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:

> <u>(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.</u>

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 administrating 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, <u>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.</u> ~~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 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.

(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.

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 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:

> <u>(a) The following definitions are applicable to this section.</u>
>
> > <u>(1) A "water-demand project" means:</u>
> >
> > <u>(A) A residential development of more than 500 dwelling units.</u>

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:

> <u>(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.</u>

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, a~~A~~t 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.

~~(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 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, a~~A~~t 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:

> (~~i~~2) 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:

> (~~i~~1) 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
>
> (~~ii~~2)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:

(~~a~~1) ~~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

(~~b~~2) 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 (~~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~~.~~; 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 Guidlines 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~~f 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.