determine the completeness of the submittal of the CEQA document." (Pub. Resources Code, section 21091(c)(3).) The simplest and most logical interpretation of this sentence is that "completeness" requires more than the correct number of copies; it requires an analysis based on information. The Resources Agency has determined that the commenter's proposed language is inconsistent with the statute.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA provided the same comment on subdivision (c) of this section as it did for subdivision (b) of Guidelines, section 15073 and subdivision (e) of Guidelines, section 15087.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15105. See response to CBIA's comment on Guidelines, section 15073, subd. (b).

Commenter: MWD, July 31, 2006

Comment Summary: MWD provided the same comment on subdivision (c) of this section as it did for section 15073, subdivision (b).

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15105. See response to MWD's comment on Guidelines, section 15073, subd. (b).

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club provided the same comment on subdivision (c) of this section as it did for section 15073, subdivision (b).

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15105. See response to Sierra Club's comment on Guidelines, section 15073, subd. (b).

§ 15155. City or County Consultation with Water Agencies.

Summary of Text: Section 15155 is an entirely new section of the Guidelines, although some of the proposed language is similar to that in Section 15083.5, which the Resources Agency proposes to repeal. The Resources Agency received several comments on this new section. In order to show the new section as well as the comments, responses and the Modifications, the Resources Agency will first show

Section 15155, as originally-proposed, followed by the summary of comments and responses thereto, and the full section as modified:

A. Full Text of Originally-Proposed Changes to the Guidelines at section 15155:

§ 15155. 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) A 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 subdivision (a)(1) 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.

(l) The adoption or amendment of a general plan is not, by itself, a water demand project.

(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 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) At the time a city or county lead agency determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration 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 prepare a water assessment. The governing body of the public water system must approve the water assessment prepared pursuant to this section at a regular or special meeting.

(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 its own 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) If the governing body of a public water system is preparing the water assessment, it must submit the requested water assessment to the city or county lead agency within 90 days after the date on which the governing body of the public water system received such request. Before the expiration of the 90-day period, a representative of the governing body of the public water system may meet with the city or county lead agency and request a 30-day extension of time to prepare and adopt the water assessment. The city or county lead agency must grant any reasonable request. 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 Sections 10910-10914 of the Water Code to submit 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 applicable agencies 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 provided pursuant to subdivision (a) of Section 10911 of the Water Code in the EIR, negative declaration, or mitigated negative declaration 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 the 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 pursuant to Sections 15091 and 15093.

Note: Authority Cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code, Sections 10910- 10914 of the Water Code.

1. § 15155, subd. (a)(1)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (a)(1) state:

(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) A 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 subdivision (a)(1) 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.

(l) The adoption or amendment of a general plan is not, by itself, a water demand project.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

We propose to use the term 'water supply assessment project.' We have determined that a term is needed in the CEQA guidelines that distinguishes SB 610 projects from other projects, and that the guidelines should not use the term 'project' as Water Code section 10912 does. We have determined that the phrase 'water supply assessment project' is most accurate in advising the reader of precisely what the guidelines are referring to, using language with which practitioners are already familiar. We find the phrase 'Water demand project' would be confusing, since projects demand water whether or not they are subject to SB 610. Additional edits clarify the language.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (a)(1). The Resources Agency does not find the phrase "water demand project" confusing since the phrase is defined in Guidelines section 15155, subd. (a)(1). Therefore, no changes to this phrase are proposed.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

...[I]f the Guidelines delete the statutory reference to 'proposed' projects, anti-development groups may argue that a water supply assessment is required whenever someone proposes to add to existing development, with the resulting total exceeding the threshold criteria (e.g. when adding 200 rooms to a 300-room hotel).

CBIA also proposes language.

Response to Comment: The commenter's remarks do not warrant a change to originally-proposed changes to the Guidelines at section 15155. Although the sections of the Water Code that identify the assessment process use the phrase "proposed project", CEQA always applies to proposed projects and CEQA

Guidelines generally refer to "projects", when such projects are proposed. Thus, this recommended change is unnecessary.

Also, whether additions to existing projects would trigger the assessment requirements is addressed by well-established principles of CEQA applicable to the determination of the "baseline" for the project. For example, Guidelines, section 15125, subd. (a) states that the physical environmental conditions as they exist at the time of the notice of preparation will normally constitute the baseline conditions by which a lead agency determines whether an impact is significant.

Commenter: EBMUD, July 26, 2006

Comment Summary: EBMUD states:

To avoid confusion, EBMUD requests that the list of projects that fall within the definition of 'water demand projects' in the new guideline Section 15155 include the term 'proposed,' which is used in the definition of 'project' set forth in Water Code Section 10912.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (a)(1). See response to CBIA's similar comment on Guidelines, section 15155, subd. (a)(1).

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states: "Section 15155(a)(1)(A) through (E) should include the word 'proposed' following the word 'A' and the beginning of each of these paragraphs."

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subds. (a)(1)(A) – (E). See responses to CBIA's and EBMUD's similar comments on Guidelines, section 15155, subd. (a)(1).

2. § 15155, subd. (a)(1)(A)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (a)(1)(A) state:

(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.

Commenter: EDAW, July 11, 2006

Comment Summary: EDAW states:

I realize that the changes to § 15155 are based on changes to State law, but a 'dwelling unit' is not a good threshold to be used in issues dealing with water demand. As everyone knows, an urban studio apartment is a dwelling unit and a suburban, large-lot, five-bedroom house is a dwelling unit. These dwelling units have vastly different long-term water demands. Is there any movement in State law or the guidelines to reconcile this? If not, perhaps this could be considered.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (a)(1)(A). As the commenter points out, the originally-proposed changes to the Guideline reflects statutory definitions. (Wat. Code, § 10912, subd. (a).) There is no basis for formulating a different definition. In addition, even if a development of 499 dwelling units that use vast amounts of water is proposed, the fact that these Water Code assessment requirements are not mandatory does not relieve the lead agency for the responsibility of assessing the water impacts of the project. In fact, CEQA requires lead agencies to evaluate all impacts of a project (Pub. Resources Code, section 21002.1; CEQA Guidelines, § 15064), and the trigger levels in Water Code, section 10912 do not suspend those requirements for projects not meeting the trigger levels. Rather, the effect of the trigger levels is that lead agencies *must* follow the Water Code assessment requirements for projects that are above the trigger levels, and have discretion to conduct the environmental analysis of water use impacts of projects below the trigger levels in a different manner. Moreover, nothing prevents lead agencies from taking advantage of the water assessment method identified in the Water Code provisions for projects that are below the trigger level.

3. § 15155, subd. (a)(1)(E)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (a)(1)(E) state:

(E) A 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.

Comment Summary: No comments were received on this subdivision. The originally-proposed changes to the Guidelines-contained a typographical error.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(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 or floor area.

4. § 15155, subd. (a)(1)(F)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subd. (a)(1)(F) state:

(F) A mixed-use project that includes one or more of the projects specified in subdivision (a)(1) of this section.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA recommends that subd. (a)(1)(F) be revised to read "[a] mixed-use project that includes one or more of the projects specified in subdivision (a)(1)(A) – (E)," which suggests to us that the original language referring to "(a)(1)" may be too broad because paragraphs (F) through (J) are inapplicable.

Response to Comment: The originally-proposed changes to the Guidelines inadvertently included subdivision (a)(1)(F). (See Wat. Code, § 10912, subd. (a)(6).) The appropriate citation is to subdivisions (a)(1)(A) – (E) and (G).

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(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.

5. § 15155, subd. (a)(1)(H)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (a)(1)(H) state:

(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.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA recommends re-ordering the language contained in subdivision (a)(1)(H) as follows:

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 existing service connections of a public water system with fewer than 5,000 service connections.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (a)(1)(H). The re-ordering of language recommended by the commenter in subdivision (a)(1)(H) varies from the ordering contained in the statute, and the commenter does not offer an explanation, nor does the Resources Agency see any reason, as to why it is preferable. Without a basis for amending the statutory ordering of the subdivision, the Resources Agency finds it more appropriate to retain the statutory ordering for the sake of consistency.

6. § 15155, subd. (a)(1)(I)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (a)(1)(I) state:

(I) The adoption or amendment of a general plan is not, by itself, a water demand project.

Commenter: Sandra Genis, July 31, 2006

Comment Summary: Ms. Genis comments that the language in subdivision (a)(1)(I) of the proposed amendment excluding general plan amendments from the definition of water demand projects, renders the amendments inconsistent with the general thrust of Water Code sections 10910-10915. Ms. Genis

contends that these sections address deviations from anticipated growth under an adopted Urban Water Management Plan. (Wat. Code, § 10610, *et seq.*) She also states that inclusion of projects that create water demand that is equivalent to or greater than that created by a 500 dwelling unit project could be construed to include a general plan amendment.

Response to Comment: Two commenters stated that the originally-proposed changes to the Guidelines adding section 15155, subd. (a)(1)(I) does not have a statutory basis. While the Resources Agency believes the language can be supported, the question of when the adoption or amendment of a general plan occurs "by itself" could raise considerable confusion. Accordingly, the Resources Agency plans to delete the originally-proposed language to the Guidelines, deleting proposed subdivision (a)(1)(I), so as to mirror the statute.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

~~(I) "The adoption or amendment of a general plan is not, by itself, a water demand project."~~

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

Section 15155(I) states that the 'adoption or amendment of a general plan is not, by itself, a water demand project.' Such a distinction is not contained in the language of SB 610. Instead, the purpose of SB 610 was to require a water supply assessment for any project that is subject to CEQA. Therefore, this purported exception should be deleted, since there is no legal basis for this provision in the guideline.

Response to Comment: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines at section 15155, subd. (a)(1)(I). See response to Ms. Sandra Genis's comment on Guidelines, section 15155, subd. (a)(1)(I).

7. § 15155, subd. (a)(3)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (a)(3) state:

(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.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states: "Subdivision (a)(3) should be deleted because the new terminology it proposes is not necessary"

Response to Comment: The commenter's remarks do not warrant a change to the Guidelines, section 15155, subd. (a)(3). Several commenters stated that it is unnecessary to provide a definition of "water acquisition plan" in the originally-proposed changes to the Guidelines adding proposed subdivision (a) of this regulation. Because the phrase "water acquisition plan" refers to a specific plan identified in Water Code, section 10911, the Resources Agency believes it is appropriate to include a definition of this term in the Guideline. However, because the definition is provided in proposed subdivision (a)(3), it is unnecessary to repeat the definition in proposed subdivision (e) of this section. Therefore, the Resources Agency also has modified the originally-proposed changes to the Guidelines by omitting the repetitive phrasing in the originally-proposed addition of subdivision (e) to section 15155.

See CBIA's comment summary and Resources Agency's response to comment on Guidelines, section 15155, subd. (e).

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to Guidelines, section 15155, subd. (e) (as also shown below) as follows:

(e) The city or county lead agency shall include the water assessment, and any water acquisition plan provided pursuant to subdivision (a) of Section 10911 of the Water Code 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. pursuant to Sections 15091 and 15093.

Note: Authority Cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code, Sections 10910-10914~~5~~ of the Water Code.

Commenter: EBMUD, July 26, 2006

Comment Summary: EBMUD states:

The definition of 'water acquisition plan' seems to be unnecessary. This terminology is only used in subsection (e), where the reference is to 'any water acquisition plan provided pursuant to subdivision (a) of Section 10911 of the Water Code.' Since this is fairly self-explanatory, the definition may not be needed.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (a)(3). However, in accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to Guidelines, section 15155, subd. (e). See response to CBIA's comment on Guidelines, section 15155, subd. (a)(3).

8. § 15155, subd. (a)(4)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (a)(4) state:

(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 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.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

Subdivision (a)(4) should be conformed to the statutory language. The only Water Code section that refers to preparation of an assessment is section 10910. The additional verbiage in this guideline may be read to create requirements that do not appear in the law. Again, adding such technical requirements creates a trap for the unwary, and may be construed to provide what should be an illegitimate basis for challenging an agency decision.

Response to Comment: The commenter's remarks do not warrant a change to the Guidelines, section 15155, subd. (a)(4). The definition of "water assessment" was

carefully drafted to include the entirety of the process that a city or county lead agency must undertake pursuant to Water Code sections 10910 – 10915. It is ultimately the city or county lead agency that is subject to the provisions of this section, so it is appropriate to include reference to all provisions in the Water Code that may be applicable to them. For example, Water Code section 10911, subdivision (a) includes mandates applicable to city or county lead agencies (but not public water systems), and section 10912 includes definitions that apply to all entities – both city and county lead agencies as well as public water systems – subject to the requirements of these sections of the Water Code. Thus, the proposed definition conforms to *all* statutory requirements. We find the commenter's proposed definition inappropriately selective. Limiting the reference in this definition to Water Code section 10910 would omit applicable provisions and thus be inconsistent with the statute.

However, Sierra Club noted that the originally-proposed changes to the Guidelines adding proposed section 15155, subd. (d) omits an important criterion that the previously completed water assessment must comply with the provisions of sections 10910-10914 of the Water Code. The originally-proposed changes to the Guidelines adding proposed section 15155, subd. (d), state:

(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:

The Resources Agency believes that this criterion is expressly stated in the definition of water assessment at subdivision (a)(4) of proposed section 15155 of the originally-proposed changes to the Guidelines. For the avoidance of doubt, the Resources Agency has modified the originally proposed changes to the Guidelines adding proposed subdivision (a)(4) of this section to ensure that the definition of "water assessment" only includes those assessments that are prepared in conformity with the applicable legal requirements. See Sierra Club's comment summary and Resources Agency's response to comment on Guidelines, section 15155, subd. (d).

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(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.

9. § 15155, subd. (b)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (b), state:

(b) At the time a city or county lead agency determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration is required for the water-demand project, the city or county lead agency shall take the following steps:

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

As written, the proposed Guideline implies that every project meeting the criteria of section 10912 must trigger the need for an EIR, negative declaration, or mitigated negative declaration. That is not the case. A project may require only an addendum, may be exempt, or may require no environmental documentation. We propose the following modifications to clarify that certain consequences follow only "if" the lead agency determines an EIR, negative declaration, or mitigated negative declaration is required.

In addition, although there is no discussion of the proposed change in the text accompanying its recommendations, CBIA also recommends adding the phrase "at the time of that determination" to the language of subdivision (b).

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (b). The phrase "At the time a city or county lead agency determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration is required" come directly from the Water Code. The Resources Agency does not find that the language as written "implies that every project meeting the criteria of section 10912 must trigger the need for an EIR, negative declaration, or mitigated negative declaration."

However, as noticed in the Resources Agency's Notice of Modification to originally-proposed changes to the Guidelines, Subdivision (b) of Water Code § 10910 says that the Water Code provisions apply when a lead agency determines whether an EIR, negative declaration or mitigated negative declaration is required; supplements to EIRs or negative declarations are not mentioned. Accordingly, when the originally-proposed changes to the Guidelines for this section were drafted, no reference to supplements was made. However, Water Code, section 10910 and Public Resources Code, section 21151.9 state that a city or county lead agency

review of a water-demand project, as defined in the Water Code, is subject to the provisions of Water Code section 10910, *et seq.* In other words, these specific water assessment requirements apply to *any* environmental documentation the lead agency is preparing, including *supplements* to an EIR, negative declaration, or mitigated negative declaration.

CEQA requires supplements in certain circumstances. (See CEQA Guidelines, § 15163.) For example, when changes or new information affect the availability of water for the project, the lead agency will be required to assess the change in water availability in a supplement. Nothing in Water Code, section 10910 eliminates that obligation. Accordingly, the Resources Agency has modified the originally-proposed changes to the Guidelines to include supplements to the list of environmental documents in subdivision (b) in order to be consistent with the statute.

In addition, the proposed addition of subdivision (d) expressly provides an exemption to the steps required in the proposed addition of subdivision (b). The Resources Agency believes it useful to include a reference to that relationship in the proposed addition of subdivision (b) as well, for the sake of additional clarity.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(b) Subject to section 15155, subd. (d) below, aAt 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:

Commenter: EBMUD, July 26, 2006

Comment Summary: EBMUD asked:

Does the new guideline Section 15155 intend that WSAs are also required for projects for which an [sic] Notice of Exemption is prepared? Or are WSAs only required for Negative Declaration, Mitigated Negative Declaration, and EIRs?

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (b). The requirements of this section do not apply to exempt projects, and the Resources Agency finds that this is already clear in the proposed changes to the Guidelines and that no changes are necessary. However, in accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the

originally-proposed changes to Guidelines, section 15155, subd. (b). See response to CBIA's comment on Guidelines, section 15155, subd. (b).

10. § 15155, subd. (b)(1)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subd. (b)(1) state:

(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 prepare a water assessment. The governing body of the public water system must approve the water assessment prepared pursuant to this section at a regular or special meeting.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

The phrase 'governing body' should be deleted because the proposal to require that the lead agency submit a request to "the governing body" of the water supplier is not a requirement of the statute, creates a trap for the unwary, and may be construed to provide what should be an illegitimate basis for challenging a decision.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (b)(1). The phrase "governing body" was added to the regulatory language in drafting this regulation because it is clear that the statutory definition of "public water system" refers to the physical facilities that treat water. (See Wat. Code, § 10911, subd. (c).) A lead agency must address its request to an entity capable of providing a response - a governing body must necessarily be the recipient of such a request.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

The request that the lead agency is to submit is described in Water Code 10910(c)(1), which requires a request regarding the urban water management plan, not a request for a water supply assessment. Having a guideline that requires a request for a water supply assessment, when the statute requires a request relating to the urban water management plan,

would create confusion and be unworkable. We believe that the Guidelines should not add requirements not required by law.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (b)(1). Water Code, section 10910 explicitly states that the lead agency is directed to request an assessment and that this requirement applies regardless of whether the proposed project was included in the most recent urban water management plan. (See Wat. Code, § 10910, subds. (c)(2) and (g)(1).)

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA comments that the last sentence of this subdivision should be deleted because it directs water agencies, rather than lead agencies, which is what CEQA guidelines are authorized to do.

Response to Comment: This commenter stated that the last sentence of this subdivision should be deleted because it directs water agencies, rather than lead agencies. While the Resources Agency does not necessarily agree with the underlying reasoning of the commenter, the purpose of this rulemaking is to provide guidance to lead agencies. Accordingly, the Resources Agency has modified the originally-proposed changes to the Guidelines to direct lead agencies.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(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 (commencing with Section 10610), and to prepare a water assessment approved at a regular or special meeting of that governing body. ~~The governing body of the public water system must approve the water assessment prepared pursuant to this section at a regular or special meeting.~~

Commenter: EBMUD, July 26, 2006

Comment Summary: EBMUD comments that the proposed language fails to expressly reference a step in the water supply and demand assessment process -- the request that the public water system identify whether the project was included in

the most recent urban water management plan -- and that confusion could result. EBMUD recommends inclusion of the language stating that the city or county shall request the public water system to identify whether the proposed project was included in the most recent urban water management plan.

Response to Comment: This commenter stated that the originally-proposed changes to the Guidelines adding this subdivision fails to expressly reference a step in the water supply and demand assessment process -- the request by the lead agency that the public water supply identify whether the project was included in the most recent urban water management plan. The Resources Agency agrees and has modified the originally-proposed changes to the Guidelines to expressly include this step.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(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 (commencing with Section 10610), and to prepare a water assessment approved at a regular or special meeting of that governing body. ~~The governing body of the public water system must approve the water assessment prepared pursuant to this section at a regular or special meeting.~~

11. § 15155, subd. (b)(2)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (b)(2) state:

(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 its own 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.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA comments that the phrase "its own water assessment" should be deleted from subdivision (b)(2), as it is confusing and may be read to require something other than what is required for an assessment prepared by the water agency.

Response to Comment: This commenter stated that the phrase "its own water assessment" should be deleted from the originally-proposed changes to the Guidelines adding subdivision (b)(2), as it is confusing and may be read to require something other than what is required for an assessment prepared by the water agency. The Resources Agency believes that modifying the originally-proposed changes to the Guidelines can provide additional clarity.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(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 ~~its own~~ 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.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

The phrase 'governing body' should be deleted because the statutes do not require consultation with 'the governing body' of the water agency. Adding this requirement creates a trap for the unwary, and may be construed to provide what should be an illegitimate basis for challenging a decision. It could also result in substantial delay due to the need to wait for a meeting of the governing body of the water agency. Delaying the process is contrary to Legislative intent and statutory language.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (b)(2). See response to CBIA's first comment on Guidelines, section 15155, subd. (b)(1).

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

The phrase 'pursuant to this section' should be deleted because a water supply assessment is prepared by a lead agency pursuant to section 10910 of the Water Code and section 21151.9 of CEQA, not pursuant to 'this section' of the CEQA Guidelines.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (b)(2). Changing "water assessment prepared pursuant to this section" to "water assessment prepared pursuant to Water Code section 10910" is unnecessary. It is this regulation that provides guidance to lead agencies on how to proceed when considering water-demand projects, including reference to the Water Code where appropriate. See response to CBIA's comment on Guidelines, section 15155, subd. (a)(4).

12. § 15155, subd. (c)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (c) state:

(c) If the governing body of a public water system is preparing the water assessment, it must submit the requested water assessment to the city or county lead agency within 90 days after the date on which the governing body of the public water system received such request. Before the expiration of the 90-day period, a representative of the governing body of the public water system may meet with the city or county lead agency and request a 30-day extension of time to prepare and adopt the water assessment. The city or county lead agency must grant any reasonable request. 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 Sections 10910-10914 of the Water Code to submit the water assessment.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

The first part of subdivision (c) appears to tell water agencies how to comply with the Water Code. Again, we believe that OPR is not

authorized to adopt Guidelines other than those that implement CEQA. The water agencies' duties under the Water Code are not part of CEQA. (See Pub. Res. Code § 21151.9, which refers only to the duties of the city or county lead agency). Including directives to water agencies in the CEQA Guidelines also creates another problem in that some may read the inclusion to impose a duty on lead agencies to ensure that water agencies comply with the Water Code and prepare a legally adequate water supply assessment. The statutes impose no such requirements. Lead agencies should not be subjected to lawsuits simply because a water agency failed in its duties.

Response to Comment: This commenter stated that the originally-proposed changes to the Guidelines adding this subdivision direct water agencies, rather than lead agencies. While the Resources Agency does not necessarily agree with the reasoning of the commenter, the purpose of this rulemaking is to provide guidance to lead agencies. Accordingly, the Resources Agency is modifying the originally-proposed changes to the Guidelines to direct lead agencies.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(c)The city or county lead agency shall grant any reasonable request for an extension of time that is made by ~~if~~ the governing body of a public water system is preparing the water assessment, it must submit the requested water assessment to the city or county lead agency 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 such the request to prepare a water assessment. Before the expiration of the 90-day period, a representative of the governing body of the public water system may meet with the city or county lead agency and request a 30-day extension of time to prepare and adopt the water assessment. The city or county lead agency must grant any reasonable request. 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 sections 10910-10914 of the Water Code to submit Part 2.10 of Division 6 of the Water Code relating to the submission of the water assessment.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

The second part of this subdivision would impose new regulations requiring a lead agency to grant a water agency's reasonable request for an extension of time. This is contrary to legislative intent and statutory language, which direct that a water supply assessment ordinarily be prepared within 90 days and that the lead agency, not the water agency, have the power to determine whether an extension of time is warranted due to extraordinary circumstances. The language in the current statute was heavily negotiated and hard-fought. The Guidelines should not attempt to overturn the legislative direction. Nor should they countenance additional delay in the process.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (c). The statutory language implemented by this section allows public water systems to request extensions of time, for a period of up to 30 days. Nowhere does the statute require that granting of such requests be limited to extraordinary circumstances. Moreover, it is entirely appropriate to expect that local lead agencies interact with water agencies in a reasonable manner.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

[T]he provisions regarding a writ of mandamus should be modified to reflect the statutory language. Water Code section 10910(g)(3) enables a lead agency to seek a writ to compel compliance 'with this part', which includes section 10915. The statute limits the writ to compliance 'relating to the submission of the water supply assessment.' The guideline should reflect this limitation.

Response to Comment: This commenter requested that the provisions regarding writs be modified to use the phrase "this part" instead of "sections 10910 – 10914" in the final sentence of the originally-proposed change to the Guidelines adding this subdivision, and that the scope of such writs should be limited to compliance "relating to the submission of the water supply assessment." The Resources Agency agrees that this nonsubstantial modification is more consistent with the statutory language.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(c)The city or county lead agency shall grant any reasonable request for an extension of time that is made by ~~If the governing body of a public water system is preparing the water assessment, it must submit the requested water assessment to the city or county lead agency 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 such the request to prepare a water assessment. Before the expiration of the 90-day period, a representative of the governing body of the public water system may meet with the city or county lead agency and request a 30-day extension of time to prepare and adopt the water assessment. The city or county lead agency must grant any reasonable request.~~ 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 sections 10910-10914 of the Water Code to submit Part 2.10 of Division 6 of the Water Code relating to the submission of the water assessment.

13. § 15155, subd. (d)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subd. (d) state:

(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:

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

Subdivision (d) refers to changes in the 'larger' project. Water Code section 10910(h)(1) refers to changes in the 'project,' not the larger project. As proposed, the guideline would contradict the statutory language.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (d). Contrary

to commenter's assertion, Water Code, section 10910, subd. (h)(1) includes the word "larger." The language in the originally-proposed changes to the Guidelines are consistent with section 10910, subd. (h)(1) of the Water Code.

Commenter: **Sierra Club, July 27, 2006**

Comment Summary: Sierra Club states that the proposed language:

omits an important criterion that the previously completed water assessment must comply with the provisions of section 10910-10914 of the Water Code. In order to be consistent with Water Code section 10910(g)(3), we propose that this section be revised to state: If a water-demand project has been the subject of a water assessment which complies with Water Code section 10910-10914, no additional water supply assessment shall be required....

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (d).

However, this commenter noted that the originally-proposed changes to the Guidelines adding proposed section 15155, subd. (d) omit an important criterion that the previously completed water assessment must comply with the provisions of sections 10910-10914 of the Water Code. The originally-proposed changes to the Guidelines adding proposed section 15155, subd. (d), state:

(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:

The Resources Agency believes that this criterion is expressly stated in the definition of water assessment at subdivision (a)(4) of proposed section 15155 of the originally-proposed changes to the Guidelines. For the avoidance of doubt, the Resources Agency has modified the originally proposed changes to the Guidelines adding proposed subdivision (a)(4) of this section to ensure that the definition of "water assessment" only includes those assessments that are prepared in conformity with the applicable legal requirements.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines section 15155, subd. (a)(4) as follows:

(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.

14. § 15155, subd. (d)(2)(B)

Summary of Text: The originally-proposed changes to the Guidelines, at section 15155, subdivision (d)(2)(B), state:

(B) Changes in the circumstances or conditions substantially affecting the ability of the applicable agencies to provide a sufficient supply of water for the water-demand project.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

The reference to 'applicable agency' in subdivision (d)(2)(B) is confusing and not defined. Water Code section 10910(h)(2) refers to the ability of 'the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b)' to supply water. This content is reflected in our suggested amendments below, which propose simpler language to achieve the same result.

Response to Comment: This commenter stated that the reference to "applicable agencies" in the originally-proposed changes to the Guidelines adding subdivision (d)(2)(B) is confusing and not defined. The Resources Agency has modified the originally-proposed changes to the Guidelines that specifically reference the public water system, city or county in order to provide additional clarity.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(B) Changes in the circumstances or conditions substantially affecting the ability of the ~~applicable agencies~~ 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.

15. § 15155, subd. (d)(2)(C)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (d)(2)(C) state:

(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).

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

Water Code section 10910(h)(3) refers to new information that could not have been known 'when the assessment was prepared. Our suggested amendments below track that statutory language. The proposed reference to the time 'the entity had reached the conclusion in subdivision (d)(1)' arguably proposes a different point in time. Tracking the statutory language avoids this confusion.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (d)(2)(C). The originally-proposed addition of this subdivision provides guidance and clarity to lead agency decisionmakers that is consistent with CEQA's requirements. (Pub. Resources Code, § 21166; CEQA Guidelines, § 15162.)

Commenter: Sierra Club, July 27, 2007

Comment Summary: Sierra Club states:

Section 15155(d)(2)(C) contains language at the end of the sentence which is inconsistent with the statute that references the time when "the assessment was prepared" and not when the entity reached its conclusions. This discrepancy should be corrected by using the language of the statute.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (d)(2)(C). See response to CBIA's comment on Guidelines, section 15155, subd. (d)(2)(C) above.

16. § 15155, subd. (e)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (e) state:

(e) The city or county lead agency shall include the water assessment, and any water acquisition plan provided pursuant to subdivision (a) of Section 10911 of the Water Code in the EIR, negative declaration, or mitigated negative declaration 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 the 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 pursuant to Sections 15091 and 15093.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

The reference to water acquisition plans should be deleted because the statutes do not require that a lead agency include any discussion presented pursuant to Water Code section 10912 (regarding plans for acquiring additional water supplies) in the environmental document. Imposing such a requirement creates a trap for the unwary, and may be construed to provide what should be an illegitimate basis of challenging a decision. Imposing such a requirement might also inhibit consideration of mitigation measures after preparation of an environmental document, for fear that such measures might be considered 'additional water acquisition plans' not properly included in the environmental document. The guidelines should not discourage consideration of feasible mitigation measures at any point in the process.

Response to Comment: This commenter stated that it is unnecessary to provide a definition of "water acquisition plan" in the originally-proposed changes to the Guidelines adding proposed subdivision (a) of this regulation. Because the phrase "water acquisition plan" refers to a specific plan identified in Water Code, section 10911, the Resources Agency believes it is appropriate to include a definition of this term in the Guideline. However, because the definition is provided in proposed subdivision (a)(3), it is unnecessary to repeat the definition in proposed subdivision (e) of this section. Therefore, the Resources Agency also has modified the

originally-proposed changes to the Guidelines by omitting the repetitive phrasing in the originally-proposed addition of subdivision (e) to section 15155.

See CBIA's comment summary and Resources Agency's response on Guidelines, section 15155, subd. (a)(3).

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(e) The city or county lead agency shall include the water assessment, and any water acquisition plan ~~provided pursuant to subdivision (a) of Section 10911 of the Water Code~~ 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. ~~pursuant to Sections 15091 and 15093.~~

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA comments that the reference to

'findings. . . pursuant to sections 15091 and 15093' should be deleted because there is no reason to require that water supply findings be included in any part of an agency's findings. The statutes require only that the findings be made, leaving them to be made anywhere in an agency's approval documents. Requiring that the findings be located only in the context of section 15091 and 15093 findings creates a trap for the unwary, and may be construed to provide what should be an illegitimate basis for challenging a decision.

Response to Comment: This commenter stated that the reference to findings pursuant to sections 15091 and 15093 should be deleted because there is no reason to require that water supply findings be included in any part of an agency's findings. The Resources Agency believes that it is appropriate to require the inclusion of findings about the insufficiency of a potential water supply with other findings required by CEQA. The Resources Agency does agree, however, that the findings should not be tied to a specific section of the CEQA Guidelines. Therefore, the Resources Agency has modified the originally-proposed changes to the Guidelines and deleting the reference to Guidelines sections 15091 and 15093.

The modifications also add a reference to supplemental documents, in order to make this section consistent with the 15-day language for subdivision (b), discussed previously in this Attachment.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(e) The city or county lead agency shall include the water assessment, and any water acquisition plan provided pursuant to subdivision (a) of Section 10911 of the Water Code 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. pursuant to Sections 15091 and 15093.

Commenter: EBMUD, July 26, 2006

Comment Summary: EBMUD states:

The definition of 'water acquisition plan' seems to be unnecessary. This terminology is only used in subsection (e), where the reference is to 'any water acquisition plan provided pursuant to subdivision (a) of Section 19011 of the Water Code'. Since this is fairly self-explanatory, the definition may not be needed.

Response to Comment: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to Guidelines, section 15155, subd. (e). See response to CBIA's first comment on Guidelines section, 15155, subd. (e).

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

Section 15155(e) contains language inconsistent with the statutory provisions which require a determination of sufficiency as to both current and future water supplies to serve the project. Thus, the second sentence

should be modified to read: The city or county lead agency shall determine, based on the entire record, whether water supplies are and will be sufficient to satisfy the demands of the project, in addition to existing and planned future demands.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (e). The commenter's statement regarding inconsistency with the statute is incorrect. The language in the proposed Guideline to which commenter objects is verbatim from Water Code, section 10911, subd. (c).

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

The final sentence of this subsection must also be modified to reference all of the requirements imposed on a city or county lead agency when there is an insufficient water supply. We suggest adding the following language to the final sentence: "and must set forth the measures to acquire and develop sufficient water supplies pursuant to Water Code section 10911."

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (e). The language in the originally-proposed changes to the Guidelines as well as the modifications to the originally-proposed changes to the Guidelines are consistent with section 10911 of the Water Code. See response to Sierra Club's comment directly above.

17. § 15155, Note

Summary of Text: The originally-proposed changes to the Guidelines at the note for section 15155 state:

Note: Authority Cited: Section 21083, Public Resources Code.
Reference: Section 21151.9, Public Resources Code, Sections 10910-10914 of the Water Code.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA pointed out in text that the Reference should be changed to include 10915 of the Water Code.

Response to Comment: The Resources Agency agrees with this commenter that it is appropriate to include section 10915 of the Water Code as a reference within the Note.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines.

"Note: Authority Cited: Section 21083, Public Resources Code.
Reference: Section 21151.9, Public Resources Code, Sections 10910-
109145 of the Water Code."

**B. Full Text Showing Modifications to the Originally-Proposed
Changes to the Guidelines at Section 15155:**

§ 15155. 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.

~~(1) The adoption or amendment of a general plan is not, by itself, a water demand project.~~

(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, subd. (d) below, aAt 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 (commencing with Section 10610), and to prepare a water assessment approved at a regular or special meeting of that governing body. ~~The governing body of the public water system must approve the water assessment prepared pursuant to this section at a regular or special meeting.~~

(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 ~~its own~~ 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 ~~if~~ the governing body of a public water system ~~is preparing the water assessment, it must submit the requested water assessment to the city or county lead agency 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 such the request to prepare a water assessment. Before the expiration of the 90-day period, a representative of the governing body of the public water system may meet with the city or county lead agency and request a 30-day extension of time to prepare and adopt the water assessment. The city or county lead agency must grant any reasonable request.~~ 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 ~~sections 10910-10914 of the Water Code to submit Part 2.10 of Division 6 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 ~~applicable agencies~~ 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 ~~provided pursuant to subdivision (a) of Section 40911 of the Water Code~~ 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. ~~pursuant to Sections 15091 and 15093.~~

Note: Authority Cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code, Sections 10910-109145 of the Water Code.

§ 15179. Limitations on the Use of the Master EIR.

Summary of Text: The originally-proposed changes to the Guidelines, at section 15179, subdivision (a)(2) state:

(ii2) After the certification of the Master EIR, a project not identified in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR for any subsequent project that was described in the Master EIR, unless the lead agency does one of the following:

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

...the terms 'identified' and 'described' . . . have different meanings. For purposes of proper construction, the term 'described' should be used in both portions of this paragraph, since they are intended to mean the same thing and the statute uses this latter term.

Response to Comment: This commenter stated that the word "identified" in subdivision (a)(2) of this section should be changed to "described." The Resources Agency agrees with the commenter, and notes that the statute being implemented by this CEQA Guidelines section uses the verb "described" rather than "identified." Therefore the Resources Agency has modified the section to ensure consistency within the Guideline and between the statute and the Guideline.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

§ 15179. Limitations on the Use of the Master EIR.

(a) The certified Master EIR shall not be used for a subsequent project described in the Master EIR in accordance with this article if either:

(i1) The Master EIR it was certified more than five years prior to the filing of an application for a later subsequent project except as set forth in subsection (b) below, or

(ii2) After the certification of the Master EIR, a project not identified described in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR for any subsequent project that was described in the Master EIR, unless the lead agency does one of the following:

(b) A Master EIR that was certified more than five years prior to the filing of an application for a subsequent project described in the Master EIR may be used in accordance with this article to review such a subsequent project if the lead agency reviews the adequacy of the Master EIR and takes either of the following steps:

(a1) Reviews the Master EIR and f Finds that no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, or that there is no new available information which was not known and could not have been known at the time the Master EIR was certified; or

(b2) Prepares an initial study, and pursuant to the findings of the initial study either:

(A) certifies a subsequent or supplemental EIR that updates or revises the Master EIR and which either (i1) is incorporated into the previously certified Master EIR, or (ii2) references any deletions, additions or other modifications to the previously certified Master EIR; or

(B) approves a mitigated negative declaration that addresses substantial changes that have occurred with respect to the circumstances under which the Master EIR was certified or the new information that was not known and could not have been known at the time the Master EIR was certified.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21157.6, Public Resources Code.

ARTICE 12.5 Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

This article is an entirely new article of the CEQA Guidelines. The comment summaries and proposed responses to Article 12.5 are listed by section and subdivision, where applicable.

A. § 15191. Definitions.

Summary of Text: The originally-proposed changes to the Guidelines at section 15191 state:

For purposes of this Article 12.5 only, the following words shall have the following meanings:

(a) "Agricultural employee" means a person engaged in agriculture, including: farming in all its branches, and, among other things, includes: (1) the cultivation and tillage of the soil, (2) dairying, (3) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), (4) the raising of livestock, bees, furbearing animals, or poultry, and (5) any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market. This definition is subject to the following limitations:

This definition shall not be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code), and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code).

This definition shall not apply, or be construed to apply, to any employee who performs work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management Relations Act, 29 U.S.C. Sec. 158(e) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above. As used in this definition, "land leveling" shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage or preparation of land for cultivation.

(b) "Census-defined place" means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

(c) "Community-level environmental review" means either of the following:

(1) An EIR certified on any of the following:

(A) A general plan.

(B) A revision or update to the general plan that includes at least the land use and circulation elements.

(C) An applicable community plan.

(D) An applicable specific plan.

(E) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.

(2) A negative declaration or mitigated negative declaration adopted as a subsequent environmental review document, following and based upon an EIR on a general plan, an applicable community plan, or an applicable specific plan, provided that the subsequent environmental review document is allowed by CEQA following a master EIR or a program EIR, or is required pursuant to Section 21166.

(d) "Developed open space" means land that meets all of the following criteria:

(1) land that is publicly owned, or financed in whole or in part by public funds,

(2) is generally open to, and available for use by, the public, and

(3) is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ball fields, enclosed child play areas, and picnic facilities.

Developed open space may include land that has been designated for acquisition by a public agency for developed open space but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(e) "Infill site" means a site in an urbanized area that meets one of the following criteria:

(1) The site has been previously developed for qualified urban uses;
or

(2) The site has not been developed for qualified urban uses but all immediately adjacent parcels are developed with existing qualified urban uses; or

(3) The site has not been developed for qualified urban uses, no parcel within the site has been created within the past 10 years, and the site is situated so that:

(A) at least 75 percent of the perimeter of the site is adjacent to parcels that are developed with existing qualified urban uses at the time the lead agency receives an application for an approval; and

(B) the remaining 25 percent of the perimeter of the site adjoins parcels that had been previously developed for qualified urban uses.

(f) "Low- and moderate-income households" means "persons and families of low or moderate income" as defined in Section 50093 of the Health and Safety Code to mean persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the Department of Housing and Community Development, in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

(g) "Low-income households" means households of persons and families of very low and low income, which are defined in Sections 50093 and 50105 of the Health and Safety Code as follows:

(1) "Persons and families of low income" or "persons of low income" is defined in Section 50093 of the Health & Safety Code to mean persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to this division.

(2) "Very low income households" is defined in Section 50105 of the Health & Safety Code to mean persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. "Very low income households" includes extremely low income households, as defined in Section 50106 of the Health & Safety Code.

(h) "Lower income households" is defined in Section 50079.5 of the Health and Safety Code to mean any of the following:

(1) "Lower income households," which means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(2) "Very low income households," which means persons and families whose incomes do not exceed the qualifying limits for very

low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(3) "Extremely low income households," which means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as established and amended from time to time by the Secretary of Housing and Urban Development and defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations.

(i) "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 a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(j) "Project-specific effect" means all the direct or indirect environmental effects of a project other than cumulative effects and growth-inducing effects.

(k) "Qualified urban use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(l) "Residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

(m) "Urbanized area" means either of the following:

(1) An incorporated city that either by itself or in combination with two contiguous incorporated cities has a population of at least 100,000 persons; or

(2) An unincorporated area that meets the requirements set forth in subdivision (m)(2)(A) and subdivision (m)(2)(B) below.

(A) The unincorporated area must meet one of the following location or density requirements:

1. The unincorporated area must be: (i) completely surrounded by one or more incorporated cities, (ii) have a population of at least 100,000 persons either by itself or in combination with the surrounding incorporated city or cities, and (iii) have a population density that at least equals the population density of the surrounding city or cities; or

2. The unincorporated area must be located within an urban growth boundary and have an existing residential population of at least 5,000 persons per square mile. For purposes of this subparagraph, an "urban growth boundary" means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.

(B) The board of supervisors with jurisdiction over the unincorporated area must have taken the following steps:

1. The board has prepared a draft document by which the board would find that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that: (i) encourage compact development in a manner that promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing, and (ii) protects the environment, open space, and agricultural areas.

2. The board has submitted the draft document to OPR and allowed OPR thirty days to submit comments on the draft findings to the board.

3. No earlier than thirty days after submitting the draft document to OPR, the board has adopted a final finding in substantial conformity with the draft finding described in the draft document referenced in subdivision (m)(2)(B)(1) above.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21159.20, 21159.21, 21159.22, 21159.23, 21159.24, Public Resources Code.

Commenter: County of San Diego, July 26, 2006

Comment Summary: County of San Diego states:

Sections 15062, 15191-15196, requires [sic] a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The County of San Diego requests that OPR accept electronic NOEs when having to file with OPR. Filing electronically will save time and resources.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15191. There is currently no formal system in place at OPR for electronic NOE filing. However, OPR is currently considering creating a system whereby electronic filing of notices will be possible. See also responses to County of San Diego's comments on Guidelines, sections, 15062, 15192, 15193, 15194, and 15195.

1. § 15191, subd. (k)

Summary of Text: The originally-proposed changes to the Guidelines at section 15191, subdivision (k) state:

(k) "Qualified urban use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

Commenter: EDAW, July 11, 2006

Comment Summary: EDAW states:

[T]he definition for qualified urban use does not include, in my reading, a developed urban park. One envisions many situations where development projects proposed in an infill setting might be partially surrounded by an urban park or similar facility. It seems the purpose of this exemption would allow for such development to be covered.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15191, subd. (k). The definition for "qualified urban use" is consistent with section 21072 of the Public Resources Code.

2. § 15191, subd. (m)(2)

Summary of Text: The originally-proposed changes to the Guidelines at section 15191, subdivision (m)(2) state:

(m) Urbanized area" means either of the following: . . .

(2) An unincorporated area that meets the requirements set forth in subdivision (m)(2)(A) and subdivision (m)(2)(B) below.

Commenter: **Sierra Club, July 27, 2006**

Comment Summary: Sierra Club states:

this subdivision should be deleted, as it would allow these exemptions to be used in unincorporated areas that are not truly urbanized and thereby contravene the intent of the Legislature in enacting Public Resources Code section 21159.20, et seq.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15191, subd. (m)(2). Section 15191 implements section 21159.21 of the Public Resources Code which was added by stats. 2002, c. 1039 (SB 1925), sec. 12. The Resources Agency's proposed language is consistent with the statute (stats. 2002, c. 1039 (SB 1925), sec. 5), which also added section 21071 of the Public Resources Code defining urbanized area. The Resources Agency finds that deletion of the proposed subdivision would cause confusion.

3. § 15191, subd. (m)(2)(b)(1)

Summary of Text: The originally-proposed changes to the Guidelines at section 15191, subdivision (m)(2)(B)(1) state:

The board of supervisors with jurisdiction over the unincorporated area must have taken the following steps:

1. The board has prepared a draft document by which the board would find that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that: (i) encourage compact development in a manner that promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing, and (ii) protects the environment, open space, and agricultural areas.

2. The board has submitted the draft document to OPR and allowed OPR thirty days to submit comments on the draft findings to the board.
3. No earlier than thirty days after submitting the draft document to OPR, the board has adopted a final finding to substantial conformity with the draft finding described in the draft document referenced in subdivision (m)(2)(B)(1) above.

Commenter: **Sierra Club, July 27, 2006**

Comment Summary: Sierra Club states:

the criteria for the unincorporated area plan are too vague and open-ended to provide adequate assurance that these exemptions will only be used in truly urbanized areas.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15191, subd. (m)(2)(b)(1). Section 15191 implements section 21159.21 of the Public Resources Code which was added by stats. 2002, c. 1039 (SB 1925), sec. 12. The Resources Agency's proposed language is consistent with the statute (stats. 2002, c. 1039 (SB 1925), sec. 5) which also added section 21071 of the Public Resources Code defining urbanized area. The Resources Agency finds that deletion of the proposed subdivision would cause confusion.

**B. § 15192. Threshold Requirements for Exemptions for
Agricultural Housing, Affordable Housing, and
Residential Infill Projects.**

Summary of Text: In order to show the new section as well as the comments, responses and the Modifications, the Resources Agency will first show Section 15192, as originally-proposed, followed by the summary of comments and responses thereto, and the full section as modified:

**1. Full Text of Originally-Proposed Changes to the Guidelines at
section 15192:**

**§ 15192. Threshold Requirements for Exemptions for
Agricultural Housing, Affordable Housing, and Residential
Infill Projects.**

In order to qualify for an exemption set forth in sections 15193, 15194 or 15195, a housing project must meet all of the threshold criteria set forth below.

(a) The project must be consistent with:

(1) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete; and

(2) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete, unless the zoning of project property is inconsistent with the general plan because the project property has not been rezoned to conform to the general plan.

(b) Community-level environmental review has been adopted or certified.

(c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(d) The site of the project:

(1) Does not contain wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations.

(2) Does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(3) Does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(4) Does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps have been taken in response to the results of this assessment:

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code.

(h) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(i) The project does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

(l) Either the project does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(m) The project site is not located on developed open space.

(n) The project site is not located within the boundaries of a state conservancy.

(o) The project has not been divided into smaller projects to qualify for one or more of the exemptions set forth in sections 15193 to 15195.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.21, 21159.27, Public Resources Code.

Commenter: County of San Diego, July 26, 2006

Comment Summary: County of San Diego states:

Sections 15062, 15191-15196, requires [sic] a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The County of San Diego requests that OPR accept electronic NOEs when having to file with OPR. Filing electronically will save time and resources.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15192. There is currently no formal system in place at OPR for electronic NOE filing. However, OPR is currently considering creating a system whereby electronic filing of notices will be possible.

See also responses to County of San Diego's comments on Guidelines, sections 15062, 15191, 15193, 15194, and 15195.

a. § 15192, subds. (i)-(k)

Summary of Text: The originally-proposed changes to the Guidelines at section 15192, subdivisions (i)-(k) state:

(i) The project does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or

zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

Commenter: **Sierra Club, July 27, 2006**

Comment Summary: Sierra Club states:

[T]hese subdivisions are not consistent with Public Resources Code section 21159.21(h)(2)-(4), which ties these limiting factors to the project site, not the project. This is an important distinction, as the project itself may not pose a risk of fire, explosion, public health exposure or seismic hazard, but the site on which the project is proposed to be built may well pose such risks.

Response to Comment: This commenter stated that the originally-proposed changes to the Guidelines are not consistent with Public Resources Code section 21159.21, subdivisions (h)(2)-(5), which tie these limiting factors to the project site, not the project. The commenter stated that this is an important distinction, as the project itself may not pose a risk of fire, explosion, public health exposure, seismic hazard, or landslide hazard, but the site on which the project is proposed to be built may well pose such risks. The Resources Agency agrees that the commenter has identified a potential conflict between the originally-proposed changes to the Guidelines and the statute. (Pub. Resources Code, § 21159.21, subds. (h)(2)-(5).) Therefore, the Resources Agency has modified the originally-proposed changes to the Guidelines.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(i) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project site is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

b. § 15192, subd. (l)

Summary of Text: The originally-proposed changes to the Guidelines at section 15192, subdivision (l) state:

(l) Either the project does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

Commenter: **Sierra Club, July 27, 2006**

Comment Summary: Sierra Club states:

... this subdivision is inconsistent with Public Resources Code section 21159.21(h)(5), which requires that the project site not be subject to a landslide or flood hazard. This subdivision, by contrast, only requires the project itself to not present such a hazard.

Response to Comment: This commenter stated that the originally-proposed changes to the Guidelines are not consistent with Public Resources Code section 21159.21, subdivisions (h)(2)-(5), which tie these limiting factors to the project site, not the project. The commenter stated that this is an important distinction, as the project itself may not pose a risk of fire, explosion, public health exposure, seismic hazard, or landslide hazard, but the site on which the project is proposed to be built may well pose such risks. The Resources Agency agrees that the commenter has identified a potential conflict between the originally-proposed changes to the Guidelines and the statute. (Pub. Resources Code, § 21159.21, subds. (h)(2)-(5).) Therefore, the Resources Agency has modified the originally-proposed changes to the Guidelines.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines at section 15192, subd. (l) as follows:

(l) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

c. § 15192, subd. (m)

Summary of Text: The originally-proposed changes to the Guidelines at section 15192, subdivision (m) state:

(m) The project site is not located on developed open space.

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

the phrase 'as defined in Public Resources Code section 21159.21, subdivisions (i)(2) and (3)' should be added to the end of this subdivision to make it consistent with that section.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15192, subd. (m). The Resources Agency has determined that the originally-proposed changes to the Guidelines are consistent with section 21159.21 of the Public Resources Code which is also referenced in the Note to this proposed section of the Guidelines. Additionally, the phrase "developed open space" is defined at proposed section 15191, subd. (d) in the originally-proposed changes to the Guidelines. The Resources Agency proposed language is more user-friendly to allow the reader to refer to the definition immediately preceding the proposed Guidelines section.

2. Full Text Showing Modifications to the Originally-Proposed Changes to the Guidelines at Section 15192:

§ 15192. Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

In order to qualify for an exemption set forth in sections 15193, 15194 or 15195, a housing project must meet all of the threshold criteria set forth below.

(a) The project must be consistent with:

(1) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete; and

(2) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete, unless the zoning of project property is inconsistent with the general plan because the project property has not been rezoned to conform to the general plan.

(b) Community-level environmental review has been adopted or certified.

(c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(d) The site of the project:

(1) Does not contain wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations.

(2) Does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(3) Does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(4) Does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps have been taken in response to the results of this assessment:

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of

the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code.

(h) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(i) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project site is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

(l) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(m) The project site is not located on developed open space.

(n) The project site is not located within the boundaries of a state conservancy.

(o) The project has not been divided into smaller projects to qualify for one or more of the exemptions set forth in sections 15193 to 15195.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.21, 21159.27, Public Resources Code.

C. § 15193. Agricultural Housing Exemption

Summary of Text: The originally-proposed changes to the Guidelines at section 15193 state:

§ 15193. Agricultural Housing Exemption.

CEQA does not apply to any development project that meets the following criteria.

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project site meets the following size criteria:

(1) The project site is located in an area with a population density of at least 1,000 persons per square mile and is two acres or less in area; or

(2) The project site is located in an area with a population density of less than 1,000 persons per square mile and is five acres or less in area.

(c) The project meets the following requirements regarding location and number of units.

(1) If the proposed development project is located on a project site within city limits or in a census-defined place, it must meet the following requirements:

(A) The proposed project location must be within one of the following:

1. Incorporated city limits; or

2. A census defined place with a minimum population density of at least 5,000 persons per square mile; or

3. A census-defined place with a minimum population density of at least 1,000 persons per square mile, unless a public agency that is carrying out or approving the project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impacts of successive projects of the same type in the same area, over time, would be significant.

(B) The proposed development project must be located on a project site that is adjacent, on at least two sides, to land that has been developed.

(C) The proposed development project must meet either of the following requirements:

1. Consist of not more than 45 units, or

2. Consist of housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(2) If the proposed development project is located on a project site zoned for general agricultural use, it must meet either of the following requirements:

(A) Consist of not more than 20 units, or

(B) Consist of housing for a total of 20 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(d) The project meets the following requirements regarding provision of housing for agricultural employees:

(1) The project must consist of the construction, conversion, or use of residential housing for agricultural employees.

(2) If the project lacks public financial assistance, then:

(A) The project must be affordable to lower income households; and

(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years.

(3) If public financial assistance exists for the project, then:

(A) The project must be housing for very low, low-, or moderate-income households; and

(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least 15 years.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.22, Public Resources Code.

Commenter: County of San Diego, July 26, 2006

Comment Summary: County of San Diego states:

Sections 15062, 15191-15196, requires [sic] a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The County of San Diego requests that OPR accept electronic NOEs when having to file with OPR. Filing electronically will save time and resources.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15193. There is currently no-formal system in place at OPR for electronic NOE filing. However, OPR is currently considering creating a system whereby electronic filing of notices will be possible. See also responses to County of San Diego's comments on Guidelines, sections 15062, 15191, 15192, 15194, and 15195.

D. § 15194. Affordable Housing Exemption.

Summary of Text: The originally-proposed changes to the Guidelines at section 15194 state:

§ 15194. Affordable Housing Exemption.

CEQA does not apply to any development project that meets the following criteria:

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project meets the following size criteria: the project site is not more than five acres in area.

(c) The project meets both of the following requirements regarding location:

(1) The project meets one of the following location requirements relating to population density:

(A) The project site is located within an urbanized area or within a census-defined place with a population density of at least 5,000 persons per square mile.

(B) If the project consists of 50 or fewer units, the project site is located within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(C) The project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile and there is no reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

(2) The project meets one of the following site-specific location requirements:

(A) The project site has been previously developed for qualified urban uses; or

(B) The parcels immediately adjacent to the project site are developed with qualified urban uses.

(C) The project site has not been developed for urban uses and all of the following conditions are met:

1. No parcel within the site has been created within 10 years prior to the proposed development of the site.

2. At least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses.

3. The existing remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses.

(d) The project meets both of the following requirements regarding provision of affordable housing.

(1) The project consists of the construction, conversion, or use of residential housing consisting of 100 or fewer units that are affordable to low-income households.

(2) The developer of the project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 30 years, at monthly housing costs deemed to be "affordable rent" for lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.23, Public Resources Code.

Commenter: County of San Diego, July 26, 2006

Comment: County of San Diego states:

Sections 15062, 15191-15196, requires [sic] a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The County of San Diego requests that OPR accept electronic NOEs when having to file with OPR. Filing electronically will save time and resources.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15194. There is currently no formal system in place at OPR for electronic NOE filing. However, OPR is currently considering creating a system whereby electronic filing of notices will be possible. See also responses to County of San Diego's comments on Guidelines, sections 15062, 15191, 15192, 15193, and 15195.

1. § 15194, subd. (d)(2)

Summary of Text: The originally-proposed changes to the Guidelines at section 15194, subdivision (d)(2) state:

(2) The developer of the project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 30 years, at monthly housing costs deemed to be "affordable rent" for lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code.

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

[T]his section should cross-reference the definitions of affordable housing in Health and Safety Code section 50079.5, as provided in Public Resources Code section 21159.23(a)(1).

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15194, subd. (d)(2). The proposed language is consistent with section 21159.23 of the Public Resources Code. Additionally, the proposed Guideline references section 21159.23 of the Public Resources Code, which contains the language requested by the commenter.

2. § 15194, Note

Summary of Text: The originally-proposed changes to the Guidelines at the Note for the proposed new section 15194 state:

Note: Authority cited: Section 21083, Public Resources Code.
Reference: Section 21159.23, Public Resources Code.

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states: "The authority cited for section 15194 should include Public Resources Code section 21159.21."

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at the note for section 15194. The authority for this proposed Guidelines section is section 21083 of the Public Resources Code. The reference for this proposed Guidelines section is 21159.23 of the Public Resources Code. Public Resources Code section 21159.21 is implemented and referenced at proposed Guidelines section 15192 and proposed Guidelines section 15194, subdivision (a).

E. § 15195. Residential Infill Exemption.

Summary of Text: The originally-proposed changes to the Guidelines state:

§ 15195. Residential Infill Exemption.

(a) Except as set forth in subdivision (b), CEQA does not apply to any development project that meets the following criteria:

(1) The project meets the threshold criteria set forth in section 15192; provided that with respect to the requirement in section 15192(b) regarding community-level environmental review, such review must be certified or adopted within five years of the date that the lead agency deems the application for the project to be complete pursuant to Section 65943 of the Government Code.

(2) The project meets both of the following size criteria:

(A) The site of the project is not more than four acres in total area.

(B) The project does not include any single level building that exceeds 100,000 square feet.

(3) The project meets both of the following requirements regarding location:

(A) The project is a residential project on an infill site.

(B) The project is within one-half mile of a major transit stop.

(4) The project meets both of the following requirements regarding number of units:

(A) The project does not contain more than 100 residential units.

(B) The project promotes higher density infill housing. The lead agency may establish its own criteria for determining whether the project promotes higher density infill housing except in either of the following two circumstances:

1. A project with a density of at least 20 units per acre is conclusively presumed to promote higher density infill housing.

2. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density infill housing unless the preponderance of the evidence demonstrates otherwise.

(5) The project meets the following requirements regarding availability of affordable housing: The project would result in housing units being made available to moderate, low or very low income families as set forth in either A or B below:

(A) The project meets one of the following criteria, and the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units as set forth below at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

1. At least 10 percent of the housing is sold to families of moderate income, or

2. Not less than 10 percent of the housing is rented to families of low income, or

3. Not less than 5 percent of the housing is rented to families of very low income.

(B) If the project does not result in housing units being available as set forth in subdivision (A) above, then the project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(b) A project that otherwise meets the criteria set forth in subdivision (a) is not exempt from CEQA if any of the following occur:

(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.

(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project

have occurred since community-level environmental review was certified or adopted:

(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project that was not known, and could not have been known at the time that community-level environmental review was certified or adopted.

If a project is not exempt from CEQA due to subdivision (b), the analysis of the environmental effects of the project covered in the EIR or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to subdivisions (b)(2) and (3).

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.24, Public Resources Code.

Commenter: County of San Diego, July 26, 2006

Comment Summary: County of San Diego states:

Sections 15062, 15191-15196, requires [sic] a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The County of San Diego requests that OPR accept electronic NOEs when having to file with OPR. Filing electronically will save time and resources.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15195, subd. (a)(3). There is currently no formal system in place at OPR for electronic NOE filing. However, OPR is currently considering creating a system whereby electronic filing of notices will be possible. See also responses to County of San Diego's comments on Guidelines, sections 15062, 15191, 15192, 15193, and 15194.

1. § 15195, subd. (a)(3)

Summary of Text: The originally-proposed changes to the Guidelines at section 15195, subdivision (a)(3) state:

(3) The project meets both of the following requirements regarding location:

(A) The project is a residential project on an infill site.

(B) The project is within one-half mile of a major transit stop.

Commenter: **Sierra Club, July 27, 2006**

Comment Summary: Sierra Club states: "this subdivision omits the critical requirement in Public Resources Code section 21159.24(a)(2) that the project be located in an urbanized area."

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15195, subd. (a)(3). The proposed Guideline requires that the residential project be located within an "infill site." Proposed Guideline section 15191, subd. (e) defines "infill site" as an urbanized area meeting specific criteria. The proposed language is consistent with section 21159.24 of the Public Resources Code requiring the project to be located within an urbanized area. Section 21159.24 of the Public Resources Code is also referenced within the note.

V. ADDITIONAL COMMENTS RAISED

Commenter: **EBMUD, July 26, 2006**

Comment Summary: EBMUD states:

EBMUD's concerns regarding Sections 15312 and 15302(c) have not been addressed by this round of Amendments but remain relevant to the District. As noted in the previous correspondence, EBMUD remains available to assist with developing pertinent language should these concerns be entertained for future updates of the CEQA Guidelines.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines. As stated in the cover letter to the NOPA, the changes to the Guidelines are for implementation of the statutory changes to CEQA only. The comments regarding the commenter's additional concerns are outside the scope of the currently proposed rulemaking.

VI. DISCUSSION SECTIONS

Summary of Text: The proposal in the originally-proposed changes to the Guidelines was to remove the discussion sections for Guidelines, sections 15179, 15180, and 15186. The Resources Agency has since determined that the discussion sections are not a part of the Guidelines and do not therefore require the Resources Agency to use the rulemaking provisions of the Administrative Procedure Act to remove the discussion sections from its website.

Commenter: Cal Trans, July 28, 2006

Comment Summary: Cal Trans states in regard to Guidelines, section 15179:

Noted is the Resources Agency's proposal to remove the discussion section from the CEQA Guidelines. The language used here indicates that this will be done on a universal basis whenever a guideline section is modified. We noted, however, that this is not being done to all Guidelines being modified under this June 13, 2006 proposal.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines. The Resources Agency included the discussions marked in strikeout in the original proposed text for this rulemaking. However, since that time, the Resources Agency has discovered that the discussion sections are not a part of the Guidelines and do not therefore require the Resources Agency to use the Administrative Procedure Act to remove the discussion sections from its website. As a result, the final text adopted by Resources Agency OAL will not be accompanied by the discussions.

Commenter: EDAW, July 11, 2006

Comment Summary: EDAW states:

These more informal plain language discussions could be helpful to the general public in certain instances where the Guidelines address potentially complex circumstances. The Guidelines might be improved if 'discussion' sections were enhanced rather than eliminated. An introductory section could make clear that these sections are not rules but simply helpful, simple presentations to clarify difficult-to-understand issues. I am not aware of statutory events that suggest 'discussion' sections should be eliminated, so perhaps that is the impetus for this proposed change.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines. See Response to Cal Trans's comment on proposed changes to the Discussion sections.

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

The Sierra Club is opposed to deleting the discussion sections from the Guidelines because these sections of the Guidelines provide important guidance to those who read CEQA.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines. See Response to Cal Trans's comment on proposed changes to the Discussion sections.

VII. Summary and Response to Public Comments Received on Modifications to the Originally-Proposed Changes to the Guidelines Implementing CEQA - Noticed April 23, 2007.

The summaries and responses below satisfy the requirement found in Government Code sections 11346.8, subd. (c) and 11346.9, subd. (a)(3) requirement that the Resources Agency summarize relevant objections and recommendations received during the public comment period and state the reasons for not implementing each comment.

This section provides a summary of the public comments the Resources Agency received on the Modifications that the Resources Agency noticed on April 23, 2007. The second comment period closed on May 8, 2007. All written comments to the Modifications are included in the rulemaking file.

The Comments and Responses to Comments are set forth in order of the sections under the originally-proposed changes to the Guidelines.

§ 15061. Review for Exemption.

Summary of Text: Modified Guidelines section 15061, subd. (e) state:

(e) When a non-elected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, ~~that the decision that the project is exempt~~ may be appealed to the local lead agency's elected decisionmaking body, if one exists. A local lead agency may establish procedures governing such appeals.

Commenter: San Bernardino County, May 8, 2007

Comment Summary: San Bernardino County states:

Our conclusion is that the majority of the proposed changes do not impact, affect, and change the Flood Control District (District) and Public Works – Transportation (Transportation) in implementing the CEQA Guidelines, with the exception of Section 15061, Review for Exemption. However, the District and Transportation do not envision changing the existing procedures for CEQA exemptions. As such, the proposed changes should not impact the District or Transportation. The purpose of changing Section 15061, Review for Exemption, was to provide a mechanism for

challenging exemption findings for new categories in CEQA dealing with low-income housing, agricultural housing, and in-fill development. However, the proposed new language adds that when a non-elected or decision-making body (i.e., planning staff, Planning Commission, etc.) determines that a project is exempt from CEQA, and, the public agency approves the project, the decision that the project is exempt may be appealed to the elected decision making body, in our case, the Board of Supervisors.

The purpose of changing Section 15061, Review for Exemption, was to provide a mechanism for challenging exemption findings for new categories in CEQA dealing with low-income housing, agricultural housing, and in-fill development. However, the proposed new language adds that when a non-elected or decision-making body (i.e., planning staff, Planning Commission, etc.) determines that a project is exempt from CEQA, and, the public agency approves the project, the decision that the project is exempt may be appealed to the elected decision making body, in our case, the Board of Supervisors.

For the majority of the District and Transportation projects, staff determines if the project is exempt. However, it is the Board of Supervisors (an elected body) that approves the project and directs the Clerk of the Board to file the Notice of Exemption. Therefore, a challenge to the CEQA Exemption process is already established in the County's procedures. However, should staff find a project exempt, and staff subsequently file the Notice of Exemption without Board authorization of the Exemption, the Exemption could be challenged.

The District and Transportation do not foresee changing the current policies and procedures regarding filing notices of exemption.

Response to Comment: The commenter's remarks do not warrant a change to the Modifications at Guidelines, section 15061. The language proposed in the originally-proposed changes to the Guidelines as well as the modifications to the originally-proposed changes are consistent with section 21151, subd. (c) of the Public Resources Code.

For the remainder of the comments, the commenter is not recommending a change to the proposal and no response is required. Additionally, the Resources Agency makes no comment whether the commenter's current policies and procedures meet the requirements of CEQA.

§ 15155. City or County Consultation with Water Agencies.

Section 15155 is an entirely new section of the CEQA Guidelines, although some of the proposed language is similar to that in Section 15083.5, which the Resources Agency proposes to repeal. The full modified text is set forth above.

A. § 15155, subd. (a)(1)(E)

Summary of Text: Modified Guidelines, section 15155, subd. (a)(1)(E) state:

(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 or floor area.

Commenter: Air Resources Board, May 7, 2007

Comment Summary: Air Resources Board states:

"I received your 15-day Notice and don't have any substantive comments from ARB, but I thought it was funny that while correcting one typo in section 15155(a)(1)(E), you left another one: the end of the section should read "...650,000 square feet of floor area", rather than "or floor area". I notice that you got it right in your aggregated rendering of that section further in the notice."

Response to Comment: The typo, unfortunately, was made in the Modifications. The typo, however, did not occur in the originally-proposed changes to the Guidelines or within the full text of section 15155 within the Modifications. As demonstrated in double strikeout/double underline below, the final version of the adopted Guidelines will have the correct language as follows:

(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 ~~or~~ floor area.

Commenter: Jim Royle, May 7, 2007

Comment Summary: Jim Royle states:

A really minor thing I noticed. In the correction of a typo in 15155(a)(1)(E), there is still a typo. At the end of the sentence it should read "square feet of floor area", not "square feet or floor area."

Response to Comment: See Response to Air Resources Board's comments on Guidelines, section 15155, subdivision (a)(1)(E).

B. § 15155, subd. (d)(2)(B)

Summary of Text: Modified Guidelines, section 15155, subd. (d)(2)(B) state:

(B) Changes in the circumstances or conditions substantially affecting the ability of the ~~applicable agencies~~ 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.

Commenter: Worden Williams APC, May 4, 2007

Comment Summary: Worden Williams, APC states:

I believe that a water assessment should be required for each phase of the project, because the availability of water is so uncertain and subject to change within this state. This is especially true in the case of the projects I have discussed above. [See comment of Worden Williams to section 15155, subd. (e) below.] At any time, the assumptions about the groundwater aquifer could be found to be incorrect, and the amount of water available could be substantially reduced. I therefore request that the language be changed to require that, at a minimum, affirmative findings regarding water availability be made at each phase of a project.

Response to Comment: The commenter's remarks do not warrant a change to the Modifications at Guidelines, section 15155, subd.(d)(2)(B). The Resources Agency finds that the language proposed in the originally-proposed changes to the Guidelines as well as the Modifications are consistent with section 10910, subds. (h)(1)-(3) of the Water Code. Additionally, the commenter's concerns are addressed in Guidelines, section 15155, subd. (d). The commenter's remarks are in response to the originally-proposed changes to the Guidelines and not to the Modifications. In that regard, they are untimely.

C. § 15155, subd. (e)

Summary of Text: Modified Guidelines, section 15155, subd. (e) state:

(e) The city or county lead agency shall include the water assessment, and any water acquisition plan ~~provided pursuant to subdivision (a) of Section 10911 of the Water Code~~ 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. pursuant to Sections 15091 and 15093.

Commenter: Worden Williams APC, May 4, 2007

Comment Summary: Worden Williams, APC states:

... I have some serious concerns regarding your proposed language in your Section 10 dealing with proposed Section 15155(e). My problem is the Agency determination of 'sufficient water.' The language '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.' is vague as to what is sufficient.

We have seen several projects approved out in the Desert Hot Springs area for thousands of single family homes. This is an area entirely dependent on groundwater, and the water basin is in overdraft. The water district is concluding that there is enough water (i.e., 20-years worth), while simultaneously recognizing that the overdraft condition is so severe that there may be no water (or no economically available water) in 50 years. Thousands of houses are being approved with no long-term water source. The EIRs being prepared are assuming that there is no significant water impacts as long as there is a 20-year supply of water. I do not believe that the CEQA threshold of a 20-year supply, but your proposed language is so vague that the EIR prepares are assuming that sufficient water equals a 20-years supply.

Response to Comment: The commenter's remarks do not warrant a change to the Modifications at Guidelines, section 15155, subd. (e). The Resources Agency notes that the language proposed in the originally-proposed changes to the Guidelines as well as the Modifications are consistent with section 10910, subds. (c)(1) and (h)(1)-(3) of the Water Code. The commenter's remarks are in response to the originally-proposed changes to the Guidelines and not to the Modifications. In that regard, they are untimely.

§ 15192. Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

Summary of Text: Modified Guidelines, section 15192, subd. (i)-(l) state:

(i) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project site is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

(l) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

Commenter: City of Roseville, May 8, 2007

Comment Summary: The City of Roseville states:

The City of Roseville is concerned that there may be implications with the proposed addition of Section 15192 (Threshold Requirements for Exemptions for Ag, Affordable Housing and Residential Infill projects). Specifically, we are concerned the phrase "the project site does not present a risk of a public health exposure at a level that would exceed state or federal standards," may be a platform for objections to residential land uses near rail yards and freeways. The City, and many other local agencies, have railroad and other transportation facilities that exist within these local jurisdictions. Some current and planned land uses could place sensitive receptors near these types of facilities. Therefore we propose that this language be stricken from the proposed modifications.

Response to Comment: The commenter's remarks do not warrant a change to the Modifications at Guidelines, section 15192. The language proposed in the originally-proposed changes to the Guidelines as well as the Modifications to subdivisions (i)-(l) are consistent with the statute. Specifically, subd. (j) of section 15192 is consistent with subd. (h)(3) of section 21159.21 of the Public Resources Code. The Modifications changed the subdivision to add the word "site". To the extent commenter's remarks are in response to the originally-proposed changes to the Guidelines and not to the Modifications, they are untimely.

VIII. LOCATION OF RULEMAKING FILE

A copy of the rulemaking file is available for public inspection at:

The Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Contact: Mary U. Akens, Assistant General Counsel
(916) 653-5656

IX. NONDUPLICATION STANDARD

Sections 15191 through 15196 overlap or duplicate many statutes found within the Public Resources Code, the Water Code and the Labor Code. Government Code Section 11349 provides that when an agency proposes to include language in a regulation that is overlapped or duplicated by statutory language, the agency must justify the overlap or duplication. Specifically, the Government Code section states, "[t]his standard is not intended to prohibit state agencies from printing relevant portions of enabling legislation in regulations when the duplication is necessary to satisfy the clarity standard in paragraph (3) of subdivision (a) of Section 11349.1. This standard is intended to prevent the indiscriminate incorporation of statutory language in a regulation."

The CEQA Guidelines are used as an implementation tool by virtually all Lead, Responsible and Trustee Agencies. Therefore, it is very important to include in the CEQA Guidelines all requirements applicable to implementation, including the new statutory requirements applicable to certain exemptions that are implemented in proposed Article 12.5. In addition, the Resources Agency has re-organized, combined, and displayed several separate statutory sections that address the same issue in a convenient and meaningful manner that will be easier to understand. Thus, the proposed language will enhance the clarity of the requirements, make the regulations easier to use and understand and reduce the chance of inadvertent non-compliance.

TITLE 14. NATURAL RESOURCES

DIVISION 6. RESOURCES AGENCY

CHAPTER 3. GUIDELINES FOR IMPLEMENTATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

ARTICLE 4. LEAD AGENCY

§ 15053. Designation of Lead Agency by the Office of Planning and Research.

(a) If there is a dispute over which of several agencies should be the Lead Agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to the Office of Planning and Research. If an agreement cannot be reached, any of the disputing public agency-agencies, or the applicant if a private project is involved, may submit the dispute to the Office of Planning and Research for resolution.

(b) For purposes of this section, a "dispute" means a contested, active difference of opinion between two or more public agencies as to which of those agencies shall prepare any necessary environmental document. A dispute exists where each of those agencies claims that it either has or does not have the obligation to prepare that environmental document.

(b) The Office of Planning and Research shall designate a Lead Agency within 21 days after receiving a completed request to resolve a dispute. The Office of Planning and Research shall not designate a lead agency in the absence of a dispute.

(ed) Regulations adopted by the Office of Planning and Research for resolving Lead Agency disputes may be found in Title 14, California Code of Regulations, Sections 16000 et seq.

(de) Designation of a Lead Agency by the Office of Planning and Research shall be based on consideration of the criteria in Section 15051 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21165, Public Resources Code; California Code of Regulations, Title 14, Sections 16000-16041.

ARTICLE 5. PRELIMINARY REVIEW OF PROJECTS AND CONDUCT OF INITIAL STUDY

§ 15061. Review for Exemption.

[(a): no changes]

(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 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.

[(c) – (d): no changes]

(e) When a non-elected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, the decision that the project is exempt may be appealed to the local lead agency's elected decisionmaking body, if one exists. A local lead agency may establish procedures governing such appeals.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b), 21151, ~~and~~ 21152(b), ~~and~~ 21159.21, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68.

§ 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) - (4): no changes]

[(b) - (d): no changes]

(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, Public Resources Code. Reference: Sections 21108, and 21152, and 21152.1, Public Resources Code.

ARTICLE 6. NEGATIVE DECLARATION PROCESS

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

[(a) - (e): no changes]

(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.

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

[(1) – (6): no changes]

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.

§ 15073. Public Review of a Proposed Negative Declaration or Mitigated Negative Declaration.

[(a): no changes]

(b) When a proposed negative declaration or mitigated negative declaration and initial study have been submitted to the State Clearinghouse for review by state agencies, 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. the public review period shall be at least as long as the review period established by the State Clearinghouse. Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies.

[(c) – (e): no changes]

Note: Authority cited: Section 21083, Public Resources Code. References: Sections 21000(e), 21003(b), 21080(c), 21081.6, 21091, and 21092.5, Public Resources Code; *Plaggmier v. City of San Jose* (1980) 101 Cal.App.3d 842.

§ 15074. Consideration and Adoption of a Negative Declaration or Mitigated Negative Declaration.

[(a) – (e): no changes]

(f) When a non-elected official or decisionmaking body of a local lead agency adopts a negative declaration or mitigated negative declaration, that adoption may be appealed to the agency's elected decisionmaking body, if one exists. For example, adoption of a negative declaration for a project by a city's planning commission may be appealed to the city council. A local lead agency may establish procedures governing such appeals.

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

ARTICLE 7. EIR PROCESS

§ 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 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. 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) – (4): no changes]

[(b): no changes]

(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) – (D): no changes]

(23) 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) – (e) no changes]

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.9, 21080.4, and 21098 of the Public Resources Code.

~~§ 15083.5. — City or County Consultation with Water Agencies.~~

~~This guideline addresses consultation between a city or county and affected water agencies at the notice of preparation stage of environmental review.~~

~~(a) This guideline shall apply only to projects which meet all of the following criteria:~~

~~(1) The project consists of any of the following activities for which an application has been submitted to a city or county:~~

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

~~(B) A shopping center or business establishment that will employ more than 1,000 persons or have more than 500,000 square feet of floor space.~~

~~(C) A commercial office building that will employ more than 1,000 persons or have more than 250,000 square feet of floor space.~~

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

~~(E) An industrial, manufacturing, or processing plant, or industrial park intended 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) Any mixed-use project that would demand an amount of water equal to, or greater than, the amount of water needed to serve a 500-dwelling-unit project.~~

~~(2) As part of approval of the project, any of the following are required:~~

~~(A) An amendment to, or revision of, the land use element of a general plan or a specific plan, which would result in a net increase in the stated population density or building intensity to provide for additional development.~~

(B) The adoption of a specific plan, unless the city or county has previously complied with this section for the project.

Notwithstanding the foregoing provisions of this subdivision (a)(2), when a project is identified in connection with the revision of any part of a general plan, that project is subject to the requirements of this section only if the project results in a net increase in the stated population density or building intensity, and if the city or county has not previously complied with the requirements of this section for the project in question.

(3) A city or county has determined that an environmental impact report is required in connection with the project.

(b) For projects subject to this guideline, a city or county shall identify any water system that is, or may become, a public water system, as defined in Section 10912 of the Water Code, that may supply water for the project. When a city or county releases a notice of preparation for review, it shall send a copy of the notice to each public water system which serves or would serve the proposed project and request that the system both indicate whether the projected water demand associated with the proposed project was included in its last urban water management plan and assess whether its total projected water supplies available during normal, single-dry, and multiple-dry water years as included in the 20-year projection contained in its urban water management plan will meet the projected water demand associated with the proposed project, in addition to the system's existing and planned future uses.

(c) The governing body of a public water system shall approve and submit its water supply assessment to the city or county not later than 30 days after the date on which the request and notice of preparation were received. If the public water system fails to submit its assessment within the allotted time, the lead agency may assume, unless there has been a request for a specific extension of time from the public water system, that the public water system has no information to submit. If a public water system concludes there would be insufficient water to serve the proposed project, it shall provide the city or county with its plans for acquiring additional water supplies.

(d) The lead agency shall include within the EIR the public water system's assessment and any other information provided by the water agency, up to a maximum of ten typewritten pages. The assessment and information may only exceed that length with the approval of the lead agency. The lead agency may independently evaluate the water system's information and shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the proposed project, in addition to existing and planned future uses. If the lead agency determines that water supplies will not be sufficient, the lead agency must include that determination in its findings for the project pursuant to Sections 15091 and 15093.

(e) For purposes of this section, "public water system" means a system as defined in Section 10912 of the Water Code with 3,000 or more service connections.

(f) This section does not apply to the County of San Diego and the cities in the county as provided in Section 10915 of the Water Code.

Note: Authority cited: Section 21083, Public Resources Code; References: Section 21151.9, 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 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) – (3): no changes]

[(b) – (d): no changes]

(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. the public review period shall be at least as long as the review period established by the Clearinghouse.

[(f) – (i): no changes]

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.

ARTICLE 8. TIME LIMITS

§ 15105. Public Review Period for a Draft EIR or a Proposed Negative Declaration or Mitigated Negative Declaration.

[(a) – (b): no changes]

(c) If a draft EIR or proposed negative declaration or mitigated negative declaration has been submitted to the State Clearinghouse for review by state agencies, 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. ~~the public review period shall be at least as long as the review period established by the State Clearinghouse.~~

[(d): no changes]

(e) The State Clearinghouse shall distribute a draft EIR or proposed negative declaration or mitigated negative declaration within three working days after the date of receipt if the submittal is determined by the State Clearinghouse to be complete.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21091 and 21092, Public Resources Code; *People v. County of Kern* (1974) 39 Cal.App.3d 830.

ARTICLE 10. CONSIDERATIONS IN PREPARING EIRS AND NEGATIVE DECLARATIONS

§ 15155. 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, subd. (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 (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 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.

Note: Authority Cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code, Sections 10910-10915 of the Water Code.

ARTICLE 11.5. MASTER ENVIRONMENTAL IMPACT REPORT

§ 15179. Limitations on the Use of the Master EIR.

(a) The certified Master EIR shall not be used for a subsequent project described in the Master EIR in accordance with this article if either:

(i1) The Master EIR it was certified more than five years prior to the filing of an application for a later subsequent project except as set forth in subsection (b) below, or

(ii2) After the certification of the Master EIR, a project not identified described in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR for any subsequent project that was described in the Master EIR, unless the lead agency does one of the following:

(b) A Master EIR that was certified more than five years prior to the filing of an application for a subsequent project described in the Master EIR may be used in accordance with this article to review such a subsequent project if the lead agency reviews the adequacy of the Master EIR and takes either of the following steps:

(a1) Reviews the Master EIR and finds that no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, or that there is no new available information which was not known and could not have been known at the time the Master EIR was certified; or

(b2) Prepares an initial study, and pursuant to the findings of the initial study either:

(A) certifies a subsequent or supplemental EIR that updates or revises the Master EIR and which either (i1) is incorporated into the previously certified Master EIR, or (ii2) references any deletions, additions or other modifications to the previously certified Master EIR; or

(B) approves a mitigated negative declaration that addresses substantial changes that have occurred with respect to the circumstances under which the Master EIR was certified or the new information that was not known and could not have been known at the time the Master EIR was certified.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21157.6, Public Resources Code.

ARTICLE 12. SPECIAL SITUATIONS

§ 15180. Redevelopment Projects.

(a) An EIR for a redevelopment plan may be a Master EIR, a program EIR, or a project EIR. An EIR for a redevelopment plan must specify whether it is a Master EIR, a program EIR, or a project EIR.

(b) If the EIR for a redevelopment plan is a project EIR, All public and private activities or undertakings pursuant to or in furtherance of a the redevelopment plan shall constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

(b) If a project EIR has been certified for the An EIR on a redevelopment plan, shall be treated as a program EIR with no subsequent EIRs are required for individual components of the redevelopment plan unless a subsequent EIR or a supplement to an EIR would be required by Section 15162 or 15163.

(c) If the EIR for a redevelopment plan is a Master EIR, subsequent projects which the lead agency determines as being within the scope of the Master EIR will be subject to the review required by Section 15177. If the EIR for a redevelopment plan is a program EIR, subsequent activities in the program will be subject to the review required by Section 15168.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21090 and 21166, Public Resources Code.

§ 15186. School Facilities.

[(a): no changes]

(b) ~~Before certifying an EIR or adopting a negative declaration for~~ When a project located within one-fourth mile of a school that involves the construction or alteration of a facility ~~which that~~ might reasonably be anticipated to emit hazardous ~~air emissions or acutely hazardous air emissions, or which that~~ would handle ~~acutely an extremely hazardous material substance~~ or a mixture containing ~~acutely extremely hazardous material substances~~ in a quantity equal to or greater than ~~that specified in subdivision (a) of Section 25536 of the Health and Safety Code, which the state threshold quantity specified in subdivision (j) of Section 25532 of the Health and Safety Code, that may impose a health or safety hazard to persons who would attend or would be employed at the school, the lead agency must do both of the following:~~

(1) Consult with the affected school district or districts regarding the potential impact of the project on the school; ~~and when circulating the proposed negative declaration or draft EIR for review.~~

(2) Notify the affected school district or districts of the project, in writing, not less than 30 days prior to approval or certification of the negative declaration or EIR. ~~This subdivision does not apply to projects for which an application was submitted prior to January 1, 1992.~~

(c) When the project involves the purchase of a school site or the construction of a secondary or elementary school by a school district, the negative declaration or EIR prepared for the project shall not be ~~approved~~ adopted or certified ~~by the school board unless:~~

(1) The negative declaration, mitigated negative declaration, or EIR contains sufficient information to determine whether the property is:

[(A) – (C): no changes]

(D) Within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

[(2): no changes]

(3) The school ~~board~~ district makes, on the basis of substantial evidence, one of the following written findings:

[(A): no changes]

(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:

[1. – 2.: no changes]

3. For a school site with boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the school district determines, through a health risk assessment pursuant to subdivision (b)(2) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in subsection (c)(2) exist, but conditions in subdivisions (c)(3)(B)(1), (2) or (3) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the school district makes this finding, the school board shall prepare an EIR and adopt a statement of overriding considerations.

This finding shall be in addition to any findings which may be required pursuant to Sections 15074, 15091 or 15093.

[(d): no changes]

(e) The following definitions shall apply for the purposes of this section:

[(1) – (2): no changes]

(3) "Extremely hazardous substance," is as defined in subdivision (g)(2)(B) of Section 25532 of the Health and Safety Code and listed in Section 2770.5, Table 3, of Title 19 of the California Code of Regulations.

(4) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(5) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000

vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

(6) "Handle" means to use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous material in any fashion.

(37) "Hazardous air emissions," is as defined in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(48) "Hazardous substance," is as defined in Section 25316 of the Health and Safety Code.

(59) "Hazardous waste," is as defined in Section 25117 of the Health and Safety Code.

(610) "Hazardous waste disposal site," is as defined in Section 25114 of the Health and Safety Code.

Note: Authority cited: Section 21083, Public Resources Code. References: Sections 21151.4 and 21151.8, Public Resources Code.

§ 15190.5. Department Of Defense Notification Requirement.

(a) For purposes of this section, the following definitions are applicable.

(1) "Low-level flight path" means any flight path for any aircraft owned, maintained, or that is under the jurisdiction of the United States Department of Defense that flies lower than 1,500 feet above ground level, as indicated in the United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)" published by the United States National Imagery and Mapping Agency, or its successor, as of the date the military service gives written notification to a lead agency pursuant to subdivision (b).

(2) "Military impact zone" means any area, including airspace, that meets both of the following criteria:

(A) Is within two miles of a military installation, including, but not limited to, any base, military airport, camp, post, station, yard, center, homeport facility for a ship, or any other military activity center that is under the jurisdiction of the United States Department of Defense; and

(B) Covers greater than 500 acres of unincorporated land, or greater than 100 acres of city incorporated land.

(3) "Military service" means the United States Department of Defense or any branch of the United States Armed Forces.

(4) "Special use airspace" means the land area underlying the airspace that is designated for training, research, development, or evaluation for a military service, as that land area is established by the United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)" published by the United States National Imagery and Mapping Agency, or its successor, as of the date the military service gives written notification to a lead agency pursuant to subdivision (b).

(b) A military service may give written notification to a lead agency of the specific boundaries of a low-level flight path, military impact zone, or special use airspace, and provide the lead agency, in writing, the military contact office and address for the military service. If the notice references the specific boundaries of a low-level flight path, such notification must include a copy of the applicable United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)." If the notice references the specific boundaries of a special use airspace, such notification must include a copy of the applicable United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)."

(c) If a military service provides the written notification specified in subdivision (b) of this section, a lead agency must 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 Section 15072, in the list of organizations and individuals receiving a notice of preparation of an EIR pursuant to Section 15082, and in the list of organizations and individuals receiving a notice of availability of a draft EIR pursuant to Section 15087 for any project that meets all of the criteria specified below:

(1) The project to be carried out or approved by the lead agency is within the boundaries specified in subdivision (b).

(2) The project is one of the following:

(A) a project that includes a general plan amendment; or

(B) a project that is of statewide, regional, or areawide significance;
or

(C) a project that relates to a public use airport and the area surrounding such airport which is required to be referred to the airport land use commission, or appropriately designated body, pursuant to Sections 21670-21679.5 of the Public Utilities Code.

(3) The project is not one of the actions described below. A lead agency does not need to send to the specified military contact office a notice of intent to adopt a negative declaration or a mitigated negative declaration, a notice of preparation of an EIR, or a notice of availability of a draft EIR for such actions.

(A) a response action taken pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(B) a response action taken pursuant to Chapter 6.85 (commencing with Section 25396) of Division 20 of the Health and Safety Code.

(C) a project undertaken at a site in response to a corrective action order issued pursuant to Section 25187 of the Health and Safety Code.

The lead agency shall send the specified military contact office a notice of intent or a notice of availability sufficiently prior to adoption or certification of the environmental documents by the lead agency to allow the military service the review period provided under Section 15105.

(d) The effect or potential effect that a project may have on military activities does not itself constitute an adverse effect on the environment for the purposes of CEQA.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21098, Public Resources Code.

Article 12.5. Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects

§ 15191. Definitions.

For purposes of this Article 12.5 only, the following words shall have the following meanings:

(a) "Agricultural employee" means a person engaged in agriculture, including: farming in all its branches, and, among other things, includes: (1) the cultivation

and tillage of the soil, (2) dairying, (3) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), (4) the raising of livestock, bees, furbearing animals, or poultry, and (5) any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market. This definition is subject to the following limitations:

This definition shall not be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code), and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code).

This definition shall not apply, or be construed to apply, to any employee who performs work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management Relations Act, 29 U.S.C. Sec. 158(e)) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above. As used in this definition, "land leveling" shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage or preparation of land for cultivation.

(b) "Census-defined place" means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

(c) "Community-level environmental review" means either of the following:

(1) An EIR certified on any of the following:

(A) A general plan.

(B) A revision or update to the general plan that includes at least the land use and circulation elements.

(C) An applicable community plan.

(D) An applicable specific plan.

(E) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.

(2) A negative declaration or mitigated negative declaration adopted as a subsequent environmental review document, following and based upon an EIR on a general plan, an applicable community plan, or an applicable specific plan, provided that the subsequent environmental review document is allowed by CEQA following a master EIR or a program EIR, or is required pursuant to Section 21166.

(d) "Developed open space" means land that meets all of the following criteria:

(1) land that is publicly owned, or financed in whole or in part by public funds,

(2) is generally open to, and available for use by, the public, and

(3) is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ball fields, enclosed child play areas, and picnic facilities.

Developed open space may include land that has been designated for acquisition by a public agency for developed open space but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(e) "Infill site" means a site in an urbanized area that meets one of the following criteria:

(1) The site has been previously developed for qualified urban uses; or

(2) The site has not been developed for qualified urban uses but all immediately adjacent parcels are developed with existing qualified urban uses; or

(3) The site has not been developed for qualified urban uses, no parcel within the site has been created within the past 10 years, and the site is situated so that:

(A) at least 75 percent of the perimeter of the site is adjacent to parcels that are developed with existing qualified urban uses at the time the lead agency receives an application for an approval; and

(B) the remaining 25 percent of the perimeter of the site adjoins parcels that had been previously developed for qualified urban uses.

(f) "Low- and moderate-income households" means "persons and families of low or moderate income" as defined in Section 50093 of the Health and Safety Code to mean persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the Department of Housing and Community Development, in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

(g) "Low-income households" means households of persons and families of very low and low income, which are defined in Sections 50093 and 50105 of the Health and Safety Code as follows:

(1) "Persons and families of low income" or "persons of low income" is defined in Section 50093 of the Health & Safety Code to mean persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to this division.

(2) "Very low income households" is defined in Section 50105 of the Health & Safety Code to mean persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. "Very low income households" includes extremely low income households, as defined in Section 50106 of the Health & Safety Code.

(h) "Lower income households" is defined in Section 50079.5 of the Health and Safety Code to mean any of the following:

(1) "Lower income households," which means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(2) "Very low income households," which means persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(3) "Extremely low income households," which means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as established and amended from time to time by the Secretary of Housing and Urban Development and defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations.

(i) "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 a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(j) "Project-specific effect" means all the direct or indirect environmental effects of a project other than cumulative effects and growth-inducing effects.

(k) "Qualified urban use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(l) "Residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

(m) "Urbanized area" means either of the following:

(1) An incorporated city that either by itself or in combination with two contiguous incorporated cities has a population of at least 100,000 persons; or

(2) An unincorporated area that meets the requirements set forth in subdivision (m)(2)(A) and subdivision (m)(2)(B) below.

(A) The unincorporated area must meet one of the following location or density requirements:

1. The unincorporated area must be: (i) completely surrounded by one or more incorporated cities, (ii) have a population of at least 100,000 persons either by itself or in combination with the surrounding incorporated city or cities, and (iii) have a population density that at least equals the population density of the surrounding city or cities; or

2. The unincorporated area must be located within an urban growth boundary and have an existing residential population of at least 5,000 persons per square mile. For purposes of this subparagraph, an "urban growth boundary" means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.

(B) The board of supervisors with jurisdiction over the unincorporated area must have taken the following steps:

1. The board has prepared a draft document by which the board would find that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that: (i) encourage compact development in a manner that promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing, and (ii) protects the environment, open space, and agricultural areas.

2. The board has submitted the draft document to OPR and allowed OPR thirty days to submit comments on the draft findings to the board.

3. No earlier than thirty days after submitting the draft document to OPR, the board has adopted a final finding in substantial conformity with the draft finding described in the draft document referenced in subdivision (m)(2)(B)(1) above.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21159.20, 21159.21, 21159.22, 21159.23, 21159.24, Public Resources Code.

§ 15192. Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

In order to qualify for an exemption set forth in sections 15193, 15194 or 15195, a housing project must meet all of the threshold criteria set forth below.

(a) The project must be consistent with:

(1) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete; and

(2) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete, unless the zoning of

project property is inconsistent with the general plan because the project property has not been rezoned to conform to the general plan.

(b) Community-level environmental review has been adopted or certified.

(c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(d) The site of the project:

(1) Does not contain wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations.

(2) Does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(3) Does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(4) Does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps have been taken in response to the results of this assessment:

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure

shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code.

(h) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(i) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project site is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

(l) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(m) The project site is not located on developed open space.

(n) The project site is not located within the boundaries of a state conservancy.

(o) The project has not been divided into smaller projects to qualify for one or more of the exemptions set forth in sections 15193 to 15195.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.21, 21159.27, Public Resources Code.

§ 15193. Agricultural Housing Exemption.

CEQA does not apply to any development project that meets the following criteria.

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project site meets the following size criteria:

(1) The project site is located in an area with a population density of at least 1,000 persons per square mile and is two acres or less in area; or

(2) The project site is located in an area with a population density of less than 1,000 persons per square mile and is five acres or less in area.

(c) The project meets the following requirements regarding location and number of units.

(1) If the proposed development project is located on a project site within city limits or in a census-defined place, it must meet the following requirements:

(A) The proposed project location must be within one of the following:

1. Incorporated city limits; or

2. A census defined place with a minimum population density of at least 5,000 persons per square mile; or

3. A census-defined place with a minimum population density of at least 1,000 persons per square mile, unless a public agency that is carrying out or approving the project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impacts of successive projects of the same type in the same area, over time, would be significant.

(B) The proposed development project must be located on a project site that is adjacent, on at least two sides, to land that has been developed.

(C) The proposed development project must meet either of the following requirements:

1. Consist of not more than 45 units, or

2. Consist of housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(2) If the proposed development project is located on a project site zoned for general agricultural use, it must meet either of the following requirements:

(A) Consist of not more than 20 units, or

(B) Consist of housing for a total of 20 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(d) The project meets the following requirements regarding provision of housing for agricultural employees:

(1) The project must consist of the construction, conversion, or use of residential housing for agricultural employees.

(2) If the project lacks public financial assistance, then:

(A) The project must be affordable to lower income households; and

(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years.

(3) If public financial assistance exists for the project, then:

(A) The project must be housing for very low, low-, or moderate-income households; and

(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least 15 years.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.22, Public Resources Code.

§ 15194. Affordable Housing Exemption.

CEQA does not apply to any development project that meets the following criteria:

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project meets the following size criteria: the project site is not more than five acres in area.

(c) The project meets both of the following requirements regarding location:

(1) The project meets one of the following location requirements relating to population density:

(A) The project site is located within an urbanized area or within a census-defined place with a population density of at least 5,000 persons per square mile.

(B) If the project consists of 50 or fewer units, the project site is located within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(C) The project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile and there is no reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

(2) The project meets one of the following site-specific location requirements:

(A) The project site has been previously developed for qualified urban uses; or

(B) The parcels immediately adjacent to the project site are developed with qualified urban uses.

(C) The project site has not been developed for urban uses and all of the following conditions are met:

1. No parcel within the site has been created within 10 years prior to the proposed development of the site.

2. At least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses.

3. The existing remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses.

(d) The project meets both of the following requirements regarding provision of affordable housing.

(1) The project consists of the construction, conversion, or use of residential housing consisting of 100 or fewer units that are affordable to low-income households.

(2) The developer of the project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 30 years, at monthly housing costs deemed to be "affordable rent" for lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.23, Public Resources Code.

§ 15195. Residential Infill Exemption.

(a) Except as set forth in subdivision (b), CEQA does not apply to any development project that meets the following criteria:

(1) The project meets the threshold criteria set forth in section 15192; provided that with respect to the requirement in section 15192(b) regarding community-level environmental review, such review must be certified or adopted within five years of the date that the lead agency deems the application for the project to be complete pursuant to Section 65943 of the Government Code.

(2) The project meets both of the following size criteria:

(A) The site of the project is not more than four acres in total area.

(B) The project does not include any single level building that exceeds 100,000 square feet.

(3) The project meets both of the following requirements regarding location:

(A) The project is a residential project on an infill site.

(B) The project is within one-half mile of a major transit stop.

(4) The project meets both of the following requirements regarding number of units:

(A) The project does not contain more than 100 residential units.

(B) The project promotes higher density infill housing. The lead agency may establish its own criteria for determining whether the project promotes higher density infill housing except in either of the following two circumstances:

1. A project with a density of at least 20 units per acre is conclusively presumed to promote higher density infill housing.
2. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density infill housing unless the preponderance of the evidence demonstrates otherwise.

(5) The project meets the following requirements regarding availability of affordable housing: The project would result in housing units being made available to moderate, low or very low income families as set forth in either A or B below:

(A) The project meets one of the following criteria, and the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units as set forth below at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

1. At least 10 percent of the housing is sold to families of moderate income, or
2. Not less than 10 percent of the housing is rented to families of low income, or
3. Not less than 5 percent of the housing is rented to families of very low income.

(B) If the project does not result in housing units being available as set forth in subdivision (A) above, then the project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(b) A project that otherwise meets the criteria set forth in subdivision (a) is not exempt from CEQA if any of the following occur:

(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.

(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.

(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project that was not known, and could not have been known at the time that community-level environmental review was certified or adopted.

If a project is not exempt from CEQA due to subdivision (b), the analysis of the environmental effects of the project covered in the EIR or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to subdivisions (b)(2) and (3).

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.24, Public Resources Code.

§ 15196. Notice of Exemption for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

(a) When a local agency determines that a project is not subject to CEQA under Section 15193, 15194, or 15195, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file the notice required by Section 21152.1 of the Public Resources Code, pursuant to Section 15062.

(b) Failure to file the notice required by this section does not affect the validity of a project.

(c) Nothing in this section affects the time limitations contained in Section 21167.

Note: Authority cited: Section 21083, Public Resources Code. Reference: 21152.1, Public Resources Code.

TITLE 14. NATURAL RESOURCES

DIVISION 6. RESOURCES AGENCY

CHAPTER 3. GUIDELINES FOR IMPLEMENTATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

ARTICLE 4. LEAD AGENCY

§ 15053. Designation of Lead Agency by the Office of Planning and Research.

(a) If there is a dispute over which of several agencies should be the Lead Agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to the Office of Planning and Research. If an agreement cannot be reached, any of the disputing public agency-agencies, or the applicant if a private project is involved, may submit the dispute to the Office of Planning and Research for resolution.

(b) For purposes of this section, a “dispute” means a contested, active difference of opinion between two or more public agencies as to which of those agencies shall prepare any necessary environmental document. A dispute exists where each of those agencies claims that it either has or does not have the obligation to prepare that environmental document.

(bc) The Office of Planning and Research shall designate a Lead Agency within 21 days after receiving a completed request to resolve a dispute. The Office of Planning and Research shall not designate a lead agency in the absence of a dispute.

(ed) Regulations adopted by the Office of Planning and Research for resolving Lead Agency disputes may be found in Title 14, California Code of Regulations, Sections 16000 et seq.

(de) Designation of a Lead Agency by the Office of Planning and Research shall be based on consideration of the criteria in Section 15051 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21165, Public Resources Code; California Code of Regulations, Title 14, Sections 16000-16041.

ARTICLE 5. PRELIMINARY REVIEW OF PROJECTS AND CONDUCT OF INITIAL STUDY

§ 15061. Review for Exemption.

[(a): no changes]

(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 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.

[(c) – (d): no changes]

(e) When a non-elected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, that decision may be appealed to the local lead agency's elected decisionmaking body, if one exists. A local lead agency may establish procedures governing such appeals.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b), 21151, and 21152(b), and 21159.21, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68.

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§ 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) - (4): no changes]

[(b) – (d): no changes]

(e) When a local agency determines that a project is not subject to CEQA under subdivision 15192, 15193, or 15194, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file a notice of the determination with OPR.

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

ARTICLE 6. NEGATIVE DECLARATION PROCESS

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

[(a) – (e): no changes]

(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.

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

[(1) – (6): no changes]

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.

§ 15073. Public Review of a Proposed Negative Declaration or Mitigated Negative Declaration.

[(a): *no changes*]

(b) When a proposed negative declaration or mitigated negative declaration and initial study have been submitted to the State Clearinghouse for review by state agencies, 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. ~~the public review period shall be at least as long as the review period established by the State Clearinghouse.~~ Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies.

[(c) – (e): *no changes*]

Note: Authority cited: Section 21083, Public Resources Code. References: Sections 21000(e), 21003(b), 21080(c), 21081.6, 21091, and 21092.5, Public Resources Code; *Plaggmier v. City of San Jose* (1980) 101 Cal.App.3d 842.

§ 15074. Consideration and Adoption of a Negative Declaration or Mitigated Negative Declaration.

[(a) – (e): *no changes*]

(f) When a non-elected official or decisionmaking body of a local lead agency adopts a negative declaration or mitigated negative declaration, that adoption may be appealed to the agency's elected decisionmaking body, if one exists. For example, adoption of a negative declaration for a project by a city's planning commission may be appealed to the city council. A local lead agency may establish procedures governing such appeals.

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

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ARTICLE 7. EIR PROCESS

§ 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 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. 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) – (4): no changes]

[(b): no changes]

(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) – (D): no changes]

(23) 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) – (e) no changes]

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.9, 21080.4, and 21098 of the Public Resources Code.

~~§ 15083.5. City or County Consultation with Water Agencies.~~

~~This guideline addresses consultation between a city or county and affected water agencies at the notice of preparation stage of environmental review.~~

~~(a) This guideline shall apply only to projects which meet all of the following criteria:~~

~~(1) The project consists of any of the following activities for which an application has been submitted to a city or county:~~

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

~~(B) A shopping center or business establishment that will employ more than 1,000 persons or have more than 500,000 square feet of floor space.~~

~~(C) A commercial office building that will employ more than 1,000 persons or have more than 250,000 square feet of floor space.~~

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

~~(E) An industrial, manufacturing, or processing plant, or industrial park intended 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) Any mixed-use project that would demand an amount of water equal to, or greater than, the amount of water needed to serve a 500-dwelling-unit project.~~

~~(2) As part of approval of the project, any of the following are required:~~

~~(A) An amendment to, or revision of, the land use element of a general plan or a specific plan, which would result in a net increase in the stated population density or building intensity to provide for additional development.~~

~~(B) The adoption of a specific plan, unless the city or county has previously complied with this section for the project.~~

~~Notwithstanding the foregoing provisions of this subdivision (a)(2), when a project is identified in connection with the revision of any part of a general plan, that project is subject to the requirements of this section only if the project results in a net increase in the stated population density or building intensity, and if the city or county has not previously complied with the requirements of this section for the project in question.~~

~~(3) A city or county has determined that an environmental impact report is required in connection with the project.~~

~~(b) For projects subject to this guideline, a city or county shall identify any water system that is, or may become, a public water system, as defined in Section 10912 of the Water Code, that may supply water for the project. When a city or county releases a notice of preparation for review, it shall send a copy of the notice to each public water system which serves or would serve the proposed project and request that the system both indicate whether the projected water demand associated with the proposed project was included in its last urban water management plan and assess whether its total projected water supplies available during normal, single dry, and multiple dry water years as included in the 20 year projection contained in its urban water management plan will meet the projected water demand associated with the proposed project, in addition to the system's existing and planned future uses.~~

~~(c) The governing body of a public water system shall approve and submit its water supply assessment to the city or county not later than 30 days after the date on which the request and notice of preparation were received. If the public water system fails to submit its assessment within the allotted time, the lead agency may assume, unless there has been a request for a specific extension of time from the public water system, that the public water system has no information to submit. If a public water system concludes there would be insufficient water to serve the proposed project, it shall provide the city or county with its plans for acquiring additional water supplies.~~

~~(d) The lead agency shall include within the EIR the public water system's assessment and any other information provided by the water agency, up to a maximum of ten typewritten pages. The assessment and information may only exceed that length with the approval of the lead agency. The lead agency may independently evaluate the water system's information and shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the proposed project, in addition to existing and planned future uses. If the lead agency determines that water supplies will not be sufficient, the lead agency must include that determination in its findings for the project pursuant to Sections 15091 and 15093.~~

~~(e) For purposes of this section, "public water system" means a system as defined in Section 10912 of the Water Code with 3,000 or more service connections.~~

~~(f) This section does not apply to the County of San Diego and the cities in the county as provided in Section 10915 of the Water Code.~~

~~**Note:** Authority cited: Section 21083, Public Resources Code; References: Section 21151.9, 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 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~~is 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) – (3): no changes]

[(b) – (d): no changes]

(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. ~~the public review period shall be at least as long as the review period established by the Clearinghouse.~~

[(f) – (i): no changes]

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.

ARTICLE 8. TIME LIMITS

§ 15105. Public Review Period for a Draft EIR or a Proposed Negative Declaration or Mitigated Negative Declaration.

[(a) – (b): *no changes*]

(c) If a draft EIR or proposed negative declaration or mitigated negative declaration has been submitted to the State Clearinghouse for review by state agencies, 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. ~~the public review period shall be at least as long as the review period established by the State Clearinghouse.~~

[(d): *no changes*]

(e) The State Clearinghouse shall distribute a draft EIR or proposed negative declaration or mitigated negative declaration within three working days after the date of receipt if the submittal is determined by the State Clearinghouse to be complete.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21091 and 21092, Public Resources Code; *People v. County of Kern* (1974) 39 Cal.App.3d 830.

ARTICLE 10. CONSIDERATIONS IN PREPARING EIRS AND NEGATIVE DECLARATIONS

§ 15155. 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) A 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 subdivision (a)(1) 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.

(I) The adoption or amendment of a general plan is not, by itself, a water demand project.

(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 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) At the time a city or county lead agency determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration 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 prepare a water assessment. The governing body of the public water system must approve the water assessment prepared pursuant to this section at a regular or special meeting.

(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 its own 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) If the governing body of a public water system is preparing the water assessment, it must submit the requested water assessment to the city or county lead agency within 90 days after the date on which the governing body of the public water system received such request. Before the expiration of the 90-day period, a representative of the governing body of the public water system may meet with the city or county lead agency and request a 30-day extension of time to prepare and adopt the water assessment. The city or county lead agency must grant any reasonable request. 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 Sections 10910-10914 of the Water Code to submit 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 applicable agencies 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 provided pursuant to subdivision (a) of Section 10911 of the Water Code in the EIR, negative declaration, or mitigated negative declaration 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 the 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 pursuant to Sections 15091 and 15093.

Note: Authority Cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code, Sections 10910- 10914 of the Water Code.

ARTICLE 11.5. MASTER ENVIRONMENTAL IMPACT RPORT

§ 15179. Limitations on the Use of the Master EIR.

(a) The certified Master EIR shall not be used for a subsequent project described in the Master EIR in accordance with this article if either:

(i1) The Master EIR ~~it~~ was certified more than five years prior to the filing of an application for a ~~later~~ subsequent project except as set forth in subsection (b) below, or

(i2) ~~After the certification of the Master EIR,~~ a project not identified in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR for any subsequent project that was described in the Master EIR. ~~unless the lead agency does one of the following:~~

(b) A Master EIR that was certified more than five years prior to the filing of an application for a subsequent project described in the Master EIR may be used in accordance with this article to review such a subsequent project if the lead agency reviews the adequacy of the Master EIR and takes either of the following steps:

(a1) ~~Reviews the Master EIR and f~~ Finds that no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, or that there is no new available information which was not known and could not have been known at the time the Master EIR was certified; or

(b2) Prepares an initial study, and pursuant to the findings of the initial study either:

(A) certifies a subsequent or supplemental EIR that updates or revises the Master EIR and which either (i1) is incorporated into the previously certified Master EIR, or (i2) references any deletions,

additions or other modifications to the previously certified Master EIR; or

(B) approves a mitigated negative declaration that addresses substantial changes that have occurred with respect to the circumstances under which the Master EIR was certified or the new information that was not known and could not have been known at the time the Master EIR was certified.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21157.6, Public Resources Code.

Discussion: ~~A master EIR must be periodically reviewed, in light of changing circumstances, to determine that it is still an adequate analysis of the significant environmental effects of the project for which it was prepared. Updating the master EIR, including preparing subsequent or supplemental EIRs, maintains its effectiveness as the basis for streamlined review of projects that are within its scope.~~

ARTICLE 12. SPECIAL SITUATIONS

§ 15180. **Redevelopment Projects.**

(a) An EIR for a redevelopment plan may be a Master EIR, a program EIR, or a project EIR. An EIR for a redevelopment plan must specify whether it is a Master EIR, a program EIR, or a project EIR.

(b) If the EIR for a redevelopment plan is a project EIR, All public and private activities or undertakings pursuant to or in furtherance of a the redevelopment plan shall constitute a single project, which shall be deemed approved at the time of adoption of the redevelopment plan by the legislative body. The EIR in connection with the redevelopment plan shall be submitted in accordance with Section 33352 of the Health and Safety Code.

~~(b) If a project EIR has been certified for the An EIR on a redevelopment plan, shall be treated as a program EIR with no subsequent EIRs are required for individual components of the redevelopment plan unless a subsequent EIR or a supplement to an EIR would be required by Section 15162 or 15163.~~

(c) If the EIR for a redevelopment plan is a Master EIR, subsequent projects which the lead agency determines as being within the scope of the Master EIR will be subject to the review required by Section 15177. If the EIR for a redevelopment plan is a program EIR, subsequent activities in the program will be subject to the review required by Section 15168.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21090 and 21166, Public Resources Code.

Discussion: ~~This section identifies the special requirements that apply to redevelopment projects. Subsection (a) identifies the statutory requirements that apply in this situation.~~

~~Subsection (b) is an effort to relate the provisions applying to redevelopment projects to other provisions in CEQA. The language in CEQA Section 21090 providing that a redevelopment plan and undertakings in furtherance thereof are a single project, is consistent with the theory of a program EIR. Case law interpreting program EIRs has provided that the various undertakings in furtherance of a program for which a program EIR was prepared must be analyzed in the light of that program EIR. If the later activities in the program involve no new significant effects beyond those analyzed in the program EIR and are adequately handled by mitigation measures identified in the program EIR, there is no need for further documentation in the EIR process. If, however, a particular activity would involve a new significant effect, then there must be additional CEQA compliance for that effect.~~

~~This approach is also consistent with Sections 21166 and 21090 which speaks in terms of a single project. They provide that where an EIR has been prepared for a project under CEQA, no subsequent or supplemental EIR shall be required by the Lead Agency or any other Responsible Agency unless one of the three described events occurs.~~

§ 15186. School Facilities.

[(a): no changes]

~~(b) Before certifying an EIR or adopting a negative declaration for When a project located within one-fourth mile of a school that involves the construction or alteration of a facility which that might reasonably be anticipated to emit hazardous air emissions or acutely hazardous air emissions, or which that would handle acutely an extremely hazardous material substance or a mixture containing acutely extremely hazardous material substances in a quantity equal to or greater than that specified in subdivision (a) of Section 25536 of the Health and Safety Code, which the state threshold quantity specified in subdivision (j) of Section 25532 of the Health and Safety Code, that may impose a health or safety hazard to persons who would attend or would be employed at the school, the lead agency must do both of~~

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the following:

(1) Consult with the affected school district or districts regarding the potential impact of the project on the school; ~~and when circulating the proposed negative declaration or draft EIR for review.~~

(2) Notify the affected school district or districts of the project, in writing, not less than 30 days prior to approval or certification of the negative declaration or EIR. ~~This subdivision does not apply to projects for which an application was submitted prior to January 1, 1992.~~

(c) When the project involves the purchase of a school site or the construction of a secondary or elementary school by a school district, the negative declaration or EIR prepared for the project shall not be ~~approved~~ adopted or certified ~~by the school board~~ unless:

(1) The negative declaration, mitigated negative declaration, or EIR contains sufficient information to determine whether the property is:

[(A) – (C): no changes]

(D) Within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

[(2): no changes]

(3) The school ~~board~~ district makes, on the basis of substantial evidence, one of the following written findings:

[(A): no changes]

(B) The facilities specified in paragraph (2) exist, but one of the following conditions applies:

[1. – 2.: no changes]

3. For a school site with boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the school district determines, through a health risk assessment pursuant to subdivision (b)(2) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in subsection (c)(2) exist, but conditions in subdivisions (c)(3)(B)(1), (2) or (3) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the school district makes this finding, the school board shall prepare an EIR and adopt a statement of overriding considerations.

This finding shall be in addition to any findings which may be required pursuant to Sections 15074, 15091 or 15093.

[(d): no changes]

(e) The following definitions shall apply for the purposes of this section:

[(1) – (2): no changes]

(3) "Extremely hazardous substance," is as defined in subdivision (g)(2)(B) of Section 25532 of the Health and Safety Code and listed in Section 2770.5, Table 3, of Title 19 of the California Code of Regulations.

(4) "Facilities" means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the California Air Resources Board.

(5) "Freeway or other busy traffic corridors" means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

(6) "Handle" means to use, generate, process, produce, package, treat, store, emit, discharge, or dispose of a hazardous material in any fashion.

(37) "Hazardous air emissions," is as defined in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(48) "Hazardous substance," is as defined in Section 25316 of the Health and Safety Code.

(59) "Hazardous waste," is as defined in Section 25117 of the Health and Safety Code.

(610) "Hazardous waste disposal site," is as defined in Section 25114 of the Health and Safety Code.

Note: Authority cited: Section 21083, Public Resources Code. References: Sections 21151.4 and 21151.8, Public Resources Code.

Discussion: ~~CEQA contains requirements applicable to school projects and projects proposed near schools which are intended to limit the exposure of school children and others to toxic or hazardous substances. This section brings the requirements of Public Resources Code sections 21151.4 and 21151.8 together in a single place for ease of reference.~~

§ 15190.5. Department Of Defense Notification Requirement.

(a) For purposes of this section, the following definitions are applicable.

(1) "Low-level flight path" means any flight path for any aircraft owned, maintained, or that is under the jurisdiction of the United States Department of Defense that flies lower than 1,500 feet above ground level, as indicated in the United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)" published by the United States National Imagery and Mapping Agency, or its successor, as of the date the military service gives written notification to a lead agency pursuant to subdivision (b).

(2) "Military impact zone" means any area, including airspace, that meets both of the following criteria:

(A) Is within two miles of a military installation, including, but not limited to, any base, military airport, camp, post, station, yard, center, homeport facility for a ship, or any other military activity center that is under the jurisdiction of the United States Department of Defense; and

(B) Covers greater than 500 acres of unincorporated land, or greater than 100 acres of city incorporated land.

(3) "Military service" means the United States Department of Defense or any branch of the United States Armed Forces.

(4) "Special use airspace" means the land area underlying the airspace that is designated for training, research, development, or evaluation for a military service, as that land area is established by the United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)" published by the United

States National Imagery and Mapping Agency, or its successor, as of the date the military service gives written notification to a lead agency pursuant to subdivision (b).

(b) A military service may give written notification to a lead agency of the specific boundaries of a low-level flight path, military impact zone, or special use airspace, and provide the lead agency, in writing, the military contact office and address for the military service. If the notice references the specific boundaries of a low-level flight path, such notification must include a copy of the applicable United States Department of Defense Flight Information Publication, "Area Planning Military Training Routes: North and South America (AP/1B)." If the notice references the specific boundaries of a special use airspace, such notification must include a copy of the applicable United States Department of Defense Flight Information Publication, "Area Planning: Special Use Airspace: North and South America (AP/1A)."

(c) If a military service provides the written notification specified in subdivision (b) of this section, a lead agency must 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 Section 15072, in the list of organizations and individuals receiving a notice of preparation of an EIR pursuant to Section 15082, and in the list of organizations and individuals receiving a notice of availability of a draft EIR pursuant to Section 15087 for any project that meets all of the criteria specified below:

(1) The project to be carried out or approved by the lead agency is within the boundaries specified in subdivision (b).

(2) The project is one of the following:

(A) a project that includes a general plan amendment; or

(B) a project that is of statewide, regional, or areawide significance; or

(C) a project that relates to a public use airport and the area surrounding such airport which is required to be referred to the airport land use commission, or appropriately designated body, pursuant to Sections 21670-21679.5 of the Public Utilities Code.

(3) The project is not one of the actions described below. A lead agency does not need to send to the specified military contact office a notice of intent to adopt a negative declaration or a mitigated negative declaration, a notice of preparation of an EIR, or a notice of availability of a draft EIR for such actions.

(A) a response action taken pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(B) a response action taken pursuant to Chapter 6.85 (commencing with Section 25396) of Division 20 of the Health and Safety Code.

(C) a project undertaken at a site in response to a corrective action order issued pursuant to Section 25187 of the Health and Safety Code.

The lead agency shall send the specified military contact office a notice of intent or a notice of availability sufficiently prior to adoption or certification of the environmental documents by the lead agency to allow the military service the review period provided under Section 15105.

(d) The effect or potential effect that a project may have on military activities does not itself constitute an adverse effect on the environment for the purposes of CEQA.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21098, Public Resources Code.

Article 12.5. Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects

§ 15191. Definitions.

For purposes of this Article 12.5 only, the following words shall have the following meanings:

(a) "Agricultural employee" means a person engaged in agriculture, including: farming in all its branches, and, among other things, includes: (1) the cultivation and tillage of the soil, (2) dairying, (3) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), (4) the raising of livestock, bees, furbearing animals, or poultry, and (5) any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market. This definition is subject to the following limitations:

This definition shall not be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code), and

Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code).

This definition shall not apply, or be construed to apply, to any employee who performs work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management Relations Act, 29 U.S.C. Sec. 158(e)) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above. As used in this definition, "land leveling" shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage or preparation of land for cultivation.

(b) "Census-defined place" means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

(c) "Community-level environmental review" means either of the following:

(1) An EIR certified on any of the following:

(A) A general plan.

(B) A revision or update to the general plan that includes at least the land use and circulation elements.

(C) An applicable community plan.

(D) An applicable specific plan.

(E) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.

(2) A negative declaration or mitigated negative declaration adopted as a subsequent environmental review document, following and based upon an EIR on a general plan, an applicable community plan, or an applicable specific plan, provided that the subsequent environmental review document is allowed by CEQA following a master EIR or a program EIR, or is required pursuant to Section 21166.

(d) "Developed open space" means land that meets all of the following criteria:

(1) land that is publicly owned, or financed in whole or in part by public funds,

(2) is generally open to, and available for use by, the public, and

(3) is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ball fields, enclosed child play areas, and picnic facilities.

Developed open space may include land that has been designated for acquisition by a public agency for developed open space but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(e) "Infill site" means a site in an urbanized area that meets one of the following criteria:

(1)The site has been previously developed for qualified urban uses; or

(2) The site has not been developed for qualified urban uses but all immediately adjacent parcels are developed with existing qualified urban uses; or

(3) The site has not been developed for qualified urban uses, no parcel within the site has been created within the past 10 years, and the site is situated so that:

(A) at least 75 percent of the perimeter of the site is adjacent to parcels that are developed with existing qualified urban uses at the time the lead agency receives an application for an approval; and

(B) the remaining 25 percent of the perimeter of the site adjoins parcels that had been previously developed for qualified urban uses.

(f) "Low- and moderate-income households" means "persons and families of low or moderate income" as defined in Section 50093 of the Health and Safety Code to mean persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the Department of Housing and Community Development, in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

(g) "Low-income households" means households of persons and families of very low and low income, which are defined in Sections 50093 and 50105 of the Health and Safety Code as follows:

(1) "Persons and families of low income" or "persons of low income" is defined in Section 50093 of the Health & Safety Code to mean persons or families who are eligible for financial assistance specifically provided by a

governmental agency for the benefit of occupants of housing financed pursuant to this division.

(2) "Very low income households" is defined in Section 50105 of the Health & Safety Code to mean persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. "Very low income households" includes extremely low income households, as defined in Section 50106 of the Health & Safety Code.

(h) "Lower income households" is defined in Section 50079.5 of the Health and Safety Code to mean any of the following:

(1) "Lower income households," which means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(2) "Very low income households," which means persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(3) "Extremely low income households," which means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as established and amended from time to time by the Secretary of Housing and Urban Development and defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations.

(i) "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 a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(j) "Project-specific effect" means all the direct or indirect environmental effects of a project other than cumulative effects and growth-inducing effects.

(k) "Qualified urban use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(l) "Residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

(m) "Urbanized area" means either of the following:

(1) An incorporated city that either by itself or in combination with two contiguous incorporated cities has a population of at least 100,000 persons; or

(2) An unincorporated area that meets the requirements set forth in subdivision (m)(2)(A) and subdivision (m)(2)(B) below.

(A) The unincorporated area must meet one of the following location or density requirements:

1. The unincorporated area must be: (i) completely surrounded by one or more incorporated cities, (ii) have a population of at least 100,000 persons either by itself or in combination with the surrounding incorporated city or cities, and (iii) have a population density that at least equals the population density of the surrounding city or cities; or

2. The unincorporated area must be located within an urban growth boundary and have an existing residential population of at least 5,000 persons per square mile. For purposes of this subparagraph, an "urban growth boundary" means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.

(B) The board of supervisors with jurisdiction over the unincorporated area must have taken the following steps:

1. The board has prepared a draft document by which the board would find that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that: (i) encourage compact development in a manner that promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing, and (ii) protects the environment, open space, and agricultural areas.

2. The board has submitted the draft document to OPR and allowed OPR thirty days to submit comments on the draft findings to the board.

3. No earlier than thirty days after submitting the draft document to OPR, the board has adopted a final finding in substantial conformity with the draft finding described in the draft document referenced in subdivision (m)(2)(B)(1) above.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21159.20, 21159.21, 21159.22, 21159.23, 21159.24, Public Resources Code.

§ 15192. Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

In order to qualify for an exemption set forth in sections 15193, 15194 or 15195, a housing project must meet all of the threshold criteria set forth below.

(a) The project must be consistent with:

(1) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete; and

(2) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete, unless the zoning of project property is inconsistent with the general plan because the project property has not been rezoned to conform to the general plan.

(b) Community-level environmental review has been adopted or certified.

(c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(d) The site of the project:

(1) Does not contain wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations.

(2) Does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(3) Does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(4) Does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps have been taken in response to the results of this assessment:

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code.

(h) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(i) The project does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public

Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

(l) Either the project does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(m) The project site is not located on developed open space.

(n) The project site is not located within the boundaries of a state conservancy.

(o) The project has not been divided into smaller projects to qualify for one or more of the exemptions set forth in sections 15193 to 15195.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.21, 21159.27, Public Resources Code.

§ 15193. Agricultural Housing Exemption.

CEQA does not apply to any development project that meets the following criteria.

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project site meets the following size criteria:

(1) The project site is located in an area with a population density of at least 1,000 persons per square mile and is two acres or less in area; or

(2) The project site is located in an area with a population density of less than 1,000 persons per square mile and is five acres or less in area.

(c) The project meets the following requirements regarding location and number of units.

(1) If the proposed development project is located on a project site within city limits or in a census-defined place, it must meet the following requirements:

(A) The proposed project location must be within one of the following:

1. Incorporated city limits; or

2. A census defined place with a minimum population density of at least 5,000 persons per square mile; or

3. A census-defined place with a minimum population density of at least 1,000 persons per square mile, unless a public agency that is carrying out or approving the project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impacts of successive projects of the same type in the same area, over time, would be significant.

(B) The proposed development project must be located on a project site that is adjacent, on at least two sides, to land that has been developed.

(C) The proposed development project must meet either of the following requirements:

1. Consist of not more than 45 units, or

2. Consist of housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(2) If the proposed development project is located on a project site zoned for general agricultural use, it must meet either of the following requirements:

(A) Consist of not more than 20 units, or

(B) Consist of housing for a total of 20 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(d) The project meets the following requirements regarding provision of housing for agricultural employees:

(1) The project must consist of the construction, conversion, or use of residential housing for agricultural employees.

(2) If the project lacks public financial assistance, then:

(A) The project must be affordable to lower income households; and

(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years.

(3) If public financial assistance exists for the project, then:

(A) The project must be housing for very low, low-, or moderate-income households; and

(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least 15 years.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.22, Public Resources Code.

§ 15194. Affordable Housing Exemption.

CEQA does not apply to any development project that meets the following criteria:

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project meets the following size criteria: the project site is not more than five acres in area.

(c) The project meets both of the following requirements regarding location:

(1) The project meets one of the following location requirements relating to population density:

(A) The project site is located within an urbanized area or within a census-defined place with a population density of at least 5,000 persons per square mile.

(B) If the project consists of 50 or fewer units, the project site is located within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(C) The project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile and there is no reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

(2) The project meets one of the following site-specific location requirements:

(A) The project site has been previously developed for qualified urban uses; or

(B) The parcels immediately adjacent to the project site are developed with qualified urban uses.

(C) The project site has not been developed for urban uses and all of the following conditions are met:

1. No parcel within the site has been created within 10 years prior to the proposed development of the site.

2. At least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses.

3. The existing remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses.

(d) The project meets both of the following requirements regarding provision of affordable housing.

(1) The project consists of the construction, conversion, or use of residential housing consisting of 100 or fewer units that are affordable to low-income households.

(2) The developer of the project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 30 years, at monthly housing costs deemed to be “affordable rent” for lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.23, Public Resources Code.

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§ 15195. Residential Infill Exemption.

(a) Except as set forth in subdivision (b), CEQA does not apply to any development project that meets the following criteria:

(1) The project meets the threshold criteria set forth in section 15192; provided that with respect to the requirement in section 15192(b) regarding community-level environmental review, such review must be certified or adopted within five years of the date that the lead agency deems the application for the project to be complete pursuant to Section 65943 of the Government Code.

(2) The project meets both of the following size criteria:

(A) The site of the project is not more than four acres in total area.

(B) The project does not include any single level building that exceeds 100,000 square feet.

(3) The project meets both of the following requirements regarding location:

(A) The project is a residential project on an infill site.

(B) The project is within one-half mile of a major transit stop.

(4) The project meets both of the following requirements regarding number of units:

(A) The project does not contain more than 100 residential units.

(B) The project promotes higher density infill housing. The lead agency may establish its own criteria for determining whether the project promotes higher density infill housing except in either of the following two circumstances:

1. A project with a density of at least 20 units per acre is conclusively presumed to promote higher density infill housing.

2. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density infill housing unless the preponderance of the evidence demonstrates otherwise.

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(5) The project meets the following requirements regarding availability of affordable housing: The project would result in housing units being made available to moderate, low or very low income families as set forth in either A or B below:

(A) The project meets one of the following criteria, and the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units as set forth below at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

1. At least 10 percent of the housing is sold to families of moderate income, or

2. Not less than 10 percent of the housing is rented to families of low income, or

3. Not less than 5 percent of the housing is rented to families of very low income.

(B) If the project does not result in housing units being available as set forth in subdivision (A) above, then the project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(b) A project that otherwise meets the criteria set forth in subdivision (a) is not exempt from CEQA if any of the following occur:

(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.

(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted:

(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project that was not known, and could not have been known at the time that community-level environmental review was certified or adopted.

If a project is not exempt from CEQA due to subdivision (b), the analysis of the environmental effects of the project covered in the EIR or the negative declaration

shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to subdivisions (b)(2) and (3).

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.24, Public Resources Code.

§ 15196. Notice of Exemption for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

(a) When a local agency determines that a project is not subject to CEQA under Section 15193, 15194, or 15195, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file the notice required by Section 21152.1 of the Public Resources Code, pursuant to Section 15062.

(b) Failure to file the notice required by this section does not affect the validity of a project.

(c) Nothing in this section affects the time limitations contained in Section 21167.

Note: Authority cited: Section 21083, Public Resources Code. Reference: 21152.1, Public Resources Code.

CALIFORNIA RESOURCES AGENCY

Notice of Modifications to the Originally-Proposed Changes to the Guidelines Implementing the California Environmental Quality Act

April 23, 2007

Pursuant to Government Code, section 11346.8, subd. (c), the California Resources Agency ("the Resources Agency") hereby provides notice of modifications to the originally-proposed changes to the regulations implementing the California Environmental Quality Act (Pub. Resources Code, § 21000, *et seq.*, "CEQA"). These regulations, which are found in Title 14, Section 15000, *et seq.*, of the California Code of Regulations and are commonly referred to as the CEQA Guidelines ("Guidelines"), are being modified in order to reflect recent statutory changes. On June 16, 2006 the originally-proposed changes to the Guidelines were published in the California Regulatory Notice Register. By June 16, 2006, the Notice of Proposed Action was mailed to all persons on the service list or emailed to those persons on the service list who specifically requested email notification for this proceeding. The originally-proposed changes to the Guidelines would add Guidelines sections 15155, 15190.5 and Article 12.5, which includes sections 15191, 15192, 15193, 15194, 15195, 15196. In addition, the originally-proposed changes to the Guidelines would amend Guidelines sections 15053, 15061, 15062, 15072, 15073, 15074, 15082, 15087, 15105, 15179, 15180, 15186, and repeal Guidelines section 15083.5.

The Resources Agency has decided to modify some portions of its originally-proposed changes to the Guidelines in response to public comment received. The affected sections are CEQA Guidelines sections 15061, 15062, 15155, 15179, and 15192. The modifications to the originally-proposed changes to the Guidelines ("15-Day Language") and the reasons for the modifications are identified in Attachment A to this notice. Although the Resources Agency believes that these modifications are nonsubstantial and that notice is therefore not required pursuant to Government Code, section 11346.8, subdivision (c), it has decided to provide this notice and attachment identifying the modifications to all parties on the mailing list for this proceeding and to post the notice and attachment on the Resources Agency's website at <http://ceres.ca.gov/ceqa/>. The Resources Agency also notes that the all of the modifications are closely related to the original proposal, and that the original notice informed the public that these types of changes could result from the originally-proposed changes to the Guidelines. The modifications identified in Attachment A to this Notice show the originally-proposed changes to the Guidelines marked in underline/strikeout format, and the additions and deletions pursuant to this notice in double underline/double strikeout format.

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Interested persons may provide written comments about the modifications by submitting written statements to the Resources Agency on or before **5:00 PM (PST), May 8, 2007** or by mailing them to:

Bruce Yonehiro, Acting Deputy Secretary and General Counsel
THE RESOURCES AGENCY
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
Fax: (916) 653-8123

Electronic Mail: ceqarulemaking@resources.ca.gov

A copy of any written comments should also be submitted by mail, hand delivery, or fax to:

cc: Caryn Holmes, Staff Counsel
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
Sacramento, CA 95814
Fax: (916) 654-3843

Dated: April 23, 2007

**ATTACHMENT A
TO
NOTICE OF MODIFICATIONS**

April 23, 2007

This attachment shows the modifications ("15-day language") to the originally-proposed changes to the CEQA Guidelines ("Guidelines") published in the Regulatory Notice Register on June 16, 2006. The unmarked text shows existing regulatory language; text marked in underline and strikeout shows originally-proposed changes to the Guidelines pursuant to the June 16, 2006 notice; and text marked in double underline and double strikeout shows modifications pursuant to this notice. The sections to which modifications are being made are: 15061, 15062, 15155, 15179, and 15192.

§ 15061. Review for Exemption.

Summary of Originally-Proposed Changes to the Guidelines:

In the originally-proposed changes to the Guidelines, the Resources Agency identified a new subdivision (e) as follows:

(e)When a non-elected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, that decision may be appealed to the local lead agency's elected decisionmaking body, if one exists. A local lead agency may establish procedures governing such appeals.

Rationale for Modification:

Several commenters stated that is not clear whether the phrase "that decision" in the originally-proposed changes to the Guidelines refers to the decision that the project is exempt from CEQA or the decision to approve the project. The Resources Agency agrees that the Guidelines should distinguish between a decision about whether the project is subject to CEQA and a decision to approve the project, and has modified the originally-proposed changes to the Guidelines to provide that clarity.

15-Day Language:

§ 15061. Review for Exemption.

[(a): no changes]

(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 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.

[(c) – (d): no changes]

(e) When a non-elected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, ~~that the decision that the project is exempt may be appealed to the local lead agency's elected decisionmaking body, if one exists.~~ A local lead agency may establish procedures governing such appeals.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b), 21151, ~~and 21152(b), and 21159.21,~~ Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68.

§ 15062. Notice of Exemption.

Summary of Originally-Proposed Changes to the Guidelines:

In the originally-proposed changes to the Guidelines, the Resources Agency identified a new subdivision (e) as follows:

(e) When a local agency determines that a project is not subject to CEQA under subdivision 15192, 15193, or 15194, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file a notice of the determination with OPR.

Rationale for Modification:

Several commenters found use of the term “notice of determination” confusing. They note that this provision is included within the Guidelines section addressing notices of exemption and that the notice that is posted pursuant to this section will be a notice that an exemption is being claimed, not a determination. In addition, lead agencies also file notices that are specifically called Notices of Determination when they decide to

approve or carry out a project after preparation of an Initial Study/Negative Declaration or an environmental impact report ("EIR").

The Resources Agency is sympathetic to the commenters' concern about confusion in the titles of various notices that are prepared during the CEQA process. Projects may be exempt from CEQA for a variety of reasons, all of which are identified in section 15061 of the Guidelines. For projects identified in subdivisions (b)(1) – (4) of that section, preparing a Notice of Exemption as described in this section is optional. However, for that subset of projects identified in subdivision (b)(5) of Section 15061 -- projects that are eligible for an exemption pursuant to Article 12.5 of the Guidelines -- a separate requirement for notice is imposed. (See Pub. Resources Code, § 21152.1.) The notice required by this statutory section is not the same as the optional Notice of Exemption described in subdivisions (a) – (c) of this Section.

Therefore, although the statute itself refers to this notice as "notice of the determination" (Pub. Resources Code, § 21151, subd. (a)), using a different phrase to describe the notice is appropriate for the Guidelines, and the Resources Agency has modified the originally-proposed changes to the Guidelines to remedy the potential confusion. In addition, the originally-proposed changes to the Guidelines contain a typographical error. Specifically, it incorrectly references "subdivisions 15192, 15193, and 15194." The correct references are "sections 15193, 15194, and 15195."

15-Day Language:

§ 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) - (4): no changes]

[(b) – (d): no changes]

(e) When a local agency determines that a project is not subject to CEQA under subdivision sections ~~15192, 15193, or 15194~~ 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 of the determination with OPR identifying the section under which the exemption is claimed.

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

§ 15155. City or County Consultation with Water Agencies.

The Resources Agency has modified several subdivisions of the originally-proposed changes to the Guidelines adding proposed section 15155. The summary of the originally-proposed changes to the Guidelines, rationale for modification, and 15-day language for each subdivision is set forth separately as follows. The full text of the entire section with the modifications indicated in double underline/double strikeout format is presented at the end of this discussion addressing section 15155.

1. CEQA Guidelines, § 15155, subd. (a)(1)(E)

Summary of Originally-Proposed Changes to the Guidelines:

The originally-proposed changes to the Guidelines, adding proposed section 15155, subd. (a)(1), identify those projects that are deemed "water-demand projects" for purposes of this regulation. Subdivision (E) specifically includes in this definition:

(E) A 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 or floor area.

Rationale for Modification:

The originally-proposed changes to the Guidelines contain a typographical error.

15-Day Language:

(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 or floor area.

2. CEQA Guidelines, § 15155, subd. (a)(1)(F)

Summary of Originally-Proposed Changes to the Guidelines:

The originally-proposed changes to the Guidelines, adding proposed section 15155, subd. (a)(1), identify those projects that are deemed "water-demand projects" for purposes of this regulation. Subdivision (F) specifically includes in this definition:

(F) A mixed-use project that includes one or more of the projects specified in subdivision (a)(1) of this section.

Rationale for Modification:

The originally-proposed changes to the Guidelines inadvertently included subdivision (a)(1)(F). (See Wat. Code, § 10912, subd. (a)(6).) The appropriate citation is to subdivisions (a)(1)(A) – (E) and (G).

15-Day Language:

(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.

3. CEQA Guidelines, § 15155, subd. (a)(1)(I)

Summary of Originally-Proposed Changes to the Guidelines:

The originally-proposed changes to the Guidelines adding proposed section 15155, subdivision (a)(1) addresses the definition of a "water-demand project." As originally-proposed, subdivision (a)(1)(I) of this section states:

(I) The adoption or amendment of a general plan is not, by itself, a water demand project.

Rationale for Modification:

Two commenters stated that the originally-proposed changes to the Guidelines adding section 15155, subd. (a)(1)(I) does not have a statutory basis. While the Resources Agency believes the language can be supported, the question of when the adoption or amendment of a general plan occurs "by itself" could raise considerable confusion. Accordingly, the Resources Agency plans to delete the originally-proposed language to the Guidelines, deleting proposed subdivision (a)(1)(I), so as to mirror the statute.

15-Day Language:

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

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

(A)...

~~(I) The adoption or amendment of a general plan is not, by itself, a water demand project.~~

4. CEQA Guidelines, section 15155, subd. (a)(4)

Summary of Originally-Proposed Changes to the Guidelines:

The originally-proposed changes to the Guidelines, adding proposed section 15155, subd. (a)(4), state:

(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 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.

Rationale for Modification:

A commenter noted that the originally-proposed changes to the Guidelines adding proposed section 15155, subd. (d) omit an important criterion that the previously completed water assessment must comply with the provisions of sections 10910-10914 of the Water Code. The originally-proposed changes to the Guidelines adding proposed section 15155, subd. (d), state:

(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:

The Resources Agency believes that this criterion is expressly stated in the definition of water assessment at subdivision (a)(4) of proposed section 15155 of the originally-proposed changes to the Guidelines. For the avoidance of doubt, the Resources Agency has modified the originally proposed changes to the Guidelines adding proposed subdivision (a)(4) of this section to ensure that the definition of "water assessment" only includes those assessments that are prepared in conformity with the applicable legal requirements.

15-Day Language:

(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. CEQA Guidelines, § 15155, subd. (b)

Summary of Originally-Proposed Changes to the Guidelines:

The originally-proposed changes to the Guidelines adding proposed section 15155, subd. (b), state:

(b) At the time a city or county lead agency determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration is required for the water-demand project, the city or county lead agency shall take the following steps:

Rationale for Modification:

Subdivision (b) of Water Code § 10910 says that the Water Code provisions apply when a lead agency determines whether an EIR, negative declaration or mitigated negative declaration is required; supplements to EIRs or negative declarations are not mentioned. Accordingly, when the originally-proposed changes to the Guidelines for this section were drafted, no reference to supplements was made. However, Water Code, section 10910 and Public Resources Code, section 21151.9 state that a city or county lead agency review of a water-demand project, as defined in the Water Code, is subject to the provisions of Water Code section 10910, *et seq.* In other words, these specific water assessment requirements apply to *any* environmental documentation the lead agency is preparing, including *supplements* to an EIR, negative declaration, or mitigated negative declaration.

CEQA requires supplements in certain circumstances. (See CEQA Guidelines, § 15163.) For example, when changes or new information affect the availability of water for the project, the lead agency will be required to assess the change in water availability in a supplement. Nothing in Water Code, section 10910 eliminates that obligation. Accordingly, the Resources Agency has modified the originally-proposed changes to the Guidelines to include supplements to the list of environmental documents in subdivision (b) in order to be consistent with the statute.

In addition, the proposed addition of subdivision (d) expressly provides an exemption to the steps required in the proposed addition of subdivision (b). The Resources Agency believes it useful to include a reference to that relationship in the proposed addition of subdivision (b) as well, for the sake of additional clarity.

15-Day Language:

(b) Subject to section 15155, subd. (d) below, aAt 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:

6. CEQA Guidelines, section 15155, subd. (b)(1)**Summary of Originally-Proposed Changes to the Guidelines:**

The originally-proposed changes to the Guidelines adding proposed section 15155, subd. (b)(1), state:

(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 prepare a water assessment. The governing body of the public water system must approve the water assessment prepared pursuant

to this section at a regular or special meeting.

Rationale for Modification:

A commenter stated that the originally-proposed changes to the Guidelines adding this subdivision fails to expressly reference a step in the water supply and demand assessment process -- the request by the lead agency that the public water supply identify whether the project was included in the most recent urban water management plan. The Resources Agency agrees and has modified the originally-proposed changes to the Guidelines to expressly include this step.

In addition, another commenter stated that the last sentence of this subdivision should be deleted because it directs water agencies, rather than lead agencies. While the Resources Agency does not necessarily agree with the underlying reasoning of the commenter, the purpose of this rulemaking is to provide guidance to lead agencies. Accordingly, the Resources Agency has modified the originally-proposed changes to the Guidelines to direct lead agencies.

15-Day Language:

(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 (commencing with Section 10610), and to prepare a water assessment approved at a regular or special meeting of that governing body. ~~The governing body of the public water system must approve the water assessment prepared pursuant to this section at a regular or special meeting.~~

7. CEQA Guidelines, section 15155, subd. (b)(2)

Summary of Originally-Proposed Changes to the Guidelines:

The originally-proposed changes to the Guidelines adding proposed section 15155, subd. (b)(2), state:

(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 its own 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.

Rationale for Modification:

One commenter stated that the phrase "its own water assessment" should be deleted from the originally-proposed changes to the Guidelines adding subdivision (b)(2), as it is confusing and may be read to require something other than what is required for an assessment prepared by the water agency. The Resources Agency believes that modifying the originally-proposed changes to the Guidelines can provide additional clarity.

15-Day Language:

(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 ~~its own~~ 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.

8. CEQA Guidelines, section 15155, subd. (c)**Summary of Originally-Proposed Changes to the Guidelines:**

The originally-proposed changes to the Guidelines adding proposed section 15155, subd. (c), state:

(c) If the governing body of a public water system is preparing the water assessment, it must submit the requested water assessment to the city or county lead agency within 90 days after the date on which the governing body of the public water system received such request. Before the expiration of the 90-day period, a representative of the governing body of the public water system may meet with the city or county lead agency and request a 30-day extension of time to prepare and adopt the water assessment. The city or county lead agency must grant any reasonable request. 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 sections 10910-10914 of the Water Code to submit the water assessment.

Rationale for Modification:

A commenter stated that the originally-proposed changes to the Guidelines adding this subdivision direct water agencies, rather than lead agencies. While the Resources Agency does not necessarily agree with the reasoning of the commenter, the purpose of this rulemaking is to provide guidance to lead agencies. Accordingly, the Resources Agency is modifying the originally-proposed changes to the Guidelines to direct lead agencies.

In addition, a commenter requested that the provisions regarding writs be modified to use the phrase "this part" instead of "sections 10910 – 10914" in the final sentence of the originally-proposed change to the Guidelines adding this subdivision, and that the scope of such writs should be limited to compliance "relating to the submission of the water supply assessment." The Resources Agency agrees that this nonsubstantial modification is more consistent with the statutory language.

15-Day Language:

(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 is preparing the water assessment, it must submit the requested water assessment to the city or county lead agency 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 such the request to prepare a water assessment. Before the expiration of the 90-day period, a representative of the governing body of the public water system may meet with the city or county lead agency and request a 30-day extension of time to prepare and adopt the water assessment. The city or county lead agency must grant any reasonable request. 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 sections 10910-10914 of the Water Code to submit Part 2.10 of Division 6 of the Water Code relating to the submission of the water assessment.

9. CEQA Guidelines, § 15155, subd. (d)(2)(B)**Summary of Originally-Proposed Changes to the Guidelines:**

The originally-proposed changes to the Guidelines adding proposed section 15155, subd. (d), state:

(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 applicable agencies 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).

Rationale for Modification:

A commenter stated that the reference to "applicable agencies" in the originally-proposed changes to the Guidelines adding subdivision (d)(2)(B) is confusing and not defined. The Resources Agency has modified the originally-proposed changes to the Guidelines that specifically reference the public water system, city or county in order to provide additional clarity.

15-Day Language:

(B) Changes in the circumstances or conditions substantially affecting the ability of the ~~applicable agencies~~ 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.

10. CEQA Guidelines, § 15155, subd. (e)

Summary of Originally-Proposed Changes to the Guidelines:

The originally-proposed changes to the Guidelines, adding proposed section 15155, subd. (e), state:

The city or county lead agency shall include the water assessment, and any water acquisition plan provided pursuant to subdivision (a) of Section 10911 of the Water Code in the EIR, negative declaration, or mitigated negative declaration 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 demand of the project, in addition to existing and planned future uses. If the 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 pursuant to Sections 15091 and 15093.

Rationale for Modification:

A commenter stated that the reference to findings pursuant to sections 15091 and 15093 should be deleted because there is no reason to require that water supply findings be included in any part of an agency's findings. The Resources Agency believes that it is appropriate to require the inclusion of findings about the insufficiency of a potential water supply with other findings required by CEQA. The Resources Agency does agree, however, that the findings should not be tied to a specific section of the CEQA Guidelines. Therefore, the Resources Agency has modified the originally-proposed changes to the Guidelines and deleting the reference to Guidelines sections 15091 and 15093.

The modifications also add a reference to supplemental documents, in order to make this section consistent with the 15-day language for subdivision (b), discussed previously in this Attachment.

In addition, the Resources Agency agrees with another commenter that it is appropriate to include section 10915 of the Water Code as a reference within the Note.

Finally, several commenters stated that it is unnecessary to provide a definition of "water acquisition plan" in the originally-proposed changes to the Guidelines adding proposed subdivision (a) of this regulation. Because the phrase "water acquisition plan" refers to a specific plan identified in Water Code, section 10911, the Resources Agency believes it is appropriate to include a definition of this term in the Guideline. However, because the definition is provided in proposed subdivision (a)(3), it is unnecessary to repeat the definition in proposed subdivision (e) of this section. Therefore, the Resources Agency also has modified the originally-proposed changes to the Guidelines by omitting the repetitive phrasing in the originally-proposed addition of subdivision (e) to section 15155.

15-Day Language:

(e) The city or county lead agency shall include the water assessment, and any water acquisition plan ~~provided pursuant to subdivision (a) of Section 10911 of the Water Code~~ 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. ~~pursuant to Sections 15091 and 15093.~~

Note: Authority Cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code, Sections 10910-109145 of the Water Code.

As a result of the modifications to the originally-proposed changes to the Guidelines that are identified above in this attachment, section 15155, in its entirety, would read as follows:

§ 15155. 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.

~~(1) The adoption or amendment of a general plan is not, by itself, a water demand project.~~

(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, subd. (d) below, aAt 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 (commencing with Section 10610), and to prepare a water assessment approved at a regular or special meeting of that governing body. ~~The governing body of the public water system must approve the water assessment prepared pursuant to this section at a regular or special meeting.~~

(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 ~~its own~~ 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 ~~If the governing body of a public water system is preparing the water assessment, it must submit the requested water assessment to the city or county lead agency 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 such the request to prepare a water assessment. Before the expiration of the 90-day period, a representative of the governing body of the public water system may meet with the city or county lead agency and request a 30-day extension of time to prepare and adopt the water assessment. The city or county lead agency must grant any reasonable request.~~ 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 ~~sections 10910-10914 of the Water Code to submit~~ Part 2.10 of Division 6 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 ~~applicable agencies~~ 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 ~~provided pursuant to subdivision (a) of Section 10911 of the Water Code~~ 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. ~~pursuant to Sections 15091 and 15093.~~

Note: Authority Cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code, Sections 10910-10914~~5~~ of the Water Code.

§ 15179. Limitations on the Use of the Master EIR.

Summary of Originally-Proposed Changes to the Guidelines:

The originally-proposed changes to the Guidelines for this section state:

(a) The certified Master EIR shall not be used for a subsequent project described in the Master EIR in accordance with this article if either:

(i1) The Master EIR it was certified more than five years prior to the filing of an application for a later subsequent project except as set forth in subsection (b) below, or

(ii2) After the certification of the Master EIR, a project not identified in the certified Master EIR as an anticipated subsequent project is approved and the

approved project may affect the adequacy of the Master EIR for any subsequent project that was described in the Master EIR, unless the lead agency does one of the following:

Rationale for Modification:

A commenter stated that the word "identified" in subdivision (a)(2) of this section should be changed to "described." The Resources Agency agrees with the commenter, and notes that the statute being implemented by this CEQA Guidelines section uses the verb "described" rather than "identified." Therefore the Resources Agency has modified the section to ensure consistency within the Guideline and between the statute and the Guideline.

15-Day Language:

§ 15179. Limitations on the Use of the Master EIR.

(a) The certified Master EIR shall not be used for a subsequent project described in the Master EIR in accordance with this article if either:

(i1) The Master EIR # was certified more than five years prior to the filing of an application for a later subsequent project except as set forth in subsection (b) below, or

(ii2) After the certification of the Master EIR, a project not identified described in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR for any subsequent project that was described in the Master EIR, unless the lead agency does one of the following:

(b) A Master EIR that was certified more than five years prior to the filing of an application for a subsequent project described in the Master EIR may be used in accordance with this article to review such a subsequent project if the lead agency reviews the adequacy of the Master EIR and takes either of the following steps:

(a1) Reviews the Master EIR and f Finds that no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, or that there is no new available information which was not known and could not have been known at the time the Master EIR was certified; or

(b2) Prepares an initial study, and pursuant to the findings of the initial study either:

(A) certifies a subsequent or supplemental EIR that updates or revises the Master EIR and which either (i1) is incorporated into the previously certified Master EIR, or (ii2) references any deletions, additions or other

modifications to the previously certified Master EIR; or
(B) approves a mitigated negative declaration that addresses substantial changes that have occurred with respect to the circumstances under which the Master EIR was certified or the new information that was not known and could not have been known at the time the Master EIR was certified.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21157.6, Public Resources Code.

§ 15192. Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

Summary of Originally-Proposed Changes to the Guidelines:

The originally-proposed changes to the Guidelines adding Subdivisions (i)- (l) to the Guidelines identify certain of those criteria as follows:

- (i) The project does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.
- (j) The project does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.
- (k) Either the project is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.
- (l) Either the project does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

Rationale for Modification:

A commenter stated that the originally-proposed changes to the Guidelines are not consistent with Public Resources Code section 21159.21, subdivisions (h)(2)-(5), which tie these limiting factors to the project site, not the project. The commenter stated that this is an important distinction, as the project itself may not pose a risk of fire, explosion, public health exposure, seismic hazard, or landslide hazard, but the site on which the project is proposed to be built may well pose such risks. The Resources Agency agrees that the commenter has identified a potential conflict between the originally-proposed changes to the Guidelines and the statute. (Pub. Resources Code, § 21159.21, subds. (h)(2)-(5).) Therefore, the Resources Agency has modified the originally-proposed changes to the Guidelines.

15-Day Language:

§ 15192. Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

In order to qualify for an exemption set forth in sections 15193, 15194 or 15195, a housing project must meet all of the threshold criteria set forth below.

(a) The project must be consistent with:

(1) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete; and

(2) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete, unless the zoning of project property is inconsistent with the general plan because the project property has not been rezoned to conform to the general plan.

(b) Community-level environmental review has been adopted or certified.

(c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(d) The site of the project:

(1) Does not contain wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations.

(2) Does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(3) Does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(4) Does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps have been taken in response to the results of this assessment:

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code.

(h) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(i) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project site is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

(l) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(m) The project site is not located on developed open space.

(n) The project site is not located within the boundaries of a state conservancy.

(o) The project has not been divided into smaller projects to qualify for one or more of

the exemptions set forth in sections 15193 to 15195.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.21, 21159.27, Public Resources Code.

FINAL STATEMENT OF REASONS

California Resources Agency CEQA Guidelines Amendments (OAL Notice File Number Z06-0606-01)

June 11, 2007

Government Code, sections 11346.9, subd. (a) and 11347.3, subd. (b)(2) require the Resources Agency to submit a Final Statement of Reasons with the adopted regulations. This document contains the information required by those sections.

I. UPDATE OF INFORMATION CONTAINED IN THE INITIAL STATEMENT OF REASONS

Government Code, section 11346.9, subd. (a)(1) requires this Final Statement of Reasons to include an update of the information contained in the Initial Statement of Reasons. The general information presented in the Initial Statement of Reasons has not changed since it was published. The originally-proposed changes to the guidelines ("Guidelines") implementing the California Environmental Quality Act ("CEQA") were adopted by the Resources Agency with changes identified in the Modifications to the Originally-Proposed Changes to the Guidelines Implementing CEQA. The changes to the Guidelines proposed in the Initial Statement of Reasons are referred to hereafter as "the originally-proposed changes to the Guidelines." The changes to the originally-proposed changes are referred to hereafter as the "Modifications" or "15-Day Language." The information supporting those changes was described in the Notice of the Modifications to the Originally-Proposed Changes to the Guidelines Implementing the California Environmental Quality Act dated April 23, 2007.

A. NOTICE OF MODIFICATIONS TO ORIGINALLY-PROPOSED CHANGES TO THE GUIDELINES IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (APRIL 23, 2007)

After the comment period for the originally-proposed changes to the Guidelines closed on July 31, 2006, the Resources Agency made Modifications to Guidelines, sections 15061, 15062, 15155, 15179, and 15192. The Modifications to the originally-proposed changes to the Guidelines and the reasons for the Modifications are set forth below. Although the Resources Agency found that the Modifications to the originally-proposed changes to the Guidelines were nonsubstantial and that notice was therefore not required pursuant to Government Code, section 11346.8, subdivision (c), the Resources Agency decided to inform all persons on the service list and provide them an opportunity to comment. The Resources Agency also notes that all of the Modifications are closely related to the originally-proposed changes to the Guidelines, and that the

original notice informed the public that these types of changes could result from the originally-proposed regulatory action. Section IV, Summaries and Responses to Comments Received on the Originally-Proposed Changes to the Guidelines Proposed June 16, 2006, shows the originally-proposed changes to the Guidelines marked in underline/strikeout format, and Modifications in double underline/double strikeout format.

B. ADDITIONAL NON-SUBSTANTIVE AMENDMENTS

A few formatting and clerical errors in the Modifications have subsequently been identified:

In the Note to Guidelines, section 15061, "21151" should have been underlined. This section was underlined in the originally-proposed changes to the Guidelines.

In Guidelines, section 15155, subdivision (a)(1)(E), "...of floor area[]" should read "or floor area." The subdivision reads correctly in the full text within the Modifications.

In Guidelines, section 15515, subdivision (a)(1)(H)1, there should be a period after the number for the subdivision.

In Guidelines, section 15155, subdivision (b)(1) within the Modifications, "of the Water Code" should follow "commencing with section 10610."

Finally, in Guidelines, section 15195, subd. (b)(2), there should be a period at the end of the sentence instead of a colon.

These errors have been determined to be non-substantive and have been corrected in the final version of the adopted Guidelines included in the rulemaking file.

As noted in the originally-proposed changes to the Guidelines, the Resources Agency has determined to remove discussion sections from Guidelines sections 15179, 15180, and 15186. These discussion sections are not a part of the published Guidelines and are therefore not a part of the APA process. The final version of the adopted Guidelines included in the rulemaking file has no discussion sections.

C. REASONABLE ALTERNATIVES TO THE REGULATION, INCLUDING ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS, AND THE RESOURCES AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Resources Agency's determination that the proposed action is necessary to update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, and the proposed action adds no new substantive requirements. The Resources Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to imposition of the statutory requirements.

The Resources Agency has determined that the proposed actions will not affect small business because the proposed changes clarify and update the Guidelines to be consistent with recent legislatively enacted statutory changes that have modified CEQA, but do not impose any new requirements. Certain statutory changes enacted by the Legislature that are reflected in this proposed action could potentially affect project proponents. However, the proposed changes to the Guidelines merely reflect the statutory requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself adversely affect small businesses.

D. TECHNICAL, THEORETICAL, OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENTS (Gov. Code, § 11347.3, subd. (b)(7).)

The Secretary for the Resources Agency did not rely upon any technical, theoretical, or empirical study, report or similar document in proposing any of the amendments or adoptions.

E. EVIDENCE SUPPORTING THE INITIAL DETERMINATION THAT THE ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The Resources Agency has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Resources Agency is aware that certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could have an economic effect on

business. Among other things, project proponents could incur additional costs in assisting lead agencies to comply with SB 610 (reflected in Guidelines section 15155), which revises the requirements imposed on cities and counties to prepare or obtain certain analyses relating to water availability and to require the inclusion in these analyses in any environmental document prepared for the project, under specified circumstances. In addition, project proponents could incur additional costs in assisting lead agencies to comply with Public Resources Code sections 21151.4 and 21151.8 (reflected in Guidelines section 15186), which require certain public agencies and certain school districts to make a number of determinations relating to air quality in the vicinity of a school or proposed school site before approving certain projects. However, the proposed changes to the Guidelines merely reflect these existing statutory requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not impose any new requirements. Therefore, the proposed action does not itself have a significant, statewide adverse economic impact directly affecting business.

II. LOCAL MANDATE DETERMINATION

Government Code, section 11346.9, subd. (a)(2) requires the Final Statement of Reasons to include a determination as to whether the adoptions and amendments of the Guidelines impose a mandate on local agencies or school districts.

The Resources Agency has determined that the proposed action does not, itself, impose a mandate on local agencies or school districts. The Resources Agency is aware that certain of the statutory changes enacted by the Legislature that are reflected in this proposed action impose mandates on local agencies and school districts. Among other things, Public Resources Code, section 21098 (reflected in proposed changes to Guidelines sections 15072, 15082, 15087 and 15190.5) requires a lead agency to submit additional notices to military agencies under specific circumstances. Public Resources Code, section 21151 (reflected in Guidelines sections 15061 and 15074) requires a local agency's elected decisionmaking body to hear an appeal under certain circumstances. SB 610 (reflected in Guidelines section 15155) revises the requirements imposed on cities and counties to prepare or obtain certain analyses relating to water availability, and requires the inclusion of these analyses in any environmental document prepared for the project, under specified circumstances. Public Resources Code, sections 21151.4 and 21151.8 (reflected in Guidelines section 15186) require certain public agencies and certain school districts to make a number of specified determinations relating to air quality in the vicinity of a school or proposed school site before approving certain projects. However, the proposed changes to the Guidelines merely reflect these statutory mandates. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself impose any costs on local government or school districts.

III. ECONOMIC AND FISCAL IMPACT ESTIMATE (Gov. Code, § 11347.3, subd. (b)(5).)

Pursuant to subdivision (a)(6) of section 11346.5 of the Government Code, the Resources Agency is required to provide "an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state...."

The Resources Agency has provided this estimate in its complete Economic and Fiscal Impact Statement (Form Std. 399) for the proposed action. This Economic and Fiscal Impact Statement is included in this rulemaking file. The Form Std. 399 provides information regarding costs or savings to any state agency, local agency or school district and cost or savings in federal funding to the state. As stated within Form Std. 399, the Resources Agency has determined that most of the proposed changes in this action have no or de minimis impacts on state agencies, local agencies or school districts. The Resources Agency is aware that certain of the statutory changes enacted by the Legislature that are reflected in this proposed action impose costs on public agencies. The Resources Agency is not aware of any savings that would result from any of the statutory changes enacted by the Legislature that are reflected in this proposed action. However, with respect to any costs or savings, the proposed changes to the Guidelines merely reflect the statutory requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself impose any costs on, or result in any savings for, any state agency, local agency or school district. Moreover, as stated within Form Std. 399, the Resources Agency has initially determined that the proposed action does not result in any cost or savings in federal funding to the state.

IV. SUMMARIES AND RESPONSES TO COMMENTS RECEIVED ON THE ORIGINALLY-PROPOSED CHANGES TO THE GUIDELINES PROPOSED JUNE 16, 2006

The summaries and responses below satisfy Government Code sections 11346.8, subd. (c) and 11346.9, subd. (a)(3) requirements that the Resources Agency summarize relevant objections and recommendations received during the public comment period and state the responses of the Resources Agency to the comment or recommendation.

This section provides a summary of the public comments the Resources Agency received on the originally-proposed changes to the Guidelines that the Resources Agency proposed on June 16, 2006. By way of background, the Resources Agency filed a Notice of Proposed Action for its originally-proposed changes to the Guidelines with the Office of Administrative Law (OAL) on June 6, 2006. OAL published the notice

in the California Regulatory Notice Registry on June 16, 2006. By June 16, 2006, the Notice of Proposed Action was mailed to all persons on the service list or emailed to those persons who specifically requested email notification for this proceeding. No public hearings were held. All written comments are included in the rulemaking file.

As stated above, the Resources Agency made Modifications to the originally-proposed changes to the Guidelines pursuant to section 11346.8, subd. (c) of the Government Code. On April 23, 2007, these Modifications were made available for additional public review and comment. The second comment period closed on May 8, 2007. All written comments to the Modifications are included in the rulemaking file.

§ 15053. Designation of Lead Agency by the Office of Planning and Research.

Summary of Text: The originally-proposed changes to the Guidelines at section 15053 state:

(a) If there is a dispute over which of several agencies should be the Lead Agency for a project, the disputing agencies should consult with each other in an effort to resolve the dispute prior to submitting it to the Office of Planning and Research. If an agreement cannot be reached, any of the disputing public agency agencies, or the applicant if a private project is involved, may submit the dispute to the Office of Planning and Research for resolution.

Commenter: Metropolitan Water District of Southern California (MWD), July 31, 2006

Comment Summary: MWD states:

... [T]he existing State CEQA guidelines do not explicitly state the opportunity of having co-lead designations. The statute clearly alludes to this type of arrangement in Section 15051(d): "...An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices." The Governor's Office of Planning and Research has also acknowledged such a designation in a letter dated May 4, 1999, to Mr. Gerald R. Zimmerman of the Colorado River Board of California: "Furthermore, the CEQA Guidelines, in Section 151051(d), provide for two or more public agencies with a substantial claim to the Lead Agency role to cooperatively act as Lead Agency, through contract, joint exercise of powers, or similar devices."

Occasions have arisen where Metropolitan has sought co-lead agency designations with other public agencies, only to encounter unwillingness

by such agencies to do so because such designation is not explicitly stated in the State CEQA Guidelines. They are concerned with the legal ramifications of such relationships without what they view as an explicit nexus in the guidelines to the statute. They further assume that under potential litigation by opponents on the environmental documents, the courts would favor the plaintiffs due to the question on the validity of co-lead agency designation.

Given the timing of this section's revision, it would be beneficial for public agencies to have more explicit language in the guidelines to allow for co-lead agency arrangements, when applicable.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15053. Guidelines, section 15050, subd. (a) states: "where a project is to be carried out or approved by more than one public agency, *one* public agency shall be responsible for preparing an EIR or negative declaration for the project. This agency shall be called the lead agency." (*Emphasis added*). Similarly, Guidelines, section 15051, subd. (d) states: "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*." (*Emphasis added*.) Also, current Guidelines, section 15053 (proposed Guidelines, section 15053, subd. (c) states: "... (b) [t]he Office of Planning and Research shall designate a lead agency ... (d) Designation of a lead agency ... " (*Emphasis added*.) The explicit requirement for a single lead agency set forth in the foregoing provisions are not superseded by Subdivision (d) of section 15051, which only states: "An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices." The Resources Agency finds that Guidelines, section 15051, subd. (d) does not allude to the allowance for co-lead agency designation.

§ 15061. Review for Exemption.

Summary of Text: The originally-proposed changes to the Guidelines, at section 15061, subdivision (e) state:

(e)When a non-elected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, that decision may be appealed to the local lead agency's elected decisionmaking body, if one exists. A local lead agency may establish procedures governing such appeals.

Commenter: California Building Industry Association ("CBIA"), July 31, 2006

Comment Summary: CBIA states:

"This Guideline should specify that local lead agencies may establish time limits governing such appeals." CBIA also recommends that the phrase "and time limits" be added to the last sentence of subdivision (e).

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15061. This change is not necessary as the proposed language in subdivision (e) states: "A local agency may establish procedures governing such appeals." Time limits governing such appeals could be one of the procedural requirements, but the Resources Agency finds it would be difficult to list all potential procedures and confusing to only list a subset.

Commenter: MWD, July 31, 2006

Comment Summary: MWD states that the amendments to subdivision (e) of this section should allow for an agency to establish an appeals procedure.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15061 which already states: "A local agency may establish procedures governing such appeals."

Commenter: MWD, July 31, 2006

Comment Summary: MWD states:

... [T]he new amendment does not take into account Section 15025 (Delegation of Responsibilities) where a public agency may assign specific functions to its staff to assist in administering CEQA including determining whether a project is exempt. Clarification of this part of the amendment to this section by cross-referencing the delegation of authority to staff as permitted under Section 15025 of the State CEQA Guidelines should be sufficient.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15061. Even where a non-elected official or decisionmaking body of a local Lead Agency utilizes the provisions of section 15025 in administering CEQA, the non-elected official or decisionmaking body retains all the authority to determine whether the project is exempt. In other words, assigning staff to assist in that determination does not shift the authority for the final determination to the staff. Thus, the originally-proposed changes to the Guidelines at section 15061 appropriately refer to determinations by a non-elected official or decisionmaking body of a local lead agency. Cross-referencing section

15025 would be confusing, as the staff of a lead agency does not have the authority to make the determination that is the subject of the proposed addition of subdivision (e) to section 15061.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

This section deals with an appeal of a decision made by a non-elected body that a project is exempt from CEQA. CBIA believes that this section should clarify that the decision to exempt the project from CEQA, not the project, is subject to appeal pursuant [sic] this Guideline. In addition, this Guideline should specify that local lead agencies may establish time limits governing such appeals.

CBIA recommends specific language.

Response to Comment: More than one commenter stated that it is not clear whether the phrase "that decision" in the originally-proposed changes to the Guidelines refers to the decision that the project is exempt from CEQA or the decision to approve the project. The Resources Agency agrees that the Guidelines should distinguish between a decision about whether the project is subject to CEQA and a decision to approve the project, and has modified the originally-proposed changes to the Guidelines to provide that clarity.

In response to commenter's comment regarding local lead agencies establishing time limits governing such appeals, see response to MWD's comment on Guidelines, section 15061, subd. (e).

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines at section 15061, subd. (e) as follows:

§ 15061. Review for Exemption.

[(a): no changes]

(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 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.

[(c) – (d): *no changes*]

(e) When a non-elected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, ~~that the decision that the project is exempt~~ may be appealed to the local lead agency's elected decisionmaking body, if one exists. A local lead agency may establish procedures governing such appeals.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21080(b), 21080.9, 21080.10, 21084, 21108(b), 21151, and 21152(b), and 21159.21, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68.

Commenter: County of San Diego, July 26, 2006

Comment Summary: County of San Diego states:

...[T]he term "that decision" is unclear. Does it mean the decision that the project is exempt from CEQA or the decision to approve the project? This confusion can be eliminated by changing "that decision" to "the decision that the project is exempt." With this change, the last phrase would read, "...the decision that the project is exempt may be appealed to the local lead agency's elected decision making body, if one exists.

Response to Comment: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines at section 15061, subd. (e). See also response to CBIA's comment to Guidelines, section 15061, subd. (e).

§ 15062. Notice of Exemption.

Summary of Text: The originally-proposed changes to the Guidelines, at section 15062, subdivision (e) state:

(e) When a local agency determines that a project is not subject to CEQA under subdivision 15192, 15193, or 15194, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file a notice of the determination with OPR.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

Although the statute uses the term "notice of determination" it is confusing to use that term in the Guideline, because the notice that is posted following use of one of these statutory exemptions will be a notice of exemption, and this provisions is included within the Guideline on notices of exemption.

CBIA suggests using the phrase "Notice of Exemption", instead.

Response to Comment: Several commenters found use of the term "notice of determination" confusing. They note that this provision is included within the Guidelines section addressing notices of exemption and that the notice that is posted pursuant to this section will be a notice that an exemption is being claimed, not a determination. In addition, lead agencies also file notices that are specifically called Notices of Determination when they decide to approve or carry out a project after preparation of an Initial Study/Negative Declaration or an environmental impact report ("EIR").

The Resources Agency is sympathetic to the commenters' concern about confusion in the titles of various notices that are prepared during the CEQA process. Projects may be exempt from CEQA for a variety of reasons, all of which are identified in section 15061 of the Guidelines. For projects identified in subdivisions (b)(1) – (4) of that section, preparing a Notice of Exemption as described in this section is optional. However, for that subset of projects identified in subdivision (b)(5) of Section 15061 - - projects that are eligible for an exemption pursuant to Article 12.5 of the Guidelines -- a separate requirement for notice is imposed. (See Pub. Resources Code, § 21152.1.) The notice required by this statutory section is not the same as the optional Notice of Exemption described in subdivisions (a) – (c) of this Section.

Therefore, although the statute itself refers to this notice as "notice of the determination" (Pub. Resources Code, § 21151, subd. (a)), using a different phrase to describe the notice is appropriate for the Guidelines, and the Resources Agency

has modified the originally-proposed changes to the Guidelines to remedy the potential confusion. In addition, the originally-proposed changes to the Guidelines contain a typographical error. Specifically, it incorrectly references "subdivisions 15192, 15193, and 15194." The correct references are "sections 15193, 15194, and 15195."

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines at section 15062, subd. (e) as follows:

§ 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) - (4): no changes]

[(b) - (d): no changes]

(e) When a local agency determines that a project is not subject to CEQA under ~~subdivision sections 15192, 15193, or 15194~~ 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 of the ~~determination~~ with OPR identifying the section under which the exemption is claimed.

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

Commenter: County of San Diego, July 26, 2006

Comment Summary: County of San Diego states:

Sections 15062, 15191-15196, requires [sic] a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The County of San Diego requests that OPR accept electronic NOEs when having to file with OPR. Filing electronically will save time and resources.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15062. There is currently no formal system in place at OPR for electronic NOE filing. However, OPR is

currently considering creating a system whereby electronic filing of notices will be possible. See also responses to County of San Diego's comments on Guidelines, sections, 15191, 15192, 15193, 15194, and 15195.

Commenter: Sandra Genis, July 31, 2006

Comment Summary: Ms. Genis asks whether "Section 15062 [is] intended to refer to a Notice of Exemption?"

Proposed Response to Comment: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines at section 15062, subd. (e). See response to CBIA's comment to Guidelines, section 15062, subd. (e).

Commenter: MWD, July 31, 2006

Comment Summary: MWD states:

Using the phrase 'a notice of the determination' might be confused with 'Notice of Determination,' the form used when project approval has occurred where the action was supported by an environmental impact report or a negative declaration. To be explicitly clear, it is recommended that that phrase be replaced with 'a Notice of Exemption.' While the proposed phrase is exactly what is stated in the statute, there is no reason why in the State CEQA Guidelines they have to be duplicated exactly with that of the statute. It would be better to be clear on this issue to avoid having the Lead Agency make a mistake and file the wrong form.

Response to Comment: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines at section 15062, subd. (e). See response to CBIA's comment on Guidelines, section 15062, subd. (e).

§ 15073. Public Review of a Proposed Negative Declaration or Mitigated Negative Declaration.

Summary of Text: The originally-proposed changes to the Guidelines at section 15073, subdivision (b) state:

When a proposed negative declaration or mitigated negative declaration and initial study have been submitted to the State Clearinghouse for review by state agencies, 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. the public review period

shall be at least as long as the review period established by the State Clearinghouse. Day one of the state review period shall be the date that the State Clearinghouse distributes the document to state agencies.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

We are concerned that these sections leave the state review period open-ended, indefinitely delaying the CEQA review period. We suggest that language be added to the end of these[] sections to clarify and resolve these concerns. . . .

CBIA suggests that language be added stating that the State Clearinghouse shall be deemed to have distributed the environmental document within three working days unless the State Clearinghouse has provided written notification to the lead agency that the environmental document was incomplete and has specified the additional needed information.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15073. The purpose of this rulemaking is to clarify and update the Guidelines to be consistent with the recent legislative enactments that have modified CEQA. The benefit to the public of having a complete environmental document outweighs the benefit to the public of the change expressed by the commenter. Additionally, the State Clearinghouse is required to distribute a complete submittal within three-working days. (Pub. Resources Code, § 21091, subd. (c)(3).)

Commenter: MWD, July 31, 2006

Comment Summary: MWD requested that the following language be added to clarify the end date for the public review process:

The end date established for state review does not affect the end date for public review provided the public review period is at least equal in duration to the state review period.

Response to Comment: The commenter's remarks do not warrant a change to originally-proposed changes to the Guidelines at section 15073. The originally-proposed changes to the Guidelines state that the two review periods may, but are not required to, begin and end at the same time. In addition, subdivision (b) of this section states that, "the public review period shall be at least as long as the review period established by the State Clearinghouse." Thus, the commenter's proposed language would duplicate both the existing and proposed language in the originally-

proposed changes to the Guidelines. As a result, no additional changes are proposed.

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

Proposed Guidelines sections 15073(b), 15087(e), and 15105(c) have been revised to explain exactly when the time period commences for the state agencies' review period. Sierra Club would like to see language added to these section[s] to state that '[d]ay one of the public review period shall be the date that the lead agency distributes the document to interested members of the public who have timely requested inclusion in the distribution list' or similar words.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15073. Both the statute (Pub. Resources Code, § 21091) and the regulation require actual notice, and it is not necessary to mandate a specific procedure to accomplish actual notice. Rather, the means by which actual notice is provided is appropriately left to the discretion of the lead agency.

§ 15087. Public Review of a Draft EIR.

Summary of Text: The originally-proposed changes to the Guidelines at section 15087, subdivision (e), state:

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. the public review period shall be at least as long as the review period established by the Clearinghouse." This language is identical to that proposed for subdivision (b) of Section 15073.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA provided the same comment on this section as it did for section 15073.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15073. See response to CBIA's comment on Guidelines, section 15073.

Commenter: MWD, July 31, 2006

Comment Summary: MWD provided the same comment on this section as it did for section 15073.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15073. See response to MWD's comment on Guidelines, section 15073.

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club provided the same comment on this section as it did for section 15073.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15073. See response to Sierra Club's comment on Guidelines, section 15073.

§ 15105. Public Review Period for a Draft EIR or a Proposed Negative Declaration or Mitigated Negative Declaration.

Summary of Text: The originally-proposed changes to the Guidelines, at section 15105 at subdivision (e) state:

(e) The State Clearinghouse shall distribute a draft EIR or proposed negative declaration or mitigated negative declaration within three working days after the date of receipt if the submittal is determined by the State Clearinghouse to be complete.

Commenter: California Department of Transportation ("Cal Trans"), July 28, 2006

Comment Summary: Cal Trans states that the proposed language in subdivision (e) is ambiguous, and would like language added which defines the word complete, specifically proposing language that defines completeness in terms of the numbers of copies of the environmental document that are submitted to the State Clearinghouse.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15105. The commenter's

statement implies "complete" refers to the number of copies of the environmental document submitted. This interpretation is not supported by a reading of the complete statutory language, which includes the sentence, "The State Clearinghouse shall specify the information that will be required in order to determine the completeness of the submittal of the CEQA document." (Pub. Resources Code, section 21091(c)(3).) The simplest and most logical interpretation of this sentence is that "completeness" requires more than the correct number of copies; it requires an analysis based on information. The Resources Agency has determined that the commenter's proposed language is inconsistent with the statute.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA provided the same comment on subdivision (c) of this section as it did for subdivision (b) of Guidelines, section 15073 and subdivision (e) of Guidelines, section 15087.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15105. See response to CBIA's comment on Guidelines, section 15073, subd. (b).

Commenter: MWD, July 31, 2006

Comment Summary: MWD provided the same comment on subdivision (c) of this section as it did for section 15073, subdivision (b).

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15105. See response to MWD's comment on Guidelines, section 15073, subd. (b).

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club provided the same comment on subdivision (c) of this section as it did for section 15073, subdivision (b).

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15105. See response to Sierra Club's comment on Guidelines, section 15073, subd. (b).

§ 15155. City or County Consultation with Water Agencies.

Summary of Text: Section 15155 is an entirely new section of the Guidelines, although some of the proposed language is similar to that in Section 15083.5, which the Resources Agency proposes to repeal. The Resources Agency received several comments on this new section. In order to show the new section as well as the comments, responses and the Modifications, the Resources Agency will first show

Section 15155, as originally-proposed, followed by the summary of comments and responses thereto, and the full section as modified:

A. Full Text of Originally-Proposed Changes to the Guidelines at section 15155:

§ 15155. 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) A 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 subdivision (a)(1) 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.

(l) The adoption or amendment of a general plan is not, by itself, a water demand project.

(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 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) At the time a city or county lead agency determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration 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 prepare a water assessment. The governing body of the public water system must approve the water assessment prepared pursuant to this section at a regular or special meeting.

(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 its own 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) If the governing body of a public water system is preparing the water assessment, it must submit the requested water assessment to the city or county lead agency within 90 days after the date on which the governing body of the public water system received such request. Before the expiration of the 90-day period, a representative of the governing body of the public water system may meet with the city or county lead agency and request a 30-day extension of time to prepare and adopt the water assessment. The city or county lead agency must grant any reasonable request. 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 Sections 10910-10914 of the Water Code to submit 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 applicable agencies 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 provided pursuant to subdivision (a) of Section 10911 of the Water Code in the EIR, negative declaration, or mitigated negative declaration 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 the 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 pursuant to Sections 15091 and 15093.

Note: Authority Cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code, Sections 10910- 10914 of the Water Code.

1. § 15155, subd. (a)(1)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (a)(1) state:

(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) A 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 subdivision (a)(1) 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.

(l) The adoption or amendment of a general plan is not, by itself, a water demand project.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

We propose to use the term 'water supply assessment project.' We have determined that a term is needed in the CEQA guidelines that distinguishes SB 610 projects from other projects, and that the guidelines should not use the term 'project' as Water Code section 10912 does. We have determined that the phrase 'water supply assessment project' is most accurate in advising the reader of precisely what the guidelines are referring to, using language with which practitioners are already familiar. We find the phrase 'Water demand project' would be confusing, since projects demand water whether or not they are subject to SB 610. Additional edits clarify the language.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (a)(1). The Resources Agency does not find the phrase "water demand project" confusing since the phrase is defined in Guidelines section 15155, subd. (a)(1). Therefore, no changes to this phrase are proposed.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

...[I]f the Guidelines delete the statutory reference to 'proposed' projects, anti-development groups may argue that a water supply assessment is required whenever someone proposes to add to existing development, with the resulting total exceeding the threshold criteria (e.g. when adding 200 rooms to a 300-room hotel).

CBIA also proposes language.

Response to Comment: The commenter's remarks do not warrant a change to originally-proposed changes to the Guidelines at section 15155. Although the sections of the Water Code that identify the assessment process use the phrase "proposed project", CEQA always applies to proposed projects and CEQA

Guidelines generally refer to "projects", when such projects are proposed. Thus, this recommended change is unnecessary.

Also, whether additions to existing projects would trigger the assessment requirements is addressed by well-established principles of CEQA applicable to the determination of the "baseline" for the project. For example, Guidelines, section 15125, subd. (a) states that the physical environmental conditions as they exist at the time of the notice of preparation will normally constitute the baseline conditions by which a lead agency determines whether an impact is significant.

Commenter: EBMUD, July 26, 2006

Comment Summary: EBMUD states:

To avoid confusion, EBMUD requests that the list of projects that fall within the definition of 'water demand projects' in the new guideline Section 15155 include the term 'proposed,' which is used in the definition of 'project' set forth in Water Code Section 10912.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (a)(1). See response to CBIA's similar comment on Guidelines, section 15155, subd. (a)(1).

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states: "Section 15155(a)(1)(A) through (E) should include the word 'proposed' following the word 'A' and the beginning of each of these paragraphs."

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subds. (a)(1)(A) – (E). See responses to CBIA's and EBMUD's similar comments on Guidelines, section 15155, subd. (a)(1).

2. § 15155, subd. (a)(1)(A)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (a)(1)(A) state:

(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.

Commenter: EDAW, July 11, 2006

Comment Summary: EDAW states:

I realize that the changes to § 15155 are based on changes to State law, but a 'dwelling unit' is not a good threshold to be used in issues dealing with water demand. As everyone knows, an urban studio apartment is a dwelling unit and a suburban, large-lot, five-bedroom house is a dwelling unit. These dwelling units have vastly different long-term water demands. Is there any movement in State law or the guidelines to reconcile this? If not, perhaps this could be considered.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (a)(1)(A). As the commenter points out, the originally-proposed changes to the Guideline reflects statutory definitions. (Wat. Code, § 10912, subd. (a).) There is no basis for formulating a different definition. In addition, even if a development of 499 dwelling units that use vast amounts of water is proposed, the fact that these Water Code assessment requirements are not mandatory does not relieve the lead agency for the responsibility of assessing the water impacts of the project. In fact, CEQA requires lead agencies to evaluate all impacts of a project (Pub. Resources Code, section 21002.1; CEQA Guidelines, § 15064), and the trigger levels in Water Code, section 10912 do not suspend those requirements for projects not meeting the trigger levels. Rather, the effect of the trigger levels is that lead agencies *must* follow the Water Code assessment requirements for projects that are above the trigger levels, and have discretion to conduct the environmental analysis of water use impacts of projects below the trigger levels in a different manner. Moreover, nothing prevents lead agencies from taking advantage of the water assessment method identified in the Water Code provisions for projects that are below the trigger level.

3. § 15155, subd. (a)(1)(E)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (a)(1)(E) state:

(E) A 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.

Comment Summary: No comments were received on this subdivision. The originally-proposed changes to the Guidelines contained a typographical error.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(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 or floor area.

4. § 15155, subd. (a)(1)(F)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subd. (a)(1)(F) state:

(F) A mixed-use project that includes one or more of the projects specified in subdivision (a)(1) of this section.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA recommends that subd. (a)(1)(F) be revised to read "[a] mixed-use project that includes one or more of the projects specified in subdivision (a)(1)(A) – (E)," which suggests to us that the original language referring to "(a)(1)" may be too broad because paragraphs (F) through (J) are inapplicable.

Response to Comment: The originally-proposed changes to the Guidelines inadvertently included subdivision (a)(1)(F). (See Wat. Code, § 10912, subd. (a)(6).) The appropriate citation is to subdivisions (a)(1)(A) – (E) and (G).

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(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.

5. § 15155, subd. (a)(1)(H)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (a)(1)(H) state:

(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.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA recommends re-ordering the language contained in subdivision (a)(1)(H) as follows:

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 existing service connections of a public water system with fewer than 5,000 service connections.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (a)(1)(H). The re-ordering of language recommended by the commenter in subdivision (a)(1)(H) varies from the ordering contained in the statute, and the commenter does not offer an explanation, nor does the Resources Agency see any reason, as to why it is preferable. Without a basis for amending the statutory ordering of the subdivision, the Resources Agency finds it more appropriate to retain the statutory ordering for the sake of consistency.

6. § 15155, subd. (a)(1)(I)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (a)(1)(I) state:

(I) The adoption or amendment of a general plan is not, by itself, a water demand project.

Commenter: Sandra Genis, July 31, 2006

Comment Summary: Ms. Genis comments that the language in subdivision (a)(1)(I) of the proposed amendment excluding general plan amendments from the definition of water demand projects, renders the amendments inconsistent with the general thrust of Water Code sections 10910-10915. Ms. Genis

contends that these sections address deviations from anticipated growth under an adopted Urban Water Management Plan. (Wat. Code, § 10610, *et seq.*) She also states that inclusion of projects that create water demand that is equivalent to or greater than that created by a 500 dwelling unit project could be construed to include a general plan amendment.

Response to Comment: Two commenters stated that the originally-proposed changes to the Guidelines adding section 15155, subd. (a)(1)(I) does not have a statutory basis. While the Resources Agency believes the language can be supported, the question of when the adoption or amendment of a general plan occurs "by itself" could raise considerable confusion. Accordingly, the Resources Agency plans to delete the originally-proposed language to the Guidelines, deleting proposed subdivision (a)(1)(I), so as to mirror the statute.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

~~(I) "The adoption or amendment of a general plan is not, by itself, a water demand project."~~

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

Section 15155(I) states that the 'adoption or amendment of a general plan is not, by itself, a water demand project.' Such a distinction is not contained in the language of SB 610. Instead, the purpose of SB 610 was to require a water supply assessment for any project that is subject to CEQA. Therefore, this purported exception should be deleted, since there is no legal basis for this provision in the guideline.

Response to Comment: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines at section 15155, subd. (a)(1)(I). See response to Ms. Sandra Genis's comment on Guidelines, section 15155, subd. (a)(1)(I).

7. § 15155, subd. (a)(3)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (a)(3) state:

(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.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states: "Subdivision (a)(3) should be deleted because the new terminology it proposes is not necessary"

Response to Comment: The commenter's remarks do not warrant a change to the Guidelines, section 15155, subd. (a)(3). Several commenters stated that it is unnecessary to provide a definition of "water acquisition plan" in the originally-proposed changes to the Guidelines adding proposed subdivision (a) of this regulation. Because the phrase "water acquisition plan" refers to a specific plan identified in Water Code, section 10911, the Resources Agency believes it is appropriate to include a definition of this term in the Guideline. However, because the definition is provided in proposed subdivision (a)(3), it is unnecessary to repeat the definition in proposed subdivision (e) of this section. Therefore, the Resources Agency also has modified the originally-proposed changes to the Guidelines by omitting the repetitive phrasing in the originally-proposed addition of subdivision (e) to section 15155.

See CBIA's comment summary and Resources Agency's response to comment on Guidelines, section 15155, subd. (e).

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to Guidelines, section 15155, subd. (e) (as also shown below) as follows:

(e) The city or county lead agency shall include the water assessment, and any water acquisition plan provided pursuant to subdivision (a) of Section 10911 of the Water Code 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. ~~pursuant to Sections 15091 and 15093.~~

Note: Authority Cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code, Sections 10910-109145 of the Water Code.

Commenter: EBMUD, July 26, 2006

Comment Summary: EBMUD states:

The definition of 'water acquisition plan' seems to be unnecessary. This terminology is only used in subsection (e), where the reference is to 'any water acquisition plan provided pursuant to subdivision (a) of Section 10911 of the Water Code.' Since this is fairly self-explanatory, the definition may not be needed.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (a)(3). However, in accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to Guidelines, section 15155, subd. (e). See response to CBIA's comment on Guidelines, section 15155, subd. (a)(3).

8. § 15155, subd. (a)(4)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (a)(4) state:

(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 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.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

Subdivision (a)(4) should be conformed to the statutory language. The only Water Code section that refers to preparation of an assessment is section 10910. The additional verbiage in this guideline may be read to create requirements that do not appear in the law. Again, adding such technical requirements creates a trap for the unwary, and may be construed to provide what should be an illegitimate basis for challenging an agency decision.

Response to Comment: The commenter's remarks do not warrant a change to the Guidelines, section 15155, subd. (a)(4). The definition of "water assessment" was

carefully drafted to include the entirety of the process that a city or county lead agency must undertake pursuant to Water Code sections 10910 – 10915. It is ultimately the city or county lead agency that is subject to the provisions of this section, so it is appropriate to include reference to all provisions in the Water Code that may be applicable to them. For example, Water Code section 10911, subdivision (a) includes mandates applicable to city or county lead agencies (but not public water systems), and section 10912 includes definitions that apply to all entities – both city and county lead agencies as well as public water systems – subject to the requirements of these sections of the Water Code. Thus, the proposed definition conforms to *all* statutory requirements. We find the commenter's proposed definition inappropriately selective. Limiting the reference in this definition to Water Code section 10910 would omit applicable provisions and thus be inconsistent with the statute.

However, Sierra Club noted that the originally-proposed changes to the Guidelines adding proposed section 15155, subd. (d) omits an important criterion that the previously completed water assessment must comply with the provisions of sections 10910-10914 of the Water Code. The originally-proposed changes to the Guidelines adding proposed section 15155, subd. (d), state:

(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:

The Resources Agency believes that this criterion is expressly stated in the definition of water assessment at subdivision (a)(4) of proposed section 15155 of the originally-proposed changes to the Guidelines. For the avoidance of doubt, the Resources Agency has modified the originally proposed changes to the Guidelines adding proposed subdivision (a)(4) of this section to ensure that the definition of "water assessment" only includes those assessments that are prepared in conformity with the applicable legal requirements. See Sierra Club's comment summary and Resources Agency's response to comment on Guidelines, section 15155, subd. (d).

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(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.

9. § 15155, subd. (b)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (b), state:

(b) At the time a city or county lead agency determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration is required for the water-demand project, the city or county lead agency shall take the following steps:

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

As written, the proposed Guideline implies that every project meeting the criteria of section 10912 must trigger the need for an EIR, negative declaration, or mitigated negative declaration. That is not the case. A project may require only an addendum, may be exempt, or may require no environmental documentation. We propose the following modifications to clarify that certain consequences follow only "if" the lead agency determines an EIR, negative declaration, or mitigated negative declaration is required.

In addition, although there is no discussion of the proposed change in the text accompanying its recommendations, CBIA also recommends adding the phrase "at the time of that determination" to the language of subdivision (b).

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (b). The phrase "At the time a city or county lead agency determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration is required" come directly from the Water Code. The Resources Agency does not find that the language as written "implies that every project meeting the criteria of section 10912 must trigger the need for an EIR, negative declaration, or mitigated negative declaration."

However, as noticed in the Resources Agency's Notice of Modification to originally-proposed changes to the Guidelines, Subdivision (b) of Water Code § 10910 says that the Water Code provisions apply when a lead agency determines whether an EIR, negative declaration or mitigated negative declaration is required; supplements to EIRs or negative declarations are not mentioned. Accordingly, when the originally-proposed changes to the Guidelines for this section were drafted, no reference to supplements was made. However, Water Code, section 10910 and Public Resources Code, section 21151.9 state that a city or county lead agency

review of a water-demand project, as defined in the Water Code, is subject to the provisions of Water Code section 10910, *et seq.* In other words, these specific water assessment requirements apply to *any* environmental documentation the lead agency is preparing, including *supplements* to an EIR, negative declaration, or mitigated negative declaration.

CEQA requires supplements in certain circumstances. (See CEQA Guidelines, § 15163.) For example, when changes or new information affect the availability of water for the project, the lead agency will be required to assess the change in water availability in a supplement. Nothing in Water Code, section 10910 eliminates that obligation. Accordingly, the Resources Agency has modified the originally-proposed changes to the Guidelines to include supplements to the list of environmental documents in subdivision (b) in order to be consistent with the statute.

In addition, the proposed addition of subdivision (d) expressly provides an exemption to the steps required in the proposed addition of subdivision (b). The Resources Agency believes it useful to include a reference to that relationship in the proposed addition of subdivision (b) as well, for the sake of additional clarity.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(b) Subject to section 15155, subd. (d) below, aAt 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:

Commenter: EBMUD, July 26, 2006

Comment Summary: EBMUD asked:

Does the new guideline Section 15155 intend that WSAs are also required for projects for which an [sic] Notice of Exemption is prepared? Or are WSAs only required for Negative Declaration, Mitigated Negative Declaration, and EIRs?

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (b). The requirements of this section do not apply to exempt projects, and the Resources Agency finds that this is already clear in the proposed changes to the Guidelines and that no changes are necessary. However, in accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the

originally-proposed changes to Guidelines, section 15155, subd. (b). See response to CBIA's comment on Guidelines, section 15155, subd. (b).

10. § 15155, subd. (b)(1)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subd. (b)(1) state:

(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 prepare a water assessment. The governing body of the public water system must approve the water assessment prepared pursuant to this section at a regular or special meeting.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

The phrase 'governing body' should be deleted because the proposal to require that the lead agency submit a request to "the governing body" of the water supplier is not a requirement of the statute, creates a trap for the unwary, and may be construed to provide what should be an illegitimate basis for challenging a decision.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (b)(1). The phrase "governing body" was added to the regulatory language in drafting this regulation because it is clear that the statutory definition of "public water system" refers to the physical facilities that treat water. (See Wat. Code, § 10911, subd. (c).) A lead agency must address its request to an entity capable of providing a response - a governing body must necessarily be the recipient of such a request.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

The request that the lead agency is to submit is described in Water Code 10910(c)(1), which requires a request regarding the urban water management plan, not a request for a water supply assessment. Having a guideline that requires a request for a water supply assessment, when the statute requires a request relating to the urban water management plan,

would create confusion and be unworkable. We believe that the Guidelines should not add requirements not required by law.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (b)(1). Water Code, section 10910 explicitly states that the lead agency is directed to request an assessment and that this requirement applies regardless of whether the proposed project was included in the most recent urban water management plan. (See Wat. Code, § 10910, subds. (c)(2) and (g)(1).)

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA comments that the last sentence of this subdivision should be deleted because it directs water agencies, rather than lead agencies, which is what CEQA guidelines are authorized to do.

Response to Comment: This commenter stated that the last sentence of this subdivision should be deleted because it directs water agencies, rather than lead agencies. While the Resources Agency does not necessarily agree with the underlying reasoning of the commenter, the purpose of this rulemaking is to provide guidance to lead agencies. Accordingly, the Resources Agency has modified the originally-proposed changes to the Guidelines to direct lead agencies.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(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 (commencing with Section 10610), and to prepare a water assessment approved at a regular or special meeting of that governing body. ~~The governing body of the public water system must approve the water assessment prepared pursuant to this section at a regular or special meeting.~~

Commenter: EBMUD, July 26, 2006

Comment Summary: EBMUD comments that the proposed language fails to expressly reference a step in the water supply and demand assessment process -- the request that the public water system identify whether the project was included in

the most recent urban water management plan -- and that confusion could result. EBMUD recommends inclusion of the language stating that the city or county shall request the public water system to identify whether the proposed project was included in the most recent urban water management plan.

Response to Comment: This commenter stated that the originally-proposed changes to the Guidelines adding this subdivision fails to expressly reference a step in the water supply and demand assessment process -- the request by the lead agency that the public water supply identify whether the project was included in the most recent urban water management plan. The Resources Agency agrees and has modified the originally-proposed changes to the Guidelines to expressly include this step.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(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 (commencing with Section 10610), and to prepare a water assessment approved at a regular or special meeting of that governing body. ~~The governing body of the public water system must approve the water assessment prepared pursuant to this section at a regular or special meeting.~~

11. § 15155, subd. (b)(2)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (b)(2) state:

(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 its own 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.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA comments that the phrase "its own water assessment" should be deleted from subdivision (b)(2), as it is confusing and may be read to require something other than what is required for an assessment prepared by the water agency.

Response to Comment: This commenter stated that the phrase "its own water assessment" should be deleted from the originally-proposed changes to the Guidelines adding subdivision (b)(2), as it is confusing and may be read to require something other than what is required for an assessment prepared by the water agency. The Resources Agency believes that modifying the originally-proposed changes to the Guidelines can provide additional clarity.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(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 ~~its own~~ 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.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

The phrase 'governing body' should be deleted because the statutes do not require consultation with 'the governing body' of the water agency. Adding this requirement creates a trap for the unwary, and may be construed to provide what should be an illegitimate basis for challenging a decision. It could also result in substantial delay due to the need to wait for a meeting of the governing body of the water agency. Delaying the process is contrary to Legislative intent and statutory language.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (b)(2). See response to CBIA's first comment on Guidelines, section 15155, subd. (b)(1).

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

The phrase 'pursuant to this section' should be deleted because a water supply assessment is prepared by a lead agency pursuant to section 10910 of the Water Code and section 21151.9 of CEQA, not pursuant to 'this section' of the CEQA Guidelines.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (b)(2). Changing "water assessment prepared pursuant to this section" to "water assessment prepared pursuant to Water Code section 10910" is unnecessary. It is this regulation that provides guidance to lead agencies on how to proceed when considering water-demand projects, including reference to the Water Code where appropriate. See response to CBIA's comment on Guidelines, section 15155, subd. (a)(4).

12. § 15155, subd. (c)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (c) state:

(c) If the governing body of a public water system is preparing the water assessment, it must submit the requested water assessment to the city or county lead agency within 90 days after the date on which the governing body of the public water system received such request. Before the expiration of the 90-day period, a representative of the governing body of the public water system may meet with the city or county lead agency and request a 30-day extension of time to prepare and adopt the water assessment. The city or county lead agency must grant any reasonable request. 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 Sections 10910-10914 of the Water Code to submit the water assessment.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

The first part of subdivision (c) appears to tell water agencies how to comply with the Water Code. Again, we believe that OPR is not

authorized to adopt Guidelines other than those that implement CEQA. The water agencies' duties under the Water Code are not part of CEQA. (See Pub. Res. Code § 21151.9, which refers only to the duties of the city or county lead agency). Including directives to water agencies in the CEQA Guidelines also creates another problem in that some may read the inclusion to impose a duty on lead agencies to ensure that water agencies comply with the Water Code and prepare a legally adequate water supply assessment. The statutes impose no such requirements. Lead agencies should not be subjected to lawsuits simply because a water agency failed in its duties.

Response to Comment: This commenter stated that the originally-proposed changes to the Guidelines adding this subdivision direct water agencies, rather than lead agencies. While the Resources Agency does not necessarily agree with the reasoning of the commenter, the purpose of this rulemaking is to provide guidance to lead agencies. Accordingly, the Resources Agency is modifying the originally-proposed changes to the Guidelines to direct lead agencies.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(c)The city or county lead agency shall grant any reasonable request for an extension of time that is made by ~~if~~ the governing body of a public water system is preparing the water assessment, it must submit the requested water assessment to the city or county lead agency 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 such the request to prepare a water assessment. Before the expiration of the 90-day period, a representative of the governing body of the public water system may meet with the city or county lead agency and request a 30-day extension of time to prepare and adopt the water assessment. The city or county lead agency must grant any reasonable request. 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 sections 10910-10914 of the Water Code to submit Part 2.10 of Division 6 of the Water Code relating to the submission of the water assessment.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

The second part of this subdivision would impose new regulations requiring a lead agency to grant a water agency's reasonable request for an extension of time. This is contrary to legislative intent and statutory language, which direct that a water supply assessment ordinarily be prepared within 90 days and that the lead agency, not the water agency, have the power to determine whether an extension of time is warranted due to extraordinary circumstances. The language in the current statute was heavily negotiated and hard-fought. The Guidelines should not attempt to overturn the legislative direction. Nor should they countenance additional delay in the process.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (c). The statutory language implemented by this section allows public water systems to request extensions of time, for a period of up to 30 days. Nowhere does the statute require that granting of such requests be limited to extraordinary circumstances. Moreover, it is entirely appropriate to expect that local lead agencies interact with water agencies in a reasonable manner.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

[T]he provisions regarding a writ of mandamus should be modified to reflect the statutory language. Water Code section 10910(g)(3) enables a lead agency to seek a writ to compel compliance 'with this part', which includes section 10915. The statute limits the writ to compliance 'relating to the submission of the water supply assessment.' The guideline should reflect this limitation.

Response to Comment: This commenter requested that the provisions regarding writs be modified to use the phrase "this part" instead of "sections 10910 – 10914" in the final sentence of the originally-proposed change to the Guidelines adding this subdivision, and that the scope of such writs should be limited to compliance "relating to the submission of the water supply assessment." The Resources Agency agrees that this nonsubstantial modification is more consistent with the statutory language.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(c) The city or county lead agency shall grant any reasonable request for an extension of time that is made by If the governing body of a public water system is preparing the water assessment, it must submit the requested water assessment to the city or county lead agency 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 such the request to prepare a water assessment. Before the expiration of the 90-day period, a representative of the governing body of the public water system may meet with the city or county lead agency and request a 30-day extension of time to prepare and adopt the water assessment. The city or county lead agency must grant any reasonable request. 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 sections 10910-10914 of the Water Code to submit Part 2.10 of Division 6 of the Water Code relating to the submission of the water assessment.

13. § 15155, subd. (d)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subd. (d) state:

(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:

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

Subdivision (d) refers to changes in the 'larger' project. Water Code section 10910(h)(1) refers to changes in the 'project,' not the larger project. As proposed, the guideline would contradict the statutory language.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (d). Contrary

to commenter's assertion, Water Code, section 10910, subd. (h)(1) includes the word "larger." The language in the originally-proposed changes to the Guidelines are consistent with section 10910, subd. (h)(1) of the Water Code.

Commenter: **Sierra Club, July 27, 2006**

Comment Summary: Sierra Club states that the proposed language:

omits an important criterion that the previously completed water assessment must comply with the provisions of section 10910-10914 of the Water Code. In order to be consistent with Water Code section 10910(g)(3), we propose that this section be revised to state: If a water-demand project has been the subject of a water assessment which complies with Water Code section 10910-10914, no additional water supply assessment shall be required....

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (d).

However, this commenter noted that the originally-proposed changes to the Guidelines adding proposed section 15155, subd. (d) omit an important criterion that the previously completed water assessment must comply with the provisions of sections 10910-10914 of the Water Code. The originally-proposed changes to the Guidelines adding proposed section 15155, subd. (d), state:

(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:

The Resources Agency believes that this criterion is expressly stated in the definition of water assessment at subdivision (a)(4) of proposed section 15155 of the originally-proposed changes to the Guidelines. For the avoidance of doubt, the Resources Agency has modified the originally proposed changes to the Guidelines adding proposed subdivision (a)(4) of this section to ensure that the definition of "water assessment" only includes those assessments that are prepared in conformity with the applicable legal requirements.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines section 15155, subd. (a)(4) as follows:

(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.

14. § 15155, subd. (d)(2)(B)

Summary of Text: The originally-proposed changes to the Guidelines, at section 15155, subdivision (d)(2)(B), state:

(B) Changes in the circumstances or conditions substantially affecting the ability of the applicable agencies to provide a sufficient supply of water for the water-demand project.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

The reference to 'applicable agency' in subdivision (d)(2)(B) is confusing and not defined. Water Code section 10910(h)(2) refers to the ability of 'the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b)' to supply water. This content is reflected in our suggested amendments below, which propose simpler language to achieve the same result.

Response to Comment: This commenter stated that the reference to "applicable agencies" in the originally-proposed changes to the Guidelines adding subdivision (d)(2)(B) is confusing and not defined. The Resources Agency has modified the originally-proposed changes to the Guidelines that specifically reference the public water system, city or county in order to provide additional clarity.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(B) Changes in the circumstances or conditions substantially affecting the ability of the ~~applicable agencies~~ 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.

15. § 15155, subd. (d)(2)(C)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (d)(2)(C) state:

(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).

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

Water Code section 10910(h)(3) refers to new information that could not have been known 'when the assessment was prepared. Our suggested amendments below track that statutory language. The proposed reference to the time 'the entity had reached the conclusion in subdivision (d)(1)' arguably proposes a different point in time. Tracking the statutory language avoids this confusion.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (d)(2)(C). The originally-proposed addition of this subdivision provides guidance and clarity to lead agency decisionmakers that is consistent with CEQA's requirements. (Pub. Resources Code, § 21166; CEQA Guidelines, § 15162.)

Commenter: Sierra Club, July 27, 2007

Comment Summary: Sierra Club states:

Section 15155(d)(2)(C) contains language at the end of the sentence which is inconsistent with the statute that references the time when "the assessment was prepared" and not when the entity reached its conclusions. This discrepancy should be corrected by using the language of the statute.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (d)(2)(C). See response to CBIA's comment on Guidelines, section 15155, subd. (d)(2)(C) above.

16. § 15155, subd. (e)

Summary of Text: The originally-proposed changes to the Guidelines at section 15155, subdivision (e) state:

(e) The city or county lead agency shall include the water assessment, and any water acquisition plan provided pursuant to subdivision (a) of Section 10911 of the Water Code in the EIR, negative declaration, or mitigated negative declaration 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 the 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 pursuant to Sections 15091 and 15093.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA states:

The reference to water acquisition plans should be deleted because the statutes do not require that a lead agency include any discussion presented pursuant to Water Code section 10912 (regarding plans for acquiring additional water supplies) in the environmental document. Imposing such a requirement creates a trap for the unwary, and may be construed to provide what should be an illegitimate basis of challenging a decision. Imposing such a requirement might also inhibit consideration of mitigation measures after preparation of an environmental document, for fear that such measures might be considered 'additional water acquisition plans' not properly included in the environmental document. The guidelines should not discourage consideration of feasible mitigation measures at any point in the process.

Response to Comment: This commenter stated that it is unnecessary to provide a definition of "water acquisition plan" in the originally-proposed changes to the Guidelines adding proposed subdivision (a) of this regulation. Because the phrase "water acquisition plan" refers to a specific plan identified in Water Code, section 10911, the Resources Agency believes it is appropriate to include a definition of this term in the Guideline. However, because the definition is provided in proposed subdivision (a)(3), it is unnecessary to repeat the definition in proposed subdivision (e) of this section. Therefore, the Resources Agency also has modified the

originally-proposed changes to the Guidelines by omitting the repetitive phrasing in the originally-proposed addition of subdivision (e) to section 15155.

See CBIA's comment summary and Resources Agency's response on Guidelines, section 15155, subd. (a)(3).

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(e) The city or county lead agency shall include the water assessment, and any water acquisition plan provided pursuant to subdivision (a) of Section 15091 of the Water Code 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. pursuant to Sections 15091 and 15093.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA comments that the reference to

'findings . . . pursuant to sections 15091 and 15093' should be deleted because there is no reason to require that water supply findings be included in any part of an agency's findings. The statutes require only that the findings be made, leaving them to be made anywhere in an agency's approval documents. Requiring that the findings be located only in the context of section 15091 and 15093 findings creates a trap for the unwary, and may be construed to provide what should be an illegitimate basis for challenging a decision.

Response to Comment: This commenter stated that the reference to findings pursuant to sections 15091 and 15093 should be deleted because there is no reason to require that water supply findings be included in any part of an agency's findings. The Resources Agency believes that it is appropriate to require the inclusion of findings about the insufficiency of a potential water supply with other findings required by CEQA. The Resources Agency does agree, however, that the findings should not be tied to a specific section of the CEQA Guidelines. Therefore, the Resources Agency has modified the originally-proposed changes to the Guidelines and deleting the reference to Guidelines sections 15091 and 15093.

The modifications also add a reference to supplemental documents, in order to make this section consistent with the 15-day language for subdivision (b), discussed previously in this Attachment.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(e) The city or county lead agency shall include the water assessment, and any water acquisition plan provided pursuant to subdivision (a) of Section 10911 of the Water Code 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, pursuant to Sections 15091 and 15093.

Commenter: EBMUD, July 26, 2006

Comment Summary: EBMUD states:

The definition of 'water acquisition plan' seems to be unnecessary. This terminology is only used in subsection (e), where the reference is to 'any water acquisition plan provided pursuant to subdivision (a) of Section 19011 of the Water Code'. Since this is fairly self-explanatory, the definition may not be needed.

Response to Comment: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to Guidelines, section 15155, subd. (e). See response to CBIA's first comment on Guidelines section, 15155, subd. (e).

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

Section 15155(e) contains language inconsistent with the statutory provisions which require a determination of sufficiency as to both current and future water supplies to serve the project. Thus, the second sentence

should be modified to read: The city or county lead agency shall determine, based on the entire record, whether water supplies are and will be sufficient to satisfy the demands of the project, in addition to existing and planned future demands.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (e). The commenter's statement regarding inconsistency with the statute is incorrect. The language in the proposed Guideline to which commenter objects is verbatim from Water Code, section 10911, subd. (c).

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

The final sentence of this subsection must also be modified to reference all of the requirements imposed on a city or county lead agency when there is an insufficient water supply. We suggest adding the following language to the final sentence: "and must set forth the measures to acquire and develop sufficient water supplies pursuant to Water Code section 10911."

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15155, subd. (e). The language in the originally-proposed changes to the Guidelines as well as the modifications to the originally-proposed changes to the Guidelines are consistent with section 10911 of the Water Code. See response to Sierra Club's comment directly above.

17. § 15155, Note

Summary of Text: The originally-proposed changes to the Guidelines at the note for section 15155 state:

Note: Authority Cited: Section 21083, Public Resources Code.

Reference: Section 21151.9, Public Resources Code, Sections 10910-10914 of the Water Code.

Commenter: CBIA, July 31, 2006

Comment Summary: CBIA pointed out in text that the Reference should be changed to include 10915 of the Water Code.

Response to Comment: The Resources Agency agrees with this commenter that it is appropriate to include section 10915 of the Water Code as a reference within the Note.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines.

"Note: Authority Cited: Section 21083, Public Resources Code.
Reference: Section 21151.9, Public Resources Code, Sections 10910-
109145 of the Water Code."

**B. Full Text Showing Modifications to the Originally-Proposed
Changes to the Guidelines at Section 15155:**

§ 15155. 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.

~~(1) The adoption or amendment of a general plan is not, by itself, a water demand project.~~

(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, subd. (d) below, aAt 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 (commencing with Section 10610), and to prepare a water assessment approved at a regular or special meeting of that governing body. ~~The governing body of the public water system must approve the water assessment prepared pursuant to this section at a regular or special meeting.~~

(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 ~~its own~~ 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 ~~if~~ the governing body of a public water system is preparing the water assessment, it must submit the requested water assessment to the city or county lead agency 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 such the request to prepare a water assessment. ~~Before the expiration of the 90-day period, a representative of the governing body of the public water system may meet with the city or county lead agency and request a 30-day extension of time to prepare and adopt the water assessment. The city or county lead agency must grant any reasonable request.~~ 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 ~~sections 10910-10914 of the Water Code to submit Part 2.10 of Division 6 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 ~~applicable agencies 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 ~~provided pursuant to subdivision (a) of Section 10911 of the Water Code~~ 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. ~~pursuant to Sections 15091 and 15093.~~

Note: Authority Cited: Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code, Sections 10910-109145 of the Water Code.

§ 15179. Limitations on the Use of the Master EIR.

Summary of Text: The originally-proposed changes to the Guidelines, at section 15179, subdivision (a)(2) state:

(ii2) After the certification of the Master EIR, a project not identified in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR for any subsequent project that was described in the Master EIR, unless the lead agency does one of the following:

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

...the terms 'identified' and 'described' . . . have different meanings. For purposes of proper construction, the term 'described' should be used in both portions of this paragraph, since they are intended to mean the same thing and the statute uses this latter term.

Response to Comment: This commenter stated that the word "identified" in subdivision (a)(2) of this section should be changed to "described." The Resources Agency agrees with the commenter, and notes that the statute being implemented by this CEQA Guidelines section uses the verb "described" rather than "identified." Therefore the Resources Agency has modified the section to ensure consistency within the Guideline and between the statute and the Guideline.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

§ 15179. Limitations on the Use of the Master EIR.

(a) The certified Master EIR shall not be used for a subsequent project described in the Master EIR in accordance with this article if either:

(i1) The Master EIR ~~it~~ was certified more than five years prior to the filing of an application for a later subsequent project except as set forth in subsection (b) below, or

(ii2) After the certification of the Master EIR, a project not identified described in the certified Master EIR as an anticipated subsequent project is approved and the approved project may affect the adequacy of the Master EIR for any subsequent project that was described in the Master EIR, unless the lead agency does one of the following:

(b) A Master EIR that was certified more than five years prior to the filing of an application for a subsequent project described in the Master EIR may be used in accordance with this article to review such a subsequent project if the lead agency reviews the adequacy of the Master EIR and takes either of the following steps:

(a1) ~~Reviews the Master EIR and f~~ Finds that no substantial changes have occurred with respect to the circumstances under which the Master EIR was certified, or that there is no new available information which was not known and could not have been known at the time the Master EIR was certified; or

(b2) Prepares an initial study, and pursuant to the findings of the initial study either:

(A) certifies a subsequent or supplemental EIR that updates or revises the Master EIR and which either (i1) is incorporated into the previously certified Master EIR, or (ii2) references any deletions, additions or other modifications to the previously certified Master EIR; or

(B) approves a mitigated negative declaration that addresses substantial changes that have occurred with respect to the circumstances under which the Master EIR was certified or the new information that was not known and could not have been known at the time the Master EIR was certified.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21157.6, Public Resources Code.

ARTICE 12.5 Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

This article is an entirely new article of the CEQA Guidelines. The comment summaries and proposed responses to Article 12.5 are listed by section and subdivision, where applicable.

A. § 15191. Definitions.

Summary of Text: The originally-proposed changes to the Guidelines at section 15191 state:

For purposes of this Article 12.5 only, the following words shall have the following meanings:

(a) "Agricultural employee" means a person engaged in agriculture, including: farming in all its branches, and, among other things, includes: (1) the cultivation and tillage of the soil, (2) dairying, (3) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 1141j(g) of Title 12 of the United States Code), (4) the raising of livestock, bees, furbearing animals, or poultry, and (5) any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market and delivery to storage or to market or to carriers for transportation to market. This definition is subject to the following limitations:

This definition shall not be construed to include any person other than those employees excluded from the coverage of the National Labor Relations Act, as amended, as agricultural employees, pursuant to Section 2(3) of the Labor Management Relations Act (Section 152(3), Title 29, United States Code), and Section 3(f) of the Fair Labor Standards Act (Section 203(f), Title 29, United States Code).

This definition shall not apply, or be construed to apply, to any employee who performs work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work (as these terms have been construed under Section 8(e) of the Labor Management Relations Act, 29 U.S.C. Sec. 158(e)) or logging or timber-clearing operations in initial preparation of land for farming, or who does land leveling or only land surveying for any of the above. As used in this definition, "land leveling" shall include only major land moving operations changing the contour of the land, but shall not include annual or seasonal tillage or preparation of land for cultivation.

(b) "Census-defined place" means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

(c) "Community-level environmental review" means either of the following:

(1) An EIR certified on any of the following:

(A) A general plan.

(B) A revision or update to the general plan that includes at least the land use and circulation elements.

(C) An applicable community plan.

(D) An applicable specific plan.

(E) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.

(2) A negative declaration or mitigated negative declaration adopted as a subsequent environmental review document, following and based upon an EIR on a general plan, an applicable community plan, or an applicable specific plan, provided that the subsequent environmental review document is allowed by CEQA following a master EIR or a program EIR, or is required pursuant to Section 21166.

(d) "Developed open space" means land that meets all of the following criteria:

(1) land that is publicly owned, or financed in whole or in part by public funds,

(2) is generally open to, and available for use by, the public, and

(3) is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ball fields, enclosed child play areas, and picnic facilities.

Developed open space may include land that has been designated for acquisition by a public agency for developed open space but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(e) "Infill site" means a site in an urbanized area that meets one of the following criteria:

(1) The site has been previously developed for qualified urban uses;
or

(2) The site has not been developed for qualified urban uses but all immediately adjacent parcels are developed with existing qualified urban uses; or

(3) The site has not been developed for qualified urban uses, no parcel within the site has been created within the past 10 years, and the site is situated so that:

(A) at least 75 percent of the perimeter of the site is adjacent to parcels that are developed with existing qualified urban uses at the time the lead agency receives an application for an approval; and

(B) the remaining 25 percent of the perimeter of the site adjoins parcels that had been previously developed for qualified urban uses.

(f) "Low- and moderate-income households" means "persons and families of low or moderate income" as defined in Section 50093 of the Health and Safety Code to mean persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the Department of Housing and Community Development, in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

(g) "Low-income households" means households of persons and families of very low and low income, which are defined in Sections 50093 and 50105 of the Health and Safety Code as follows:

(1) "Persons and families of low income" or "persons of low income" is defined in Section 50093 of the Health & Safety Code to mean persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to this division.

(2) "Very low income households" is defined in Section 50105 of the Health & Safety Code to mean persons and families whose incomes do not exceed the qualifying limits for very low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. "Very low income households" includes extremely low income households, as defined in Section 50106 of the Health & Safety Code.

(h) "Lower income households" is defined in Section 50079.5 of the Health and Safety Code to mean any of the following:

(1) "Lower income households," which means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(2) "Very low income households," which means persons and families whose incomes do not exceed the qualifying limits for very

low income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

(3) "Extremely low income households," which means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as established and amended from time to time by the Secretary of Housing and Urban Development and defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations.

(i) "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 a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

(j) "Project-specific effect" means all the direct or indirect environmental effects of a project other than cumulative effects and growth-inducing effects.

(k) "Qualified urban use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

(l) "Residential" means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

(m) "Urbanized area" means either of the following:

(1) An incorporated city that either by itself or in combination with two contiguous incorporated cities has a population of at least 100,000 persons; or

(2) An unincorporated area that meets the requirements set forth in subdivision (m)(2)(A) and subdivision (m)(2)(B) below.

(A) The unincorporated area must meet one of the following location or density requirements:

1. The unincorporated area must be: (i) completely surrounded by one or more incorporated cities, (ii) have a population of at least 100,000 persons either by itself or in combination with the surrounding incorporated city or cities, and (iii) have a population density that at least equals the population density of the surrounding city or cities; or

2. The unincorporated area must be located within an urban growth boundary and have an existing residential population of at least 5,000 persons per square mile. For purposes of this subparagraph, an "urban growth boundary" means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.

(B) The board of supervisors with jurisdiction over the unincorporated area must have taken the following steps:

1. The board has prepared a draft document by which the board would find that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that: (i) encourage compact development in a manner that promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing, and (ii) protects the environment, open space, and agricultural areas.

2. The board has submitted the draft document to OPR and allowed OPR thirty days to submit comments on the draft findings to the board.

3. No earlier than thirty days after submitting the draft document to OPR, the board has adopted a final finding in substantial conformity with the draft finding described in the draft document referenced in subdivision (m)(2)(B)(1) above.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21159.20, 21159.21, 21159.22, 21159.23, 21159.24, Public Resources Code.

Commenter: County of San Diego, July 26, 2006

Comment Summary: County of San Diego states:

Sections 15062, 15191-15196, requires [sic] a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The County of San Diego requests that OPR accept electronic NOEs when having to file with OPR. Filing electronically will save time and resources:

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15191. There is currently no formal system in place at OPR for electronic NOE filing. However, OPR is currently considering creating a system whereby electronic filing of notices will be possible. See also responses to County of San Diego's comments on Guidelines, sections, 15062, 15192, 15193, 15194, and 15195.

1. § 15191, subd. (k)

Summary of Text: The originally-proposed changes to the Guidelines at section 15191, subdivision (k) state:

(k) "Qualified urban use" means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

Commenter: EDAW, July 11, 2006

Comment Summary: EDAW states:

[T]he definition for qualified urban use does not include, in my reading, a developed urban park. One envisions many situations where development projects proposed in an infill setting might be partially surrounded by an urban park or similar facility. It seems the purpose of this exemption would allow for such development to be covered.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15191, subd. (k). The definition for "qualified urban use" is consistent with section 21072 of the Public Resources Code.

2. § 15191, subd. (m)(2)

Summary of Text: The originally-proposed changes to the Guidelines at section 15191, subdivision (m)(2) state:

(m) Urbanized area" means either of the following: . . .

(2) An unincorporated area that meets the requirements set forth in subdivision (m)(2)(A) and subdivision (m)(2)(B) below.

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

this subdivision should be deleted, as it would allow these exemptions to be used in unincorporated areas that are not truly urbanized and thereby contravene the intent of the Legislature in enacting Public Resources Code section 21159.20, et seq.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15191, subd. (m)(2). Section 15191 implements section 21159.21 of the Public Resources Code which was added by stats. 2002, c. 1039 (SB 1925), sec. 12. The Resources Agency's proposed language is consistent with the statute (stats. 2002, c. 1039 (SB 1925), sec. 5), which also added section 21071 of the Public Resources Code defining urbanized area. The Resources Agency finds that deletion of the proposed subdivision would cause confusion.

3. § 15191, subd. (m)(2)(b)(1)

Summary of Text: The originally-proposed changes to the Guidelines at section 15191, subdivision (m)(2)(B)(1) state:

The board of supervisors with jurisdiction over the unincorporated area must have taken the following steps:

1. The board has prepared a draft document by which the board would find that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that: (i) encourage compact development in a manner that promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing, and (ii) protects the environment, open space, and agricultural areas.

2. The board has submitted the draft document to OPR and allowed OPR thirty days to submit comments on the draft findings to the board.
3. No earlier than thirty days after submitting the draft document to OPR, the board has adopted a final finding to substantial conformity with the draft finding described in the draft document referenced in subdivision (m)(2)(B)(1) above.

Commenter: **Sierra Club, July 27, 2006**

Comment Summary: Sierra Club states:

the criteria for the unincorporated area plan are too vague and open-ended to provide adequate assurance that these exemptions will only be used in truly urbanized areas.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15191, subd. (m)(2)(b)(1). Section 15191 implements section 21159.21 of the Public Resources Code which was added by stats. 2002, c. 1039 (SB 1925), sec. 12. The Resources Agency's proposed language is consistent with the statute (stats. 2002, c. 1039 (SB 1925), sec. 5) which also added section 21071 of the Public Resources Code defining urbanized area. The Resources Agency finds that deletion of the proposed subdivision would cause confusion.

B. § 15192. Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

Summary of Text: In order to show the new section as well as the comments, responses and the Modifications, the Resources Agency will first show Section 15192, as originally-proposed, followed by the summary of comments and responses thereto, and the full section as modified:

1. Full Text of Originally-Proposed Changes to the Guidelines at section 15192:

§ 15192. Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

In order to qualify for an exemption set forth in sections 15193, 15194 or 15195, a housing project must meet all of the threshold criteria set forth below.

(a) The project must be consistent with:

(1) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete; and

(2) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete, unless the zoning of project property is inconsistent with the general plan because the project property has not been rezoned to conform to the general plan.

(b) Community-level environmental review has been adopted or certified.

(c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(d) The site of the project:

(1) Does not contain wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations.

(2) Does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(3) Does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(4) Does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps have been taken in response to the results of this assessment:

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code.

(h) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(i) The project does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

(l) Either the project does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(m) The project site is not located on developed open space.

(n) The project site is not located within the boundaries of a state conservancy.

(o) The project has not been divided into smaller projects to qualify for one or more of the exemptions set forth in sections 15193 to 15195.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.21, 21159.27, Public Resources Code.

Commenter: County of San Diego, July 26, 2006

Comment Summary: County of San Diego states:

Sections 15062, 15191-15196, requires [sic] a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The County of San Diego requests that OPR accept electronic NOEs when having to file with OPR. Filing electronically will save time and resources.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15192. There is currently no formal system in place at OPR for electronic NOE filing. However, OPR is currently considering creating a system whereby electronic filing of notices will be possible.

See also responses to County of San Diego's comments on Guidelines, sections 15062, 15191, 15193, 15194, and 15195.

a. § 15192, subds. (i)-(k)

Summary of Text: The originally-proposed changes to the Guidelines at section 15192, subdivisions (i)-(k) state:

(i) The project does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or

zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

Commenter: **Sierra Club, July 27, 2006**

Comment Summary: Sierra Club states:

[T]hese subdivisions are not consistent with Public Resources Code section 21159.21(h)(2)-(4), which ties these limiting factors to the project site, not the project. This is an important distinction, as the project itself may not pose a risk of fire, explosion, public health exposure or seismic hazard, but the site on which the project is proposed to be built may well pose such risks.

Response to Comment: This commenter stated that the originally-proposed changes to the Guidelines are not consistent with Public Resources Code section 21159.21, subdivisions (h)(2)-(5); which tie these limiting factors to the project site, not the project. The commenter stated that this is an important distinction, as the project itself may not pose a risk of fire, explosion, public health exposure, seismic hazard, or landslide hazard, but the site on which the project is proposed to be built may well pose such risks. The Resources Agency agrees that the commenter has identified a potential conflict between the originally-proposed changes to the Guidelines and the statute. (Pub. Resources Code, § 21159.21, subds. (h)(2)-(5).) Therefore, the Resources Agency has modified the originally-proposed changes to the Guidelines.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines as follows:

(i) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project site is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

b. § 15192, subd. (l)

Summary of Text: The originally-proposed changes to the Guidelines at section 15192, subdivision (l) state:

(l) Either the project does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

Commenter: **Sierra Club, July 27, 2006**

Comment Summary: Sierra Club states:

... this subdivision is inconsistent with Public Resources Code section 21159.21(h)(5), which requires that the project site not be subject to a landslide or flood hazard. This subdivision, by contrast, only requires the project itself to not present such a hazard.

Response to Comment: This commenter stated that the originally-proposed changes to the Guidelines are not consistent with Public Resources Code section 21159.21, subdivisions (h)(2)-(5), which tie these limiting factors to the project site, not the project. The commenter stated that this is an important distinction, as the project itself may not pose a risk of fire, explosion, public health exposure, seismic hazard, or landslide hazard, but the site on which the project is proposed to be built may well pose such risks. The Resources Agency agrees that the commenter has identified a potential conflict between the originally-proposed changes to the Guidelines and the statute. (Pub. Resources Code, § 21159.21, subds. (h)(2)-(5).) Therefore, the Resources Agency has modified the originally-proposed changes to the Guidelines.

Modified Text: In accordance with section 11346.8, subd. (c) of the Government Code, the Resources Agency has modified the originally-proposed changes to the Guidelines at section 15192, subd. (l) as follows:

(l) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

c. § 15192, subd. (m)

Summary of Text: The originally-proposed changes to the Guidelines at section 15192, subdivision (m) state:

(m) The project site is not located on developed open space.

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

the phrase 'as defined in Public Resources Code section 21159.21, subdivisions (i)(2) and (3)' should be added to the end of this subdivision to make it consistent with that section.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15192, subd. (m). The Resources Agency has determined that the originally-proposed changes to the Guidelines are consistent with section 21159.21 of the Public Resources Code which is also referenced in the Note to this proposed section of the Guidelines. Additionally, the phrase "developed open space" is defined at proposed section 15191, subd. (d) in the originally-proposed changes to the Guidelines. The Resources Agency proposed language is more user-friendly to allow the reader to refer to the definition immediately preceding the proposed Guidelines section.

2. Full Text Showing Modifications to the Originally-Proposed Changes to the Guidelines at Section 15192:

§ 15192. Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

In order to qualify for an exemption set forth in sections 15193, 15194 or 15195, a housing project must meet all of the threshold criteria set forth below.

(a) The project must be consistent with:

(1) Any applicable general plan, specific plan, or local coastal program, including any mitigation measures required by such plan or program, as that plan or program existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete; and

(2) Any applicable zoning ordinance, as that zoning ordinance existed on the date that the application for the project pursuant to Section 65943 of the Government Code was deemed complete, unless the zoning of project property is inconsistent with the general plan because the project property has not been rezoned to conform to the general plan.

(b) Community-level environmental review has been adopted or certified.

(c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(d) The site of the project:

(1) Does not contain wetlands, as defined in Section 328.3 of Title 33 of the Code of Federal Regulations.

(2) Does not have any value as an ecological community upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(3) Does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(4) Does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity. In addition, the following steps have been taken in response to the results of this assessment:

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of

the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1 of the Public Resources Code.

(h) The project site is not subject to wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(i) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project site is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

(l) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(m) The project site is not located on developed open space.

(n) The project site is not located within the boundaries of a state conservancy.

(o) The project has not been divided into smaller projects to qualify for one or more of the exemptions set forth in sections 15193 to 15195.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.21, 21159.27, Public Resources Code.

C. § 15193. Agricultural Housing Exemption

Summary of Text: The originally-proposed changes to the Guidelines at section 15193 state:

§ 15193. Agricultural Housing Exemption.

CEQA does not apply to any development project that meets the following criteria.

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project site meets the following size criteria:

(1) The project site is located in an area with a population density of at least 1,000 persons per square mile and is two acres or less in area; or

(2) The project site is located in an area with a population density of less than 1,000 persons per square mile and is five acres or less in area.

(c) The project meets the following requirements regarding location and number of units.

(1) If the proposed development project is located on a project site within city limits or in a census-defined place, it must meet the following requirements:

(A) The proposed project location must be within one of the following:

1. Incorporated city limits; or

2. A census defined place with a minimum population density of at least 5,000 persons per square mile; or

3. A census-defined place with a minimum population density of at least 1,000 persons per square mile, unless a public agency that is carrying out or approving the project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impacts of successive projects of the same type in the same area, over time, would be significant.

(B) The proposed development project must be located on a project site that is adjacent, on at least two sides, to land that has been developed.

(C) The proposed development project must meet either of the following requirements:

1. Consist of not more than 45 units, or

2. Consist of housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(2) If the proposed development project is located on a project site zoned for general agricultural use, it must meet either of the following requirements:

(A) Consist of not more than 20 units, or

(B) Consist of housing for a total of 20 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(d) The project meets the following requirements regarding provision of housing for agricultural employees:

(1) The project must consist of the construction, conversion, or use of residential housing for agricultural employees.

(2) If the project lacks public financial assistance, then:

(A) The project must be affordable to lower income households; and

(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years.

(3) If public financial assistance exists for the project, then:

(A) The project must be housing for very low, low-, or moderate-income households; and

(B) The developer of the development project must provide sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least 15 years.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.22, Public Resources Code.

Commenter: County of San Diego, July 26, 2006

Comment Summary: County of San Diego states:

Sections 15062, 15191-15196, requires [sic] a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The County of San Diego requests that OPR accept electronic NOEs when having to file with OPR. Filing electronically will save time and resources.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15193. There is currently no-formal system in place at OPR for electronic NOE filing. However, OPR is currently considering creating a system whereby electronic filing of notices will be possible. See also responses to County of San Diego's comments on Guidelines, sections 15062, 15191, 15192, 15194, and 15195.

D. § 15194. Affordable Housing Exemption.

Summary of Text: The originally-proposed changes to the Guidelines at section 15194 state:

§ 15194. Affordable Housing Exemption.

CEQA does not apply to any development project that meets the following criteria:

(a) The project meets the threshold criteria set forth in section 15192.

(b) The project meets the following size criteria: the project site is not more than five acres in area.

(c) The project meets both of the following requirements regarding location:

(1) The project meets one of the following location requirements relating to population density:

(A) The project site is located within an urbanized area or within a census-defined place with a population density of at least 5,000 persons per square mile.

(B) If the project consists of 50 or fewer units, the project site is located within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(C) The project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile and there is no reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

(2) The project meets one of the following site-specific location requirements:

(A) The project site has been previously developed for qualified urban uses; or

(B) The parcels immediately adjacent to the project site are developed with qualified urban uses.

(C) The project site has not been developed for urban uses and all of the following conditions are met:

1. No parcel within the site has been created within 10 years prior to the proposed development of the site.

2. At least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses.

3. The existing remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses.

(d) The project meets both of the following requirements regarding provision of affordable housing:

(1) The project consists of the construction, conversion, or use of residential housing consisting of 100 or fewer units that are affordable to low-income households.

(2) The developer of the project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 30 years, at monthly housing costs deemed to be "affordable rent" for lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.23, Public Resources Code.

Commenter: County of San Diego, July 26, 2006

Comment: County of San Diego states:

Sections 15062, 15191-15196, requires [sic] a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The County of San Diego requests that OPR accept electronic NOEs when having to file with OPR. Filing electronically will save time and resources.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15194. There is currently no formal system in place at OPR for electronic NOE filing. However, OPR is currently considering creating a system whereby electronic filing of notices will be possible. See also responses to County of San Diego's comments on Guidelines, sections 15062, 15191, 15192, 15193, and 15195.

1. § 15194, subd. (d)(2)

Summary of Text: The originally-proposed changes to the Guidelines at section 15194, subdivision (d)(2) state:

(2) The developer of the project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 30 years, at monthly housing costs deemed to be "affordable rent" for lower income, very low income, and extremely low income households, as determined pursuant to Section 50053 of the Health and Safety Code.

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

[T]his section should cross-reference the definitions of affordable housing in Health and Safety Code section 50079.5, as provided in Public Resources Code section 21159.23(a)(1).

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15194, subd. (d)(2). The proposed language is consistent with section 21159.23 of the Public Resources Code. Additionally, the proposed Guideline references section 21159.23 of the Public Resources Code, which contains the language requested by the commenter.

2. § 15194, Note

Summary of Text: The originally-proposed changes to the Guidelines at the Note for the proposed new section 15194 state:

Note: Authority cited: Section 21083, Public Resources Code.
Reference: Section 21159.23, Public Resources Code.

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states: "The authority cited for section 15194 should include Public Resources Code section 21159.21."

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at the note for section 15194. The authority for this proposed Guidelines section is section 21083 of the Public Resources Code. The reference for this proposed Guidelines section is 21159.23 of the Public Resources Code. Public Resources Code section 21159.21 is implemented and referenced at proposed Guidelines section 15192 and proposed Guidelines section 15194, subdivision (a).

E. § 15195. Residential Infill Exemption.

Summary of Text: The originally-proposed changes to the Guidelines state:

§ 15195. Residential Infill Exemption.

(a) Except as set forth in subdivision (b), CEQA does not apply to any development project that meets the following criteria:

(1) The project meets the threshold criteria set forth in section 15192; provided that with respect to the requirement in section 15192(b) regarding community-level environmental review, such review must be certified or adopted within five years of the date that the lead agency deems the application for the project to be complete pursuant to Section 65943 of the Government Code.

(2) The project meets both of the following size criteria:

(A) The site of the project is not more than four acres in total area.

(B) The project does not include any single level building that exceeds 100,000 square feet.

(3) The project meets both of the following requirements regarding location:

(A) The project is a residential project on an infill site.

(B) The project is within one-half mile of a major transit stop.

(4) The project meets both of the following requirements regarding number of units:

(A) The project does not contain more than 100 residential units.

(B) The project promotes higher density infill housing. The lead agency may establish its own criteria for determining whether the project promotes higher density infill housing except in either of the following two circumstances:

1. A project with a density of at least 20 units per acre is conclusively presumed to promote higher density infill housing.

2. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density infill housing unless the preponderance of the evidence demonstrates otherwise.

(5) The project meets the following requirements regarding availability of affordable housing: The project would result in housing units being made available to moderate, low or very low income families as set forth in either A or B below:

(A) The project meets one of the following criteria, and the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units as set forth below at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

1. At least 10 percent of the housing is sold to families of moderate income, or

2. Not less than 10 percent of the housing is rented to families of low income, or

3. Not less than 5 percent of the housing is rented to families of very low income.

(B) If the project does not result in housing units being available as set forth in subdivision (A) above, then the project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(b) A project that otherwise meets the criteria set forth in subdivision (a) is not exempt from CEQA if any of the following occur:

(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.

(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project

have occurred since community-level environmental review was certified or adopted:

(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project that was not known, and could not have been known at the time that community-level environmental review was certified or adopted.

If a project is not exempt from CEQA due to subdivision (b), the analysis of the environmental effects of the project covered in the EIR or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to subdivisions (b)(2) and (3).

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21159.24, Public Resources Code.

Commenter: County of San Diego, July 26, 2006

Comment Summary: County of San Diego states:

Sections 15062, 15191-15196, requires [sic] a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The County of San Diego requests that OPR accept electronic NOEs when having to file with OPR. Filing electronically will save time and resources.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15195, subd. (a)(3). There is currently no formal system in place at OPR for electronic NOE filing. However, OPR is currently considering creating a system whereby electronic filing of notices will be possible. See also responses to County of San Diego's comments on Guidelines, sections 15062, 15191, 15192, 15193, and 15194.

1. § 15195, subd. (a)(3)

Summary of Text: The originally-proposed changes to the Guidelines at section 15195, subdivision (a)(3) state:

(3) The project meets both of the following requirements regarding location:

(A) The project is a residential project on an infill site.

(B) The project is within one-half mile of a major transit stop.

Commenter: **Sierra Club, July 27, 2006**

Comment Summary: Sierra Club states: "this subdivision omits the critical requirement in Public Resources Code section 21159.24(a)(2) that the project be located in an urbanized area."

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines at section 15195, subd. (a)(3). The proposed Guideline requires that the residential project be located within an "infill site." Proposed Guideline section 15191, subd. (e) defines "infill site" as an urbanized area meeting specific criteria. The proposed language is consistent with section 21159.24 of the Public Resources Code requiring the project to be located within an urbanized area. Section 21159.24 of the Public Resources Code is also referenced within the note.

V. ADDITIONAL COMMENTS RAISED

Commenter: **EBMUD, July 26, 2006**

Comment Summary: EBMUD states:

EBMUD's concerns regarding Sections 15312 and 15302(c) have not been addressed by this round of Amendments but remain relevant to the District. As noted in the previous correspondence, EBMUD remains available to assist with developing pertinent language should these concerns be entertained for future updates of the CEQA Guidelines.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines. As stated in the cover letter to the NOPA, the changes to the Guidelines are for implementation of the statutory changes to CEQA only. The comments regarding the commenter's additional concerns are outside the scope of the currently proposed rulemaking.

VI. DISCUSSION SECTIONS

Summary of Text: The proposal in the originally-proposed changes to the Guidelines was to remove the discussion sections for Guidelines, sections 15179, 15180, and 15186. The Resources Agency has since determined that the discussion sections are not a part of the Guidelines and do not therefore require the Resources Agency to use the rulemaking provisions of the Administrative Procedure Act to remove the discussion sections from its website.

Commenter: Cal Trans, July 28, 2006

Comment Summary: Cal Trans states in regard to Guidelines, section 15179:

Noted is the Resources Agency's proposal to remove the discussion section from the CEQA Guidelines. The language used here indicates that this will be done on a universal basis whenever a guideline section is modified. We noted, however, that this is not being done to all Guidelines being modified under this June 13, 2006 proposal.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines. The Resources Agency included the discussions marked in strikeout in the original proposed text for this rulemaking. However, since that time, the Resources Agency has discovered that the discussion sections are not a part of the Guidelines and do not therefore require the Resources Agency to use the Administrative Procedure Act to remove the discussion sections from its website. As a result, the final text adopted by Resources Agency OAL will not be accompanied by the discussions.

Commenter: EDAW, July 11, 2006

Comment Summary: EDAW states:

These more informal plain language discussions could be helpful to the general public in certain instances where the Guidelines address potentially complex circumstances. The Guidelines might be improved if 'discussion' sections were enhanced rather than eliminated. An introductory section could make clear that these sections are not rules but simply helpful, simple presentations to clarify difficult-to-understand issues. I am not aware of statutory events that suggest 'discussion' sections should be eliminated, so perhaps that is the impetus for this proposed change.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines. See Response to Cal Trans's comment on proposed changes to the Discussion sections.

Commenter: Sierra Club, July 27, 2006

Comment Summary: Sierra Club states:

The Sierra Club is opposed to deleting the discussion sections from the Guidelines because these sections of the Guidelines provide important guidance to those who read CEQA.

Response to Comment: The commenter's remarks do not warrant a change to the originally-proposed changes to the Guidelines. See Response to Cal Trans's comment on proposed changes to the Discussion sections.

VII. Summary and Response to Public Comments Received on Modifications to the Originally-Proposed Changes to the Guidelines Implementing CEQA - Noticed April 23, 2007.

The summaries and responses below satisfy the requirement found in Government Code sections 11346.8, subd. (c) and 11346.9, subd. (a)(3) requirement that the Resources Agency summarize relevant objections and recommendations received during the public comment period and state the reasons for not implementing each comment.

This section provides a summary of the public comments the Resources Agency received on the Modifications that the Resources Agency noticed on April 23, 2007. The second comment period closed on May 8, 2007. All written comments to the Modifications are included in the rulemaking file.

The Comments and Responses to Comments are set forth in order of the sections under the originally-proposed changes to the Guidelines.

§ 15061. Review for Exemption.

Summary of Text: Modified Guidelines section 15061, subd. (e) state:

(e) When a non-elected official or decisionmaking body of a local lead agency decides that a project is exempt from CEQA, and the public agency approves or determines to carry out the project, ~~that the decision that the project is exempt~~ may be appealed to the local lead agency's elected decisionmaking body, if one exists. A local lead agency may establish procedures governing such appeals.

Commenter: San Bernardino County, May 8, 2007

Comment Summary: San Bernardino County states:

Our conclusion is that the majority of the proposed changes do not impact, affect, and change the Flood Control District (District) and Public Works – Transportation (Transportation) in implementing the CEQA Guidelines, with the exception of Section 15061, Review for Exemption. However, the District and Transportation do not envision changing the existing procedures for CEQA exemptions. As such, the proposed changes should not impact the District or Transportation. The purpose of changing Section 15061, Review for Exemption, was to provide a mechanism for

challenging exemption findings for new categories in CEQA dealing with low-income housing, agricultural housing, and in-fill development. However, the proposed new language adds that when a non-elected or decision-making body (i.e., planning staff, Planning Commission, etc.) determines that a project is exempt from CEQA, and, the public agency approves the project, the decision that the project is exempt may be appealed to the elected decision making body, in our case, the Board of Supervisors.

The purpose of changing Section 15061, Review for Exemption, was to provide a mechanism for challenging exemption findings for new categories in CEQA dealing with low-income housing, agricultural housing, and in-fill development. However, the proposed new language adds that when a non-elected or decision-making body (i.e., planning staff, Planning Commission, etc.) determines that a project is exempt from CEQA, and, the public agency approves the project, the decision that the project is exempt may be appealed to the elected decision making body, in our case, the Board of Supervisors.

For the majority of the District and Transportation projects, staff determines if the project is exempt. However, it is the Board of Supervisors (an elected body) that approves the project and directs the Clerk of the Board to file the Notice of Exemption. Therefore, a challenge to the CEQA Exemption process is already established in the County's procedures. However, should staff find a project exempt, and staff subsequently file the Notice of Exemption without Board authorization of the Exemption, the Exemption could be challenged.

The District and Transportation do not foresee changing the current policies and procedures regarding filing notices of exemption.

Response to Comment: The commenter's remarks do not warrant a change to the Modifications at Guidelines, section 15061. The language proposed in the originally-proposed changes to the Guidelines as well as the modifications to the originally-proposed changes are consistent with section 21151, subd. (c) of the Public Resources Code.

For the remainder of the comments, the commenter is not recommending a change to the proposal and no response is required. Additionally, the Resources Agency makes no comment whether the commenter's current policies and procedures meet the requirements of CEQA.

§ 15155. City or County Consultation with Water Agencies.

Section 15155 is an entirely new section of the CEQA Guidelines, although some of the proposed language is similar to that in Section 15083.5, which the Resources Agency proposes to repeal. The full modified text is set forth above.

A. § 15155, subd. (a)(1)(E)

Summary of Text: Modified Guidelines, section 15155, subd. (a)(1)(E) state:

(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 or floor area.

Commenter: Air Resources Board, May 7, 2007

Comment Summary: Air Resources Board states:

"I received your 15-day Notice and don't have any substantive comments from ARB, but I thought it was funny that while correcting one typo in section 15155(a)(1)(E), you left another one: the end of the section should read "...650,000 square feet of floor area", rather than "or floor area". I notice that you got it right in your aggregated rendering of that section further in the notice."

Response to Comment: The typo, unfortunately, was made in the Modifications. The typo, however, did not occur in the originally-proposed changes to the Guidelines or within the full text of section 15155 within the Modifications. As demonstrated in double strikeout/double underline below, the final version of the adopted Guidelines will have the correct language as follows:

(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 ~~or~~ floor area.

Commenter: Jim Royle, May 7, 2007

Comment Summary: Jim Royle states:

A really minor thing I noticed. In the correction of a typo in 15155(a)(1)(E), there is still a typo. At the end of the sentence it should read "square feet of floor area", not "square feet or floor area."

Response to Comment: See Response to Air Resources Board's comments on Guidelines, section 15155, subdivision (a)(1)(E).

B. § 15155, subd. (d)(2)(B)

Summary of Text: Modified Guidelines, section 15155, subd. (d)(2)(B) state:

(B) Changes in the circumstances or conditions substantially affecting the ability of the ~~applicable agencies~~ 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.

Commenter: Worden Williams APC, May 4, 2007

Comment Summary: Worden Williams, APC states:

I believe that a water assessment should be required for each phase of the project, because the availability of water is so uncertain and subject to change within this state. This is especially true in the case of the projects I have discussed above. [See comment of Worden Williams to section 15155, subd. (e) below.] At any time, the assumptions about the groundwater aquifer could be found to be incorrect, and the amount of water available could be substantially reduced. I therefore request that the language be changed to require that, at a minimum, affirmative findings regarding water availability be made at each phase of a project.

Response to Comment: The commenter's remarks do not warrant a change to the Modifications at Guidelines, section 15155, subd.(d)(2)(B). The Resources Agency finds that the language proposed in the originally-proposed changes to the Guidelines as well as the Modifications are consistent with section 10910, subds. (h)(1)-(3) of the Water Code. Additionally, the commenter's concerns are addressed in Guidelines, section 15155, subd. (d). The commenter's remarks are in response to the originally-proposed changes to the Guidelines and not to the Modifications. In that regard, they are untimely.

C. § 15155, subd. (e)

Summary of Text: Modified Guidelines, section 15155, subd. (e) state:

(e) The city or county lead agency shall include the water assessment, and any water acquisition plan ~~provided pursuant to subdivision (a) of Section 10911 of the Water Code~~ 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. pursuant to Sections 15091 and 15093.

Commenter: Worden Williams APC, May 4, 2007

Comment Summary: Worden Williams, APC states:

... I have some serious concerns regarding your proposed language in your Section 10 dealing with proposed Section 15155(e). My problem is the Agency determination of 'sufficient water.' The language '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.' is vague as to what is sufficient.

We have seen several projects approved out in the Desert Hot Springs area for thousands of single family homes. This is an area entirely dependent on groundwater, and the water basin is in overdraft. The water district is concluding that there is enough water (i.e., 20-years worth), while simultaneously recognizing that the overdraft condition is so severe that there may be no water (or no economically available water) in 50 years. Thousands of houses are being approved with no long-term water source. The EIRs being prepared are assuming that there is no significant water impacts as long as there is a 20-year supply of water. I do not believe that the CEQA threshold of a 20-year supply, but your proposed language is so vague that the EIR prepares are assuming that sufficient water equals a 20-years supply.

Response to Comment: The commenter's remarks do not warrant a change to the Modifications at Guidelines, section 15155, subd. (e). The Resources Agency notes that the language proposed in the originally-proposed changes to the Guidelines as well as the Modifications are consistent with section 10910, subds. (c)(1) and (h)(1)-(3) of the Water Code. The commenter's remarks are in response to the originally-proposed changes to the Guidelines and not to the Modifications. In that regard, they are untimely.

§ 15192. Threshold Requirements for Exemptions for Agricultural Housing, Affordable Housing, and Residential Infill Projects.

Summary of Text: Modified Guidelines, section 15192, subd. (i)-(l) state:

(i) The project site does not have an unusually high risk of fire or explosion from materials stored or used on nearby properties.

(j) The project site does not present a risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(k) Either the project site is not within a delineated earthquake fault zone or a seismic hazard zone, as determined pursuant to Section 2622 and 2696 of the Public Resources Code respectively, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake or seismic hazard.

(l) Either the project site does not present a landslide hazard, flood plain, flood way, or restriction zone, or the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

Commenter: City of Roseville, May 8, 2007

Comment Summary: The City of Roseville states:

The City of Roseville is concerned that there may be implications with the proposed addition of Section 15192 (Threshold Requirements for Exemptions for Ag, Affordable Housing and Residential Infill projects). Specifically, we are concerned the phrase "the project site does not present a risk of a public health exposure at a level that would exceed state or federal standards," may be a platform for objections to residential land uses near rail yards and freeways. The City, and many other local agencies, have railroad and other transportation facilities that exist within these local jurisdictions. Some current and planned land uses could place sensitive receptors near these types of facilities. Therefore we propose that this language be stricken from the proposed modifications.

Response to Comment: The commenter's remarks do not warrant a change to the Modifications at Guidelines, section 15192. The language proposed in the originally-proposed changes to the Guidelines as well as the Modifications to subdivisions (i)-(l) are consistent with the statute. Specifically, subd. (j) of section 15192 is consistent with subd. (h)(3) of section 21159.21 of the Public Resources Code. The Modifications changed the subdivision to add the word "site". To the extent commenter's remarks are in response to the originally-proposed changes to the Guidelines and not to the Modifications, they are untimely.

VIII. LOCATION OF RULEMAKING FILE

A copy of the rulemaking file is available for public inspection at:

The Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Contact: Mary U. Akens, Assistant General Counsel
(916) 653-5656