

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, 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:

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 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.

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 15001 and 15003.~~

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 10910-109145 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, subs. (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.