

**Title 14. CALIFORNIA RESOURCES AGENCY  
NOTICE OF PROPOSED ACTION  
AMENDING GUIDELINES IMPLEMENTING  
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**July 27, 2012**

**NOTICE IS HEREBY GIVEN** pursuant to Government Code section 11346.6 that the California Natural Resources Agency (“Resources Agency”) proposes to adopt and amend regulations implementing Division 13 of the Public Resources Code, the California Environmental Quality Act (CEQA), setting out streamlined environmental review for qualifying infill projects.

**PROPOSED ACTION**

The proposed action amends the Guidelines to reflect recent legislative changes to CEQA, specifically legislation adding Public Resources Code section 21094.5. The changes to the Guidelines proposed in this action are as follows:

Add Guidelines section 15183.3;  
Add Appendix M;  
Add Appendix N.

**PUBLIC HEARING AND WRITTEN COMMENT PERIOD AND AGENCY CONTACT**

**Written Comments:** Any interested person or his or her authorized representative may submit written comments relevant to the proposed action to the Resources Agency. Comments may be submitted by mail or email. The written comment period ends at **5:00 p.m. on September 10, 2012**. The Resources Agency will consider only comments submitted and received by that time. Following the conclusion of the written comment period, the resources Agency may adopt the proposal substantial as set forth without further notice.

Pursuant to Government Code section 11346.9(a)(3), the Resources Agency shall in a final statement of reasons respond to comments submitted during the comment period containing objections and/or recommendations specifically directed at the Resources Agency’s proposed action or to the procedures followed by the Resources Agency in proposing or adopting the proposed action.

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**Submit comments to:**

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**Two public hearings have been scheduled.**

The first will take place at 1:00 p.m. and end at 4:00 p.m., on **September 7, 2012** at the Ronald Reagan Building, 300 South Spring St Los Angeles, CA 90013. Once a room for the hearing is finalized, it will be indicated on the Resource Agency website [www.resources.ca.gov](http://www.resources.ca.gov) prior to the date for the hearing. Webcast will be made available and directions for its use will also be placed on the Resource Agency's website prior to the hearing. Please note, those attending by webcast at this location will not be permitted to issue oral comments and will need to submit their comments in writing following the specified procedure in this notice. Oral comments will be accepted in person.

The second hearing will take place on **September 10, 2012** at the California Energy Commission Hearing Room from 1:00-4:00 p.m. and is located at 1516 Ninth Street, Sacramento, CA 95814. Webcast is also available and directions for its use will be listed on the Natural Resource Agency's website at [www.resources.ca.gov](http://www.resources.ca.gov) prior to the hearing. Please note, those attending by webcast will not be permitted to issue oral comments at this location and will need to submit their comments in writing following the specified procedure in this notice. Oral comments will be accepted in person.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Existing law permits streamlining CEQA review for qualifying infill projects. (See Public Resources Code sections 21094.5 and 21094.5.5 [enacted as part of SB226, Simitian 2011; signed by Governor Brown on October 4, 2011.]). This regulatory action develops a process for documenting and applying the streamlining directed by SB 226, and clarifies or makes more specific when and to what extent environmental review is required pursuant to that process. It does this in multiple ways, including: identifying when an infill project can be approved on the basis of a checklist without requiring additional public review; clarifying what the evidentiary standard is for lead agencies making determinations pursuant to SB 226; identifying what amount of environmental impact will trigger additional review, clarifying when an additional environmental impact report (EIR) or new

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statement of overriding considerations is or is not necessary, and identifying the scope of such documents; clarifying when and what type of uniform local development standards and policies can be used to mitigate project-specific impacts as well as the degree of mitigation required; and clarifying that streamlining is permitted if there is either a comprehensive General Plan EIR, or any supplement or addenda to that EIR which analyzes zoning or planning amendments.

Further, this proposal develops regulatory performance standards as directed by SB 226. Compliance with these proposed standards is required for a project to be eligible for streamlining. These performance standards dictate the types of characteristics various infill projects must have based on land use designations and project design, and include components like location to transit, efficiency measures, and foot-plate size of intended commercial structures among other things. The goal of the performance standards is to implement the legislative directives in Public Resources Code 21904.5.5(b), thereby ensuring that eligible infill projects have attributes that advance or align with existing state policies on greenhouse gas emissions, pollution, public health, and efficient resource management.

The broad objective behind both SB 226 and these implementing regulations is to promote thoughtful infill over other potential land use patterns by making the environmental review process less burdensome through streamlining. This is necessary because, as will be more specifically discussed, infill development can lead to multiple environmental, social, health and economic benefits. Infill development is also a state policy priority, and thus this package reduces some of the obstacles associated with achieving its successful implementation.

### **1. Specific Benefits Anticipated by the Proposed Regulation Including Non-monetary Benefits**

Infill development is important to the State and comes with a host of benefits for both the environment as well as the health and wellbeing of the population of California. Simply put, infill encourages more reliance on neighborhood-oriented businesses, walking, cycling, and public transit. These activities indirectly reduce greenhouse gas emissions and other emissions that lead to smog and air and water quality issues because they result in less vehicle miles traveled by residents who would traditionally have to drive to obtain the same services and products. Taken together, these benefits create sustainable, vibrant, and economically viable neighborhoods. Therefore, it simply makes sense to deregulate the permitting process for qualifying infill so that such projects are easier to approve and site.

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This package attempts to do just that by limiting and streamlining some of the regulatory burden associated with CEQA.

**a. Promotes More Efficient Regulatory Review Pursuant to CEQA**

Infill developers and public entities considering infill approval will receive the benefit of an abbreviated environmental review process pursuant to CEQA as a result of this proposal. In many cases, this will include being exempted from requirements to develop costly and time-consuming environmental impact reports (EIR). Such EIR processes can span several years and cost several hundreds of thousands of dollars. In a typical greenfield development, such costs can be spread across many units. Infill project sizes, though, tend to be much smaller and land costs tend to be much higher. The disproportional affect of review on infill then, is significant. The proposed action will make infill projects more feasible to undertake and complete by reducing the regulatory burden of the existing process, thereby reducing the associated costs.

**b. Promotes Sustainable Communities and Climate Protection Act Goals**

This rulemaking also promotes the implementation of the land use policies in the Sustainable Communities and Climate Protection Act (SB 375, Steinberg, 2008). SB 375 seeks to reduce greenhouse gas emissions from passenger vehicles by integrating land use and transportation planning so that newly developed emissions targets can be realistically achieved. Specifically, it requires local metropolitan organizations to develop “sustainable community strategies” that evidence the regions’ ability and plan to meet certain emissions targets imposed by the State. The proposed addition to the CEQA Guidelines promotes SB 375’s goals because it incentivizes development in low VMT areas and along transit lines—the fundamental planning paradigm being sought by SB 375. It also requires that projects be consistent with the applicable Sustainable Communities Strategy, thus motivating local and regional planners to refer to and be consistent with those strategies when siting new projects.

Similarly, the Air Resources Board’s Scoping Plan describes local policies that may assist the state in achieving its greenhouse gas reduction targets pursuant to AB 32 (Nunez, 2006). It notes, for example, that “[l]ocal governments have the ability to directly influence both the siting and design of new residential and commercial developments in a way that reduces GHG associated with energy, water, waste, and vehicle travel, which may include zoning for more compact and mixed-use residential and commercial development and adopting policies to promote infill and affordable housing.” (California Air Resources Board, Scoping Plan (2011), Appendix C, at pp. C-53.) Again, by promoting infill located in low VMT corridors, this package comports with and enhances the Air Board’s policy for the statewide reduction of GHG pursuant to AB 32.



**c. Promote State Planning Priorities in Government Code section 65041.1**

This package promotes California's planning priorities that are specified in California Government Code section 65041.1. Section 65041.1 indicates that California's first planning priority is to promote "infill development and appropriate reuse and redevelopment of previously developed, underutilized land[.]" This priority was first discussed in California's 1978 Urban Strategy. The state's second planning priority is to "[d]evelop vacant and under-utilized land within existing urban and suburban areas." These proposed additions to the CEQA Guidelines promotes urban infill by attempting to incentivize and redirect development to previously developed and vacant sites within existing urban environments.

**d. Provides Certainty for Infill Developers and Lead Agencies**

This proposal reduces the legal risk associated with CEQA for qualifying infill projects. The existing CEQA process typically includes numerous opportunities for public input because there is an extensive public process, which can often result in challenges to the proposed project. This proposal is aimed at making public review more effective during planning stages, so that conflicts may be avoided or substantially limited by the time an infill project is proposed. Thus, it promotes a result wherein the environmental review for infill is less likely to be challenged and more deferential to the lead agency.

**e. Promotes Environmental Objectives**

This package also promotes environmental benefits. Infill refers to development on previously developed land or vacant parcels of land surrounded by other urban uses. Infill tends to be less impactful to the environment because it reduces sprawl, which requires the conversion and development of open-space. In addition to promoting infill generally, this package includes performance standards that further mitigate or reduce potential environmental and health impacts. These standards allow a project to qualify for streamlining and are intended to ensure that infill projects that are streamlined as a result of this regulatory action are thoughtful and align with existing state policies on reduction of emissions through reduced vehicle travel, efficient use of resources such as water and energy, and more effective reliance on and improvement of existing infrastructure.

**f. Promotes Energy Efficiency**

This proposal promotes energy efficiency. It does so by prioritizing projects in low VMT areas. Such projects are typically more efficient and less consumptive because they include apartment complexes and other high density residential formats that result in smaller unit sizes and greater shared infrastructure.

**g. Promotes Sustainable Local Economies**

Being able to develop infill more feasibility will indirectly result in an economic benefit to local governments. Specifically, if compared on a per acre basis, infill tends to result in greater and more sustainable long-term revenues. Further, infill projects rely on existing

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improvements and services, resulting in a less costly capital outlay. The collective result is the revitalization of walkable urban neighborhoods with unique local cultures. (See, e.g., Emily Badger, “The Simple Math That Can Save Cities From Bankruptcy,” *The Atlantic Cities* (March 30, 2012), available online at <http://www.theatlanticcities.com/jobs-and-economy/2012/03/simple-math-can-save-cities-bankruptcy/1629/>.) Since this package seeks to incentivize and promote the approval of infill, it will indirectly benefit local communities looking to take advantage of the financial benefits infill has to offer by making the siting and approval of infill projects easier.

#### **h. Helps Developers and Local Agencies Plan for and Respond to Market Trends**

This package also advances and promotes new trends in the housing market because it promotes expedited approval of infill housing that is located near existing businesses and services, or near transit that permits easy and affordable access to businesses and services. The demand for housing within transit station areas is much higher than available supply, whereas the supply of large lot homes presently exceeds demand. (Arthur Nelson, “The New California Dream: How Demographic and Economic Trends May Shape the Housing Market: A Land Use Scenario for 2020 and 2035,” *Urban Land Institute* (2011).) Simply put, more people are seeking walkability and easy access to services within their existing neighborhoods in California than in previous years. This package makes it easier for such housing to be permitted, thereby increasing the available supply for this growing market trend.

#### **i. Promotes Healthy Communities**

This package promotes public health in several ways. First the performance standard provided in Appendix M facilitates walking and cycling. Second, the standards are designed to ensure projects sited in high-volume roadways don’t result in disproportionate impacts to the residents who eventually live in them by requiring on-site mitigation of potential air quality issues. Third, the package itself rewards communities and neighborhoods with lower VMT which will ultimately result in reductions of emissions generally from vehicular sources. This will in turn result in better air and water quality, thus promoting greater public health.

Since infill development is linked to health benefits, promoting greater infill development indirectly benefits the health and welfare of California’s residents. According to the American Lung Association, “Sustainable, mixed-use communities designed around mass transit, walking and cycling have been shown to reduce greenhouse gas emissions, air pollution, and a range of adverse health outcomes including traffic injuries, cancers, lung and heart disease, obesity, diabetes, and other chronic health conditions. In addition to the benefits to lung health, individuals who live in mixed-use and walkable communities have a 35 percent lower risk of obesity.” (American Lung Association in California, “Land Use,

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Climate Change & Public Health Issue Brief: Improving public health and combating climate change through sustainable land use and transportation planning” (Spring 2010).)

Beyond the benefits from reductions in obesity, diabetes, heart and lung disease, cancers and other chronic illnesses associated with increased physical activity attendant to lifestyles centered around walkable communities, smart growth development patterns “could help California cut over 132,000 tons of air pollution and avoid up to 140 premature deaths, 105,000 asthma attacks and other respiratory symptoms, 16,550 work days lost and \$1.66 billion in health costs in 2035.” (American Lung Association in California, Fact Sheet, “Smart Growth will help California avoid air pollution-related illnesses, deaths and costs.”) Studies have linked positive health outcomes to policies that increase walking, bicycling and other physical activity. (Woodcock J, et al. “Public health benefits of strategies to reduce greenhouse-gas emissions: urban land transport,” *The Lancet* (2009), pp. 1930-1943.)

**j. Provides Regulatory Flexibility**

Finally, this package preserves a high degree of flexibility for both project applicants and local governments that was not available with existing exemptions created to spur infill. Thus, there is a benefit to regional governments seeking to make infill work within their existing planning structure. Wherever possible and consistent with the statute, this proposal provides alternative paths to regulatory streamlining so that the environmental review for infill is not prohibitive.

**2. The Proposed Regulation is Not Inconsistent with or Incompatible with Existing State Law or Regulations**

This proposal is not inconsistent or incompatible with any existing state regulation, but rather is intended to align with and compliment existing state policies. SB 375 (Steinberg, 2008) calls for a reduction in greenhouse gas emissions by aligning land use and transportation planning. Specifically, the California Transportation Commission’s Regional Transportation Plan Guidelines recognize “urban and suburban infill, clustered development, mixed land uses, New Urbanist design, transit-oriented development, and other ‘smart-growth’ strategies” as land use tools to reduce greenhouse gas emissions. (California Transportation Commission, Regional Transportation Plan Guidelines (2010), at pp. 230-231.) This package facilitates SB 375’s goal to reduce greenhouse gas emissions by better siting of well-planned urban development, including infill.

Similarly, the Air Resources Board’s Scoping Plan describes local policies that may assist the state in achieving its greenhouse gas reduction targets pursuant to AB 32 (Nunez,



2006). Since these proposed additions use VMT as a primary metric, this package attempts to advance the State's goals relative to AB 32.

### **NON-DUPLICATION OF FEDERAL LAW**

The proposed action does not duplicate or conflict with any federal statutes or regulations. CEQA is similar in some respects to the National Environmental Policy Act ("NEPA"), 42 U.S.C. sections 4321-4343. However, only federal agencies are subject to NEPA, which requires environmental review of federal actions. State and local agencies are subject to CEQA, which requires environmental review before state and local agencies may approve or decide to undertake discretionary actions and projects in California.

Although both NEPA and CEQA require an analysis of environmental impacts, the substantive and procedural requirements of the two statutes differ. Most significantly, CEQA requirements for feasible mitigation of environmental impacts exceed NEPA's mitigation provisions. A state or local agency must complete a CEQA review even for those projects for which NEPA review is also applicable, although Guidelines sections 15220-15229 allow state, local and federal agencies to coordinate review when projects are subject to both CEQA and NEPA. Further, it would be rare for there to be federal participation at a local planning level where infill development is most often considered.

Because state and local agencies are subject to CEQA unless exemptions apply, and because CEQA and NEPA are not identical, guidelines for CEQA are necessary to interpret and make specific provisions of SB226 and do not duplicate the Code of Federal Regulations.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Resources Agency has made the following initial findings and determinations:

- 1) Mandate on local agencies and school districts: None;
- 2) Cost or savings to any state agency: None;
- 3) Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None, and no other nondiscretionary costs or saving to local agencies or school districts;
- 4) Cost or savings in federal funding to the state: None;
- 5) Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses of other states: None;
- 6) Cost impacts on representative private person or business: None;
- 7) Significant effect on housing costs: None;
- 8) Impact or affect on small businesses: None;
- 9) Required Business Report: None.



## RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The proposed regulations will not:

- 1) Create or eliminate jobs within California;
- 2) Create new business or eliminate existing businesses within California or;
- 3) Affect the expansion of businesses currently doing business within California.

There are no specific benefits or costs that the adoption of these regulations would have pertaining to California worker safety. The Resources Agency believes the adoption of this regulation benefits the general health and welfare of California residents by promoting the feasibility of infill development, which has recognized economic, social and environmental benefits. (Government Code section 11346.3(b).)

## COST IMPACTS TO REPRESENTATIVE PERSONS OR BUSINESS

The Resources Agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Streamlining infill remains discretionary, and is less burdensome than the existing CEQA process. This package does not replace the existing process, but rather adds an additional option for compliance with CEQA. Since this package does not foresee directly influencing the amount, but rather the type of development taking place, the Resources Agency has determined that this rulemaking package will reduce costs to individuals and businesses seeking to develop in California.

## ALTERNATIVES CONSIDERED

The Resources Agency must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## STATUTORY AUTHORITY AND REFERENCE

Public Resources Code section 21083 requires the adoption of the Guidelines to explain and implement CEQA. Section 21083, subdivision (f) requires the Resources Agency, in consultation with the Governor's Office of Planning and Research ("OPR"), to certify, adopt and amend the Guidelines at least once every two years. Similarly, PRC section 21094.5 provides that "on or before July 1, 2012, the Office of Planning and Research shall prepare, develop, and transmit to the Natural Resources Agency for certification and adoption



guidelines for the implementation of Section 21094.5 and the Secretary of the Natural Resources Agency, on or before January 1, 2013, shall certify and adopt the guidelines.”

Authority: Public Resources Code Sections 21083, 21094.5.5.

Reference: Public Resources Code Sections 21094.5 and 21094.5.5

### **INTERNET ACCESS AND AVAILABILITY OF RULEMAKING PACKAGE**

A copy of any materials generated or relied upon in this rulemaking package are available upon request. Additionally, the actual proposed amendments to the CEQA Guidelines and the Initial statement of reasons are located on the Resource Agency website at [www.resources.ca.gov/CEQA](http://www.resources.ca.gov/CEQA). When completed, the final statement of reasons will also be made available. If you have difficulty locating any material, please contact Carlie Jackson at [Carlie.jackson@resources.ca.gov](mailto:Carlie.jackson@resources.ca.gov) or at (916) 653-5656.

### **REASONABLE ACCOMMODATIONS**

Anyone requiring reasonable accommodation to participate in either of these hearings should contact Carlie Jackson by email at [carlie.jackson@resources.ca.gov](mailto:carlie.jackson@resources.ca.gov) or by phone at (916) 653-5656 at least five days prior to the scheduled workshop. The meeting locations are accessible to persons with disabilities.

