

# INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION

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## *Amendments and Additions to the State CEQA Guidelines*

CALIFORNIA NATURAL RESOURCES AGENCY

January 26, 2018

### I. INTRODUCTION

The California Natural Resources Agency (the “Natural Resources Agency” or “Agency”) proposes to amend the Guidelines Implementing the California Environmental Quality Act (Pub. Resources Code section 21000, *et seq.*) (“CEQA Guidelines”). The proposed amendments address legislative changes to the California Environmental Quality Act (CEQA), clarify certain portions of the existing CEQA Guidelines, and update the CEQA Guidelines to be consistent with recent court decisions.

CEQA generally requires public agencies to review the environmental impacts of proposed projects, and, if those impacts may be significant, to consider feasible alternatives and mitigation measures that would substantially reduce significant adverse environmental effects. Section 21083 of the Public Resources Code requires the adoption of guidelines to provide public agencies and members of the public with guidance about the procedures and criteria for implementing CEQA. The guidelines required by section 21083 of the Public Resources Code are promulgated in the California Code of Regulations, title 14, sections 15000-15387, plus appendices. Public agencies, project proponents, and third parties, who wish to enforce the requirements of CEQA, rely on the CEQA Guidelines to provide a comprehensive guide on compliance with CEQA. Subdivision (f) of section 21083 requires the Agency, in consultation with the Office of Planning and Research (“OPR”), to certify, adopt, and amend the CEQA Guidelines at least once every two years.

The Natural Resources Agency proposes the following changes to the CEQA Guidelines:

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Add sections: 15064.3 and 15234.

Amend sections: 15004, 15051, 15061, 15062, 15063, 15064, 15064.4, 15064.7, 15072, 15075, 15082, 15086, 15087, 15088, 15094, 15107, 15124, 15125, 15126.2, 15126.4, 15152, 15155, 15168, 15182, 15222, 15269, 15301, 15357, 15370, and Appendix C, Appendix D, Appendix E, Appendix G, and Appendix M.

The CEQA Guidelines are unique among administrative regulations. They provide a carefully organized, step-by-step guide to the environmental review process. As a result, rather than turning to the statute and case law, many agency staff and planners look to the CEQA Guidelines as a comprehensive source of information regarding CEQA's requirements.

## **Background**

The last comprehensive update to the CEQA Guidelines occurred in the late 1990s. Since 2011, the Governor's Office of Planning and Research ("OPR") and the Natural Resources Agency have informally collected ideas on possible improvements to the CEQA Guidelines. In 2013, OPR and the Agency distributed a formal Solicitation for Input on possible improvements. Specifically, the solicitation asked for suggestions on efficiency improvements, substantive improvements, and technical improvements. Stakeholders offered many ideas. After considering this input, OPR developed a possible list of topics to address in the update, and again sought and received substantial public input. Based on that input, as well as input received during informal stakeholder meetings, conferences, and other venues, OPR, in consultation with the Agency, developed a Preliminary Discussion Draft of proposed changes to the CEQA Guidelines. As that process proceeded, OPR, again in consultation with the Agency, developed proposed updates related to transportation impacts, as well as a proposed update related to the evaluation of hazards in response to the California Supreme Court's holding in *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal. 4th 369.

In November 2017, OPR finalized the package of updates and transmitted them to the Natural Resources Agency. The Agency then prepared the rulemaking documents required by the Administrative Procedures Act, including a Standardized Regulatory Impact Assessment to evaluate the potential economic impacts of the package.

## **What is in this Package?**

This proposed rulemaking package contains changes or additions involving nearly thirty different sections of the Guidelines addressing nearly every step of the environmental review process. It is a balanced package that is intended to make the process easier and quicker to implement, and better protect natural and fiscal resources consistent with California's environmental policies.

## **Efficiency Improvements**

The package proposes several changes intended to result in a smoother, more predictable process for agencies, project applicants and the public.

First, the package promotes use of existing regulatory standards in the CEQA process. Using standards as “thresholds of significance” creates a predictable starting point for environmental analysis, and allows agencies to rely on the expertise of the regulatory body, without foreclosing consideration of possible project-specific effects.

Second, the package proposes to update the environmental checklist that most agencies use to conduct their environmental review. Redundant questions in the existing checklist are proposed to be eliminated and some questions would be updated to address contemporary topics. The checklist has also been updated with new questions related to transportation and wildfire, pursuant to Senate Bill 743 (Steinberg, 2013), and Senate Bill 1241 (Kehoe, 2012), respectively.

Third, the package includes several changes to make existing programmatic environmental review easier to use for later projects. Specifically, it clarifies the rules on tiering, and provides additional guidance on when a later project may be considered within the scope of a program EIR.

Fourth, the package enhances several exemptions. For example, consistent with Senate Bill 743 (Steinberg, 2013), it updates an existing exemption for projects implementing a specific plan to include not just residential, but also commercial and mixed-use projects near transit. It also clarifies the rules on the exemption for changes to existing facilities so that vacant buildings can more easily be redeveloped. Changes to that same exemption will also promote pedestrian, bicycle and streetscape improvements within an existing right of way.

Finally, the package includes a new section to assist agencies in complying with CEQA following resolution of a court challenge, and help the public and project proponents understand the effect of the remand on project implementation.

## **Substantive Improvements**

The package also contains substantive improvements related to environmental protection.

First, the package would provide guidance regarding energy impacts analysis. Specifically, it would require an EIR to include an analysis of a project’s energy impacts that addresses not just building design, but also transportation, equipment use, location, and other relevant factors.

Second, the package proposes guidance on the analysis of water supply impacts. The guidance is built on the holding in the California Supreme Court decision in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 4th 412. It requires analysis of a proposed project’s possible sources of water supply over the life of the project and the environmental impacts of supplying that

water to the project. The analysis must consider any uncertainties in supply, as well as potential alternatives.

Third, as directed in Senate Bill 743, the package includes a new section addressing the evaluation of transportation impacts. The current emphasis on traffic congestion in transportation analyses tends to promote increased vehicle use. This new update will instead focus on a project's effect on vehicle miles traveled, which should promote project designs that reduce reliance on automobile travel.

### **Technical Improvements**

The package also includes many technical changes to conform to recent cases and statutory changes. For example, one of the changes clarifies when agencies must consider the effects of locating projects in hazardous locations, in response to the California Supreme Court's ruling in *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal. 4th 369. Further refinements are proposed to the Guideline section addressing greenhouse gas emissions to respond to developments in the case law. Others clarify when it may be appropriate to use projected future conditions as the environmental baseline. Another change addresses when agencies may defer specific details of mitigation measures until after project approval. The package also proposes a set of changes related to the duty of lead agencies to provide detailed responses to comments on a project. The changes would clarify that a general response may be appropriate when a comment submits voluminous data and information without explaining its relevance to the project. Other changes address a range of topics such as selecting the lead agency, posting notices with county clerks, clarifying the definition of "discretionary," and others.

### **Initial Determinations**

#### **Alternatives**

As provided in the Public Resources Code, OPR developed early drafts of this proposal and made those drafts available for public review and comment. Additionally, even before proposing Guidelines text to implement SB 743, OPR evaluated several alternative methodologies to consider transportation impacts, and invited public comment on that evaluation. The Natural Resources Agency has considered the alternatives that OPR developed as part of this package, and concurs in OPR's recommendation.

Based on input received, OPR developed a proposal for changes which it submitted to Natural Resources Agency on November 27, 2017. Having considered the alternatives originally developed by OPR, the public input received, and OPR's final recommendation, the Agency has 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 amendments. This conclusion is based on Agency's

determination that the amendments are necessary to update the CEQA Guidelines to be consistent with recent legislative enactments that have modified CEQA. The 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 overall adverse impacts on small business, as any impacts are due to imposition of the recent statutory requirements or judicial interpretations of CEQA and not from the CEQA Guidelines.

### **Local Mandates**

The Resources Agency has initially determined that the proposed changes to the CEQA Guidelines will not impose a mandate on local agencies or school districts requiring reimbursement pursuant to Government Code Section 17500 *et seq.* as the Resources Agency is implementing legislation and making clarifications based on current case law. Local agencies incur costs in their compliance with CEQA. The costs imposed by the CEQA Guidelines are not the result of a new program or higher level of service within the meaning of Article XIII.B, Section 6 of the California Constitution.

### **Economic Impacts**

The Natural Resources Agency has also initially determined that the proposed action will not have a significant adverse economic impact on business. Regarding the proposed changes in response to Senate Bill 743, the Agency has initially determined that the proposed action will not have a significant adverse economic impact on businesses, and instead, would lead to an overall economic benefit. Project proponents, including businesses, would experience time and cost savings related to document preparation largely because, with the changes in this package, transportation studies would be less complicated and CEQA analysis may be streamlined, depending on the project's proximity to transit. Private consulting businesses that prepare environmental documents may generate less revenue for preparing less expensive studies, but their receipts would vary based on project-specific factors, including project complexity and location. The full standardized regulatory impact assessment is contained in this Initial Statement of Reasons as an appendix.

### **Duplication**

The proposed action does not duplicate or conflict with any federal statutes or regulations. CEQA is similar in some respects to the National Environmental Policy Act ("NEPA"), 42 U.S.C. sections 4321-4343, but NEPA requires environmental review of federal actions by federal agencies while CEQA requires environmental review of state and local projects by state and local agencies in California. Moreover, although both NEPA and CEQA require an analysis of environmental impacts, the substantive and procedural requirements of the two statutes are different. Most significantly, CEQA requires feasible mitigation of environmental impacts, while NEPA does not require mitigation. A state or local agency must complete a CEQA review even

for those projects for which NEPA review is also applicable, although CEQA Guidelines sections 15220-15229 allow state, local and federal agencies to coordinate a review when projects are subject to both CEQA and NEPA. Because a state or local agency cannot avoid CEQA review, and because CEQA and NEPA are not identical, CEQA Guidelines are necessary and do not duplicate the Code of Federal Regulations.

### **Detailed Description of Proposed Changes**

The specific changes proposed in this package are described in detail below in the order in which they would appear in the CEQA Guidelines.

#### **15004. TIME OF PREPARATION**

##### **Specific Purposes of the Amendment**

CEQA Guidelines section 15004 states the requirement that environmental impact reports (EIRs) and Negative Declarations be prepared before an agency makes a decision on the project and early enough to help influence the project's plans or design.

In *Save Tara v. City of West Hollywood* (“*Save Tara*”) (2008) 45 Cal.4th 116, the California Supreme Court addressed the issue of when CEQA applies to certain activities that precede project approval. The court declined to set forth a bright-line rule. Instead, the court concluded that several factors are relevant to the determination of when CEQA review must be completed. The purpose of the addition of subdivision (b)(4) is to assist lead agencies in applying the principles identified by the California Supreme Court in the *Save Tara* decision. The first sentence of subdivision (b)(4) acknowledges that pre-approval agreements may fall on a spectrum between mere interest in a project and a commitment to a definite course of action. That sentence also reflects the Supreme Court's holding that circumstances surrounding the activity are relevant to the determination of whether an agency has, as a practical matter, committed to a project. The second sentence provides an example of what could likely not precede CEQA review, such as an agreement that vests development rights. The third sentence, on the other hand, provides examples of characteristics of agreements that may be executed prior to CEQA review. These include agreements that do not foreclose any mitigation measures or project alternative and that are conditioned on completion of CEQA review.

##### **Necessity**

The proposed addition of (b)(4) of CEQA Guidelines section 15004 is reasonably necessary to reflect the California Supreme Court's decision in *Save Tara*. The additional language will ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with case law that has interpreted CEQA, and the proposed action adds no new substantive requirements. The Natural 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 the California Supreme Court's determination in *Save Tara*.

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

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

### **15051. CRITERIA FOR IDENTIFYING THE LEAD AGENCY**

#### **Specific Purposes of the Amendment**

This CEQA Guidelines section provides criteria for identifying the Lead Agency when a project may require approval by more than one public agency under CEQA. Public Resources Code section 21067 defines "lead agency" as "the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." Similarly, the CEQA Guidelines define the lead agency as "the public agency which has the principal responsibility for carrying out or approving a project.... Criteria for determining which agency will be the lead agency for a project is contained in section 15051." (CEQA Guidelines, § 15367.) CEQA Guidelines section 15051, subdivisions (a) and (b), explain which entity will act as lead agency under usual circumstances, and subdivisions (c) and (d) address circumstances when more than one agency could potentially be lead.

CEQA Guidelines, section 15051, subdivision (c), states that, "[w]here more than one public agency equally meet the criteria in subdivision (b), the agency which will act first on the project in question shall be the lead agency." However, subdivision (d) states that "[w]here 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....” As these sections are currently written, where two public agencies equally meet the criteria for lead agency, the agency which will act first must be the lead under subdivision (c), which effectually renders subdivision (d) inapplicable other than with respect to subdivision (a). The existing language, if read literally, would prevent two potential lead agencies which meet the criteria in subdivision (b), each with a substantial claim to be the lead, from agreeing to designate one as the lead unless both happen to act at the exact same moment on the project.

The purpose of the amendment is to increase the flexibility in the determination of a lead agency by changing the word “shall” to “will normally” to clarify that where more than one public agency meets the criteria in subdivision (b), the agencies may agree pursuant to subdivision (d) to designate one entity as the lead.

### **Necessity**

The proposed changes are reasonably necessary to provide clarity and to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Natural Resources Agency’s determination that the proposed action is necessary to update the CEQA Guidelines to be internally consistent, and the proposed action adds no new substantive requirements. The Natural 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 the change is a clarifying change only.

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

The proposed action implements and clarifies existing law and makes this CEQA Guideline internally consistent. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.



## **15061. REVIEW OF EXEMPTION**

### **Specific Purposes of the Amendment**

CEQA Guidelines section 15061 describes when a project or activity is exempt from CEQA. The Natural Resources Agency proposes to amend subdivision (b)(3) of Section 15061. Currently, subdivision (b)(3) states that an activity is covered by the “general rule” that an activity is exempt from CEQA if there is no possibility that activity may have a significant effect on the environment. The Natural Resources Agency proposes to replace the phrase “general rule” with the phrase “common sense exemption” in order to match the language used by the California Supreme Court when evaluating the application of this CEQA exemption. (See, *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal. 4th 372, 389 (using the phrase “common sense exemption” to apply Section 15061).)

### **Necessity**

This clarification is needed to match practitioners’ customary use of the term “common sense exemption” and to prevent possible confusion for others who see or hear references to the term but cannot find it in the text of the CEQA Guidelines. Additionally, the proposed change is reasonably necessary to provide clarity and to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Natural Resources Agency’s determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with case law that has interpreted CEQA, and the proposed action adds no new substantive requirements. The Natural 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 the change is a clarifying change only.

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

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

### **15062. NOTICE OF EXEMPTION**

#### **Specific Purposes of the Amendment**

This section prescribes the use and content of the Notice of Exemption. Agencies are authorized but, in most cases, not required to file this notice. The regulation spells out minimum contents so that people can recognize whether a particular notice applies to the project with which they are concerned. The section notes that the effect of filing the notice is to start a short statute of limitations period. If the notice is not filed, a longer period would apply. Failure to comply with all of the requirements for filing notices of exemption results in the longer, 180-day, statute of limitations.

Pursuant to Assembly Bill 320 (Hill, 2011), the Natural Resources Agency proposes to add a new subdivision (a)(6) to Section 15062 of the CEQA Guidelines. AB 320 amended Public Resource Code, sections 21108 and 21152 requiring certain information to be included in the Notice of Exemption consistent with CEQA Guidelines section 21065, subdivisions (b) and (c). Specifically, AB 320 requires the Notice of Exemption to include the identity of the person undertaking an activity, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use. Thus, the Natural Resources Agency proposes to add subdivision (a)(6) to section 15062 of the CEQA Guidelines to provide consistency with Public Resources Code, section 21108 and 21152.

#### **Necessity**

This addition is necessary to implement the requirements of AB 320 (Hill, 2011) and to be consistent with Public Resources code, sections 21108 and 21152.

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

The Natural 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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with Sections 21108 and 21152 of the Public Resources Code, and the proposed action adds no new substantive requirements per se. Rather, additional information regarding the project applicant must be included in the forms filed by public agencies. The Natural 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 the change is a clarifying change only.

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

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

### **15063. INITIAL STUDY**

#### **Specific Purposes of the Amendment**

The purpose of this section is to describe the process, contents, and use of the Initial Study. The Natural Resources Agency proposes to add a new subsection (4) to Section 15063, subdivision (a), to specify the arrangements a lead agency may use to prepare an initial study. The Public Resources Code states that a public agency may prepare a draft environmental impact report or negative declaration directly or under contract to that public agency. (Pub. Resources Code, § 21082.1.) Section 15084 of the CEQA Guidelines implements the Public Resources Code by allowing lead agencies to prepare a draft environmental impact report directly or under contract. (See CEQA Guidelines, § 15084 subd. (d).) The CEQA Guidelines do not currently, however, contain a parallel provision for negative declarations or mitigated declarations.

A draft or mitigated negative declaration must include a copy of an initial study. (See CEQA Guidelines, § 15071, subd. (d) (stating that a negative declaration circulated for public review must include a copy of the initial study).) Therefore, the Natural Resources Agency proposes to add the new subsection to Section 15063, subdivision (a) to match the methods and arrangement used to prepare a draft environmental impact report and increase consistency in report preparation.

#### **Necessity**

This addition is necessary to provide consistent guidance for lead agencies preparing environmental documents.

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

The Natural 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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be internally consistent, and the proposed action adds no new substantive requirements. The Natural 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 the change is a clarifying change only.

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

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

## **15064. DETERMINING THE SIGNIFICANCE OF THE ENVIRONMENTAL EFFECTS CAUSED BY A PROJECT**

### **Specific Purposes of the Amendment**

A key step in the environmental review process is to determine whether a project may cause a significant effect on the environment. Section 15064 of the CEQA Guidelines provides general criteria to guide agencies in determining the significance of environmental effects of their projects as required by section 21083 of the Public Resources Code. The Natural Resources Agency proposes to amend CEQA Guidelines Section 15064 to expressly clarify that agencies may rely on standards adopted for environmental protection as thresholds of significance. Specifically, the Natural Resources Agency proposes to add subdivision (b)(2) to Section 15064.

The first sentence of proposed subdivision (b)(2) states the rule, set forth in cases interpreting CEQA, that thresholds of significance may be used in the determination of significance. (See *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98 111; see also *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1111.) Importantly, this new sentence also provides a cross-reference to CEQA Guidelines, Section 15064.7, which defines a threshold of significance.

The second sentence of this new proposed subdivision provides that an agency that relies on a threshold of significance should explain how application of the threshold indicates a less than significant effect. This sentence recognizes the court’s caution in *Protect the Historic Amador Waterways* that “thresholds cannot be used to determine automatically whether a given effect will or will not be significant.” (*Protect the Historic Amador Waterways, supra*, 116 Cal. App. 4th at pp. 1108-1109.) This sentence is also consistent with several other provisions in the Guidelines. (See, e.g., CEQA Guidelines § 15064(h)(3) (“When relying on a plan, regulation or program [to evaluate cumulative impacts], the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project’s incremental contribution to the cumulative effect is not cumulatively considerable”); § 15063, subd. (d)(3) (initial study must include sufficient information to support its conclusions).) Notably, the explanation need not be lengthy. CEQA Guidelines Section 15128 provides the explanation that an impact is determined to be less than significant, and therefore was not analyzed in an EIR, need only be brief.

Finally, the third sentence of this new proposed subdivision cautions that a lead agency must evaluate any substantial evidence supporting a fair argument that, despite compliance with thresholds, the project’s impacts are nevertheless significant. (*Protect the Historic Amador Waterways, supra*, 116 Cal. App. 4th at pp. 1108-1109 (“thresholds cannot be used to determine automatically whether a given effect will or will not be significant[;]” rather, “thresholds of significance can be used only as a measure of whether a certain environmental effect ‘will normally be determined to be significant’ or ‘normally will be determined to be less than significant’ by the agency”); see also *CBE, supra*, 103 Cal.App.4th at 112-113.)

This sentence does not alter the standard of review. Thus, in the context of an environmental impact report, a lead agency may weigh the evidence before it to reach a conclusion regarding the significance of a project’s effects. This added sentence clarifies, however, that a project’s compliance with a threshold does not excuse an agency of its obligation to consider the information presented to it regarding a project’s impacts. (*Rominger v. County of Colusa* (2014) 229 Cal. App. 4th 690, 717.) In other words, thresholds shall not be applied in a rote manner; analysis and evaluation of the evidence is still required. In this regard, this sentence is similar to a lead agency’s requirement to review and consider comments submitted on its environmental documents. (CEQA Guidelines, §§ 15074, subd. (b), 15088.)

### **Necessity**

The change is necessary to clarify a lead agency’s obligation to determine the significance of a proposed project and what evidence it must consider in reaching that conclusion. The Natural Resources Agency’s proposed revision will clarify that compliance with relevant standards may be a basis for determining that the project’s impacts are less than significant.

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

The Natural 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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be internally consistent, and the proposed action adds no new substantive requirements. The Natural 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 the change is a clarifying change only.

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

The proposed action implements and clarifies existing law. The proposed action also does not alter the applicable standard of review. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## **15064.3. DETERMINING THE SIGNIFICANCE OF TRANSPORTATION IMPACTS**

### **[New Section]**

#### **Background**

Californians drive approximately 332 *billion* vehicle miles each year. Traffic studies used in CEQA documents have typically focused on one thing: the impact of projects on traffic flows.

Senate Bill 743 (2013) required the OPR and the Natural Resources Agency to develop alternative methods of measuring transportation impacts under CEQA. At a minimum, the new methods must apply within areas that are served by transit; however, the Guidelines may extend the new methods statewide. Once the new transportation guidelines are adopted, automobile delay (often called Level of Service) will no longer be considered to be an environmental impact under CEQA.

#### **Explanation of Proposed New Section 15064.3**

The proposed new section 15064.3 contains several subdivisions, which are described below. In brief, these Guidelines provide that transportation impacts of projects are, in general, best measured by evaluating the project's vehicle miles traveled. Methodologies for evaluating such impacts are already in use for most land use projects, as well as many transit and active

transportation projects. Methods for evaluating vehicle miles traveled for highway capacity projects continue to evolve, however, and so these Guidelines recognize a lead agency's discretion to analyze such projects, provided such analysis is consistent with CEQA and applicable planning requirements.

#### **Subdivision (a): Purpose**

Subdivision (a) sets forth the purpose of the entire new section 15064.3. First, the subdivision clarifies that the primary consideration, in an environmental analysis, regarding transportation is the amount and distance that a project might cause people to drive. This captures two measures of transportation impacts: auto trips generated and vehicle miles traveled. These factors were identified by the legislature in SB 743. The last sentence clarifies that automobile delay is not a significant effect on the environment.

#### **Subdivision (b): Criteria for Analyzing Transportation Impacts**

While subdivision (a) sets forth general principles related to transportation analysis, subdivision (b) focuses on specific criteria for determining the significance of transportation impacts. It is further divided into four subdivisions: (1) land use projects, (2) transportation projects, (3) qualitative analysis, and (4) methodology.

#### **Subdivision (b)(1): Land Use Projects**

SB 743 did not authorize OPR to set thresholds, but it did direct OPR to develop Guidelines “for determining the significance of transportation impacts of projects[.]” (Pub. Resources Code § 21099(b)(2).) Therefore, to provide guidance on determining the significance of impacts, subdivision (b)(1) describes factors that might indicate whether the amount of a project’s vehicle miles traveled may be significant, or not.

#### **Subdivision (b)(2): Transportation Projects**

While subdivision (b)(1) addresses vehicle miles traveled associated with land use projects, subdivision (b)(2) focuses on impacts that result from certain transportation projects. Subdivision (b)(2) clarifies that projects that reduce VMT, such as pedestrian, bicycle and transit projects, should be presumed to have a less than significant impact. This subdivision further provides that lead agencies have discretion in which measure to use to evaluate highway capacity projects, provided that any such analysis is consistent with the requirements of CEQA and any other applicable requirements (e.g., local planning rules). Importantly, this provision does not prohibit capacity expansion. Finally, recognizing that highway capacity projects may be analyzed at a programmatic level, subdivision (b)(2) states that lead agencies may be able to tier from a programmatic analysis that adequately addresses the effects of such capacity projects.

### **Subdivision (b)(4): Methodology**

Lead agencies have the discretion to choose the most appropriate methodology to analyze a project's vehicle miles traveled. Depending on the project, vehicle miles traveled may be best measures on a per person, per household or other similar unit of measurement. Subdivision (b)(4) also recognizes the role for both models and professional judgment in estimating vehicle miles traveled.

### **Subdivision (c): Applicability**

The new procedures may be used immediately upon the effective date of these Guidelines by lead agencies that are ready to begin evaluating vehicle miles traveled, but jurisdictions will have until 2020 to switch to VMT if they so choose.

### **Necessity**

The proposed addition of CEQA Guidelines section 15064.3 is reasonably necessary to implement the direction in Public Resources Code 21099 that the CEQA Guidelines provide for a new methodology for analyzing transportation impacts of projects. The language of this section of the CEQA Guidelines follows the direction of the Legislature and ensures that that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural Resources Agency considered and rejected two alternatives to the proposed action. Under Alternative 1, the change from level of service (LOS) to vehicle miles traveled would apply only to proposed projects within "transit priority areas." This is the minimum scope of what Senate Bill 743 requires. Proposed projects outside of transit priority areas would continue to prepare traffic analyses using LOS.

Alternative 1 was rejected for several reasons. First, this alternative would forgo substantial cost and time savings that are expected to result from studying VMT instead of LOS. Second, this alternative would be more likely to cause confusion and increase litigation risk. Greater uncertainty would result because this alternative would require two different types of analyses to be conducted, depending on location. Third, research indicates that a transportation analysis focused on VMT may result in numerous indirect benefits to individuals including improved health; savings on outlay for fuel, energy, and water; reduction of time spent in transport to destinations. Finally, this alternative would be less likely to achieve the purposes of SB 743. That legislation requires the updated CEQA Guidelines "promote the reduction of greenhouse



gas emissions, the development of multimodal transportation networks, and a diversity of land uses.” As explained in the Office of Planning and Research’s Preliminary Evaluation of Alternative Methods of Transportation Analysis, as a metric, VMT promotes those statutory purposes better than LOS.

Under Alternative 2, the analysis of VMT would apply to land use projects only and not to transportation projects. In other words, under this alternative, LOS analysis would continue to apply to roadway, transit, bicycle and pedestrian projects reviewed under CEQA.

Alternative 2 was rejected because it would forgo the cost and time benefits described above for transit, bicycle and pedestrian projects. Those types of projects in particular are more likely to provide healthier, lower cost, more equitable transportation options. They are also a key strategy to reducing greenhouse gas emissions. As a result, this alternative would be less likely to achieve the purposes of Senate Bill 743, requiring the CEQA Guidelines update to “promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses.”

### **The Action Will Not Have a Significant Adverse Economic Impact on Business**

The Resources Agency has initially determined that the proposed action will not have a significant adverse economic impact on businesses, and instead, would lead to an overall economic benefit. Project proponents, including businesses, would experience time and cost savings related to document preparation largely because, with the changes required by SB 743, traffic studies would be less complicated and CEQA analysis may be streamlined, depending on the project’s proximity to transit. Private consulting businesses that prepare environmental documents may generate less revenue for preparing less expensive studies, but their receipts would vary based on project-specific factors, including project complexity and location.

## **15064.7. THRESHOLDS OF SIGNIFICANCE**

### **Specific Purposes of the Amendment**

This section provides additional explanation of thresholds of significance. Existing Section 15064.7 defines a threshold as “an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will *normally* be determined to be significant by the agency and compliance with which means the effect *normally* will be determined to be less than significant.” (CEQA Guidelines § 15064.7, subd. (a) (emphasis added).)

Thresholds of significance can inform not only the decision of whether to prepare an EIR but also the identification of effects to be analyzed in depth in the EIR, the requirement to make detailed findings on the feasibility of alternatives or mitigation measures to reduce or avoid the

significant effects, and when found to be feasible, changes in the project to lessen the adverse environmental impacts.

Because environmental standards, if used correctly, may promote efficiency in the environmental review process, the Natural Resources Agency proposes to add subdivision (d) to CEQA Guidelines, Section 15064.7 on thresholds of significance. Consistent with the rulings in both *Communities for a Better Environment, et al., v. Resources Agency* (2002) 103 Cal.App.4th and *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4<sup>th</sup>, the first sentence recognizes that lead agencies may treat environmental standards as thresholds of significance. By promoting the use of environmental standards as thresholds of significance, the proposed changes in Section 15064.7 are intended to make determinations of significance simpler and more predictable for all participants in the environmental review process.

The second sentence explains that in adopting or applying an environmental standard as a threshold, the lead agency should explain how application of the environmental standard indicates a less than significant effect. This sentence recognizes the court's caution in *Protect the Historic Amador Waterways* that "thresholds cannot be used to determine automatically whether a given effect will or will not be significant." (*Protect the Historic Amador Waterways, supra*, 116 Cal. App. 4<sup>th</sup> at pp. 1108-1109; see also *Rominger v. County of Colusa* (2014) 229 Cal.App.4<sup>th</sup> 690, 717.) This sentence is also consistent with a similar provision in existing subdivision (h)(3), which states: "When relying on a plan, regulation or program [to evaluate cumulative impacts], the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable." (CEQA Guidelines, § 15064, subd. (h)(3); see also §§ 15063, subd. (d)(3) (requiring an initial study to include sufficient information to support its conclusions); and, 15128 (requiring a lead agency to explain briefly the reasons that an impact is determined to be less than significant and therefore was not analyzed in an EIR).)

Finally, the third sentence provides criteria to assist a lead agency in determining whether a particular environmental standard is appropriate for use as a threshold of significance. The first criterion requires that the standard actually be adopted by some formal mechanism. Standards that have already undergone the scrutiny of a formal adoption process are more likely to provide a sound benchmark against which to measure a particular project's impacts. The second criterion requires the standard to actually be adopted for the purpose of environmental protection. Such standards are more likely to provide useful information about a project's environmental impacts than, for example, consumer protection standards. The third criterion requires that the standard actually govern the impact at issue. This is necessary to ensure that the standard relates to the impact of concern. (See, e.g., *Californians for Alternatives to Toxics*

*v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 16–20; *Berkeley Keep Jets Over the Bay Com. v. Board of Port Comm.* (2001) 91 Cal.App.4th 1344, 1382 (requiring analysis of single event noise despite compliance with cumulative noise standard).) The last criterion is that the standard must actually govern the project type. For example, some standards address plan-level activities, while others address project-specific activities.

Other changes in this section clarify that lead agencies may, but are not required to, formally adopt thresholds. Lead agencies may also use thresholds on a case-by-case basis.

### **Necessity**

The change is necessary to clarify a lead agency’s obligation to determine the significance of a proposed project and what evidence it must consider in reaching that conclusion. The Natural Resources Agency’s proposed revision will clarify that compliance with relevant standards may be a basis for determining that the project’s impacts are less than significant. The changes in this section are necessary to assist lead agencies in determining when environmental standards may be used for this purpose.

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

The Natural 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 Natural Resources Agency’s determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with current case law, and the proposed action adds no new substantive requirements. The Natural 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 the change is a clarifying change only.

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

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

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

### **Specific Purposes of the Amendment**

CEQA Guidelines section 15072 describes a lead agency's obligations to provide notices of intent to specified recipients before the lead agency adopts a negative declaration or a mitigated negative declaration. The Natural Resources Agency proposes two changes to this section in response to concerns raised by stakeholders.

First, stakeholders have noted that there is some confusion about the word "referenced" as used in the CEQA Guidelines. (CEQA Guidelines, §§ 15072 and 15087.) Specifically, Section 15072(h) states that a notice of intent must list the address where all documents referenced in an initial study must be specified. Some agencies interpret "referenced" to mean every document that is cited in the environmental document, where others interpret it to mean every document that is incorporated by reference into the document pursuant to CEQA Guidelines, section 15150.

Documents that are "incorporated by reference" provide a portion of the document's overall analysis, and because the final initial study must reflect the independent judgment of the lead agency, one would expect a copy of the incorporated document to actually be among the lead agency's files. Other referenced documents may only provide supplementary information, and may be contained in a consultant's files or research libraries. While still valid sources of information, it is less important for such documents to actually be in the lead agency's possession. The Natural Resources Agency, therefore, finds that the latter interpretation to be a more practical interpretation of CEQA.

Second, the Natural Resources Agency proposes to add a sentence to subdivision (e) of Section 15072. The purpose of this subdivision is to list the agencies and entities in which a lead agency shall or may consult prior to completing an environmental impact report. (See, Pub. Resources Code, § 21104 (stating that the lead agency shall consult with, and obtain comments from each responsible, trustee, or public agency that has jurisdiction over the project).) The Resources Agency proposes to clarify in this subdivision that lead agencies should consult public transit agencies with facilities within one-half mile of the proposed project. Doing so is likely to promote early information sharing and to avoid potential conflicts.

### **Necessity**

This addition is necessary to improve noticing standards, provide internal consistency between sections 15072, 15082 and 15150 of the CEQA Guidelines, and clarify that CEQA itself does not mandate that a lead agency include every document cited in an EIR for public review.

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

The Natural 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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be internally consistent, and the proposed action adds no new substantive requirements. The Natural 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 the change is a clarifying change only.

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

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

## **15075. NOTICE OF DETERMINATION ON A PROJECT FOR WHICH A PROPOSED NEGATIVE OR MITIGATED NEGATIVE DECLARATION HAS BEEN APPROVED**

### **Specific Purposes of the Amendment**

This section prescribes the use and content of a Notice of Determination on a project for which a proposed negative or mitigated negative declaration has been approved. The existing regulation spells out minimum contents so that people can recognize whether a particular notice applies to the project with which they are concerned. The section notes that the effect of filing the notice is to start a short statute of limitations period. If the notice is not filed, a longer period would apply. Failure to comply with all of the requirements for filing notices of determination results in the longer, 180-day, statute of limitations.

Pursuant to Assembly Bill 320 (Hill, 2011), the Natural Resources Agency proposes to add a new subdivision (b)(8) to Section 15075 of the CEQA Guidelines. AB 320 amended Public Resource Code sections 21108 and 21152 to require certain information to be included in the Notice of Determination consistent with CEQA Guidelines section 21065, subdivisions (b) and (c). AB 320 requires the Notice of Determination to include the identity of the person undertaking an activity, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use. Thus, the Natural Resources Agency

proposes to add subdivision (b)(8) to section 15075 of the CEQA Guidelines to provide consistency with Public Resources Code, section 21108 and 21152.

### **Necessity**

The proposed amendment to CEQA Guidelines section 15075 is necessary to reflect the Legislative changes. The language of this section of the CEQA Guidelines follows the direction of the Legislature and ensures that that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with Sections 21108 and 21152 of the Public Resources Code, and the proposed action adds no new substantive requirements per se. Rather, additional information regarding the project applicant must be included in the forms filed by public agencies. The Natural 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 the change is a clarifying change only.

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

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

## **15082. NOTICE OF PREPARATION AND DETERMINATION OF SCOPE OF EIR**

### **Specific Purposes of the Amendment**

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

The Natural Resources Agency proposes to amend subdivision (a) of Section 15082 of the CEQA Guidelines. Currently, subdivision (a) of Section 15082 states that a lead agency must send a notice of preparation stating that an environmental impact report will be prepared to the Office of Planning and Research and each responsible and trustee agency involved in the project. Public Resources Code, Section 21092.3 also requires that the notices be posted in the office of the county clerk of each county in which the project will be located. The Natural Resources Agency, therefore, proposes to include a statement that the notice must also be filed with the county clerk of each county within which the project is located.

### **Necessity**

This addition is necessary to accurately reflect the procedural requirement stated in the Public Resources Code, which also requires posting with the county clerk.

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

The Natural 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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with the Act, and the proposed action adds no new substantive requirements. The Natural 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 the change is a clarifying change only.

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

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

## **15086. CONSULTATION CONCERNING DRAFT EIR**

### **Specific Purposes of the Amendment**

This section implements the statutory requirements for consultation with other public agencies and the authority to consult with people who have special expertise concerning the environmental effects of the project. (Pub. Resources Code, § 21092.4.)

Among the other agencies with whom a lead agency should consult, the Natural Resources Agency proposes to clarify in subdivision (a)(5) of Section 15086 that lead agencies should also consult public transit agencies facilities within one-half mile of the proposed project. Doing so is likely to promote early information sharing and resolution of potential conflicts.

### **Necessity**

This addition is necessary to improve noticing standards by involving affected public transit agencies in the preparation of an environmental impact report and to ensure environmental transportation impacts are fully considered in accordance to the general statutory mandate under CEQA.

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

The Natural 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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with the Act, and the proposed action adds no new substantive requirements. The Natural 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 the change is a clarifying change only.

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

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

## **15087. PUBLIC REVIEW AND DRAFT EIR**

### **Specific Purposes of the Amendment**

CEQA Guidelines section 15087 sets forth procedures for public notice applying to the public review of draft EIRs.

The Natural Resources Agency proposes two separate amendments to this section. The first is an addition to subdivision (c)(2) of section 15087 that the lead agency may specify the manner in which it will receive written comments. The second would clarify the requirement in (g)(4) of



section 15087 that all documents referenced in the draft environmental impact report or negative declaration be available for review.

1. CEQA Guidelines section 15087, subd. (c)(2)

Advances in technology have altered the nature of the public's interactions with government agencies. Many public agencies now incorporate the internet and social media into their outreach and public participation strategies. (See, e.g., Office of Planning and Research, *Book of Lists* (2003), pp. 94-99 (listing local governments that use the internet and e-mail as forms of public engagement); see also Institute for Local Government, "A Local Official's Guide to Online Public Engagement" (2012).) In light of these changes, it is appropriate to allow a lead agency to specify that formal written comments must be submitted to a particular physical or electronic mail address and not, for example, a posting on social media.

Similarly, the public has expanded its use of the internet and digital storage to provide increasing amounts of data and information to decision-makers.

Therefore, the Natural Resources Agency proposes to clarify in Section 15087, subdivision (c)(2) that the lead agency may specify the manner in which it will receive written comments. This is an important clarification given that failure to respond to a timely submitted comment may lead to invalidation of a project for failure to comply with CEQA. Further, it is important for the public to understand the way to best make its views known to decisionmakers. Thus, this change promotes both public participation in the CEQA process and predictable outcomes in the CEQA process.

2. CEQA Guidelines, 15087, subd. (c)(5)

CEQA requires a lead agency to provide notice that it is preparing an EIR or a negative declaration, and such notice "shall specify ... the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review ...." (Pub. Resources Code § 21092, subs. (a) and (b).) Stakeholders have noted that there is some confusion about the word "referenced" as used in that section and in the CEQA Guidelines. (CEQA Guidelines §§ 15072, 15087.) Some agencies interpret "referenced" to mean every document that is cited in the environmental document, where others interpret it to mean every document that is incorporated by reference into the document pursuant to Section 15150.

Documents that are "incorporated by reference" provide a portion of the document's overall analysis, and because the final initial study must reflect the independent judgment of the lead agency, one would expect a copy of the incorporated document to actually be among the lead agency's files. Other referenced documents may only provide supplementary information, and may be contained in a consultant's files or research libraries. While still valid sources of

information, it is less important for such documents to actually be in the lead agency's possession. The Natural Resources Agency, therefore, finds that the latter interpretation to be a more practical interpretation of CEQA.

### **Necessity**

The clarification of subdivision (c)(2), of section 15087 is necessary to accommodate those agencies that wish to publicize the availability a draft environmental impact report on the internet or social media, and to make clear that responses will not be prepared for comments made in internet chat-rooms or via social media.

Additionally, in enacting CEQA, the Legislature declared that "it is the policy of the state that ... [a]ll persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner ...." (Pub. Resources Code § 21003, subd. (f).) The changes to subdivision (c)(5) would also provide internal consistency between sections 15072, 15082 and 15150 of the Guidelines and would clarify that CEQA itself does not mandate that a lead agency include every document cited in an EIR for public review.

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

The Natural 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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to carry out the CEQA process in the most efficient, expeditious manner, to be internally consistent, and the proposed action adds no new substantive requirements. The Natural 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 the change is a clarifying change only.

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

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

## **15088. EVALUATION OF AND RESPONSE TO COMMENTS**

### **Specific Purposes of the Amendment**

This section explains that evaluation and response to public comments is an essential part of the CEQA process. Failure to comply with the requirements can lead to disapproval of a project. To avoid this problem, it is necessary to identify the requirements for responding to comments in the CEQA Guidelines. This section is also necessary to explain different ways in which the responses to comments can be prepared. The options of revising the draft or adding the comments and responses as a separate section of the final EIR match the permissible approaches under NEPA.

In light of the increasing use of the internet in public engagement, as well as current case law, the Natural Resources Agency proposes to clarify the scope of a lead agency's duty to respond to comments as described in Section 15088. Specifically, the Agency proposes that responses to general comments may be general. Further, the Agency proposes to clarify that general responses may be appropriate when a comment does not explain the relevance of information submitted with the comment, and when a comment refers to information that is not included or is not readily available to the agency.

The Natural Resources Agency also proposes to clarify in Section 15088, subdivision (b) that a lead agency may provide proposed responses to public agency comments in electronic form. This change is consistent with the policy stated in Public Resources Code Section 21003, subdivision (f), that "agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner[.]" The change is also consistent with the trend of making more government documents available electronically. (*See, e.g.,* Senate Bill 122 (Jackson, 2016) (allowing the State Clearinghouse to require submission of documents in electronic form).)

### **Necessity**

This clarification is necessary to define the scope of a lead agency's duty to respond to comments as described in section 15088. Specifically, these changes are necessary to clarify that responses to general comments may be general. Further, these changes are necessary to clarify that general responses may be appropriate when a comment does not explain the relevance of information submitted with the comment, and when a comment refers to information that is not included or is not readily available to the agency. Additionally, in enacting CEQA, the Legislature declared that "it is the policy of the state that ... [a]ll persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner ...." (Pub. Resources Code § 21003, subd. (f).)

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

The Natural 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 Agency's determination that the proposed action is necessary to update the CEQA Guidelines to carry out the CEQA process in the most efficient, expeditious manner, to be internally consistent, and the proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

## **15094. NOTICE OF DETERMINATION**

### **Specific Purposes of the Amendment**

This section prescribes the use and content of the Notice of Determination. The existing regulation spells out minimum contents so that people can recognize whether a particular notice applies to the project with which they are concerned. The section notes that the effect of filing the notice is to start a short statute of limitations period. If the notice is not filed, a longer period would apply. Failure to comply with all of the requirements for filing notices of determination results in the longer, 180-day, statute of limitations.

Pursuant to Assembly Bill 320 (Hill, 2011), the Natural Resources Agency proposes to add a new subdivision (b)(10) to Section 15094 of the CEQA Guidelines. AB 320 amended Public Resource Code, sections 21108 and 21152 requiring information to be included in the Notice of Determination consistent with CEQA Guidelines section 21065, subdivisions (b) and (c). AB 320 requires the Notice of Determination to include the identity of the person undertaking an activity, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use. Thus, the Agency proposes to add

subdivision (b)(10) to section 15094 of the CEQA Guidelines to provide consistency with Public Resources Code, section 21108 and 21152.

### **Necessity**

The proposed amendment to CEQA Guidelines section 15094 is necessary to reflect the Legislative changes made in AB 320 (2011). The language of this section of the CEQA Guidelines follows the direction of the Legislature and ensures that that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with Sections 21108 and 21152 of the Public Resources Code, and the proposed action adds no new substantive requirements. Rather, additional information regarding the project applicant must be included in the forms filed by public agencies. The 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 the change is a clarifying change only.

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

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

## **15107. COMPLETION OF NEGATIVE DECLARATION FOR CERTAIN PRIVATE PROJECTS**

### **Specific Purposes of the Amendment**

This section reflects the statutory requirement that a Negative Declaration be completed and adopted within 180 days of the day a private project is accepted as complete for processing. The Natural Resources Agency proposes to add a sentence to Section 15107 clarifying that a lead agency may extend the 180-day time limit once for a period of no more than 90 days upon the consent of both the lead agency and the applicant.

## **Necessity**

This addition is necessary to allow the lead agency the same flexibility to extend the deadline for the completion of a negative declaration as is allotted for the completion of an environmental impact report. (CEQA Guidelines, § 15108 (lead agency may extend the deadline for the completion of an environmental impact report "...[O]nce for a period of not more than 90 days upon consent of the lead agency and the applicant".))

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

The Natural 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 Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be internally consistent, and the proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

## **15124. PROJECT DESCRIPTION**

### **Specific Purposes of the Amendment**

This section requires the EIR to describe the proposed project in a way that will be meaningful to the public, to the other reviewing agencies, and to the decision-makers. The Natural Resources Agency proposes to amend subdivision (b) of Section 15124. Currently, subdivision (b) states that a project description shall include a statement of objectives sought by the project. The Agency proposes to clarify that the general description may also discuss the proposed project's benefits to ensure the project description allows decision makers to balance, if needed, a project's benefit against its environmental cost.

## **Necessity**

This clarification is necessary to ensure that the CEQA Guidelines are consistent with case law. (See *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 192 (determined an accurate project description allows decision makers to balance the proposal's benefit against its environmental cost).) The clarification ensures that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with the case law, and the proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

## **15125. ENVIRONMENTAL SETTING**

### **Specific Purposes of the Amendment**

This section of the CEQA Guidelines requires an EIR to describe the environmental setting of the project so that the changes can be seen in context. Section 15125 of the CEQA Guidelines has for years described the general rule: "normally," the baseline consists of physical environmental conditions "as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced." In recent years, several decisions of the courts of appeal and the California Supreme Court have focused on exceptions to this general rule. Specifically, the Natural Resources Agency proposes to add a statement of purpose and three subdivisions to subdivision Section 15125, subdivision (a).

## **Subdivision (a) – Purpose**

In the body of subdivision (a), the Natural Resources Agency proposes to add a sentence stating that the purpose of defining the environmental setting is to give decision-makers and the public an accurate picture of the project’s likely impacts, both near-term and long-term. This sentence paraphrases the Supreme Court’s description of the requirement in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439. (See *id.* at 455 (“Even when a project is intended and expected to improve conditions in the long term--20 or 30 years after an EIR is prepared--decision makers and members of the public are entitled under CEQA to know the short- and medium-term environmental costs of achieving that desirable improvement. ... [¶] ... The public and decision makers are entitled to the most accurate information on project impacts practically possible, and the choice of a baseline must reflect that goal”); see also *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310.) The purpose of adding this sentence to subdivision (a) is to guide lead agencies in the choice between potential alternative baselines. When in doubt, lead agencies should choose the baseline that most meaningfully informs decision-makers and the public of the project’s possible impacts.

## **Subdivision (a)(1) – General Rule**

Proposed subdivision (a)(1) sets forth the general rule: normally, conditions existing at the time of the environmental review should be considered the baseline. The first sentence largely consists of language that was moved from the body of existing subdivision (a) and that states this general rule. The second sentence provides that a lead agency may look back to historic conditions to establish a baseline where existing conditions fluctuate, provided that it can document such historic conditions with substantial evidence. (See, *Communities for a Better Environment, supra*, 48 Cal.4th at pp. 327-328 (“Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods”) (quoting *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125); see also *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.)

The third sentence provides that a lead agency may describe both existing conditions as well as future conditions. (*Neighbors, supra*, 57 Cal. 4th at p. 454 (“nothing in CEQA law precludes an agency... from considering both types of baseline--existing and future conditions--in its primary analysis of the project's significant adverse effects”).) The court in the *Neighbors* decision described examples of when it might be appropriate to focus on conditions existing at the time the project commences operations:

For example, in an EIR for a new office building, the analysis of impacts on sunlight and views in the surrounding neighborhood might reasonably take account of a larger tower



already under construction on an adjacent site at the time of EIR preparation. For a large-scale transportation project ..., to the extent changing background conditions during the project's lengthy approval and construction period are expected to affect the project's likely impacts, the agency has discretion to consider those changing background conditions in formulating its analytical baseline.

(*Id.* at 453.)

### **Subdivision (a)(2) – Exceptions to the General Rule**

Proposed subdivision (a)(2) sets forth the exception to the general rule, and conditions allowing lead agencies to use an alternative baseline. The first sentence explains that existing conditions may be omitted in favor of an alternate baseline where “use of existing conditions would be either misleading or without informative value to decision-makers and the public.” (See, *Neighbors, supra*, 57 Cal.4th at p. 453 (“To the extent a departure from the ‘norm[.]’ of an existing conditions baseline (CEQA Guidelines, § 15125(a)) promotes public participation and more informed decisionmaking by providing a more accurate picture of a proposed project's likely impacts, CEQA permits the departure. Thus, an agency may forego analysis of a project's impacts on existing environmental conditions if such an analysis would be uninformative or misleading to decision makers and the public”).) Notably, the Court in the *Neighbors* case highlighted a useful example of when future conditions might provide a more useful analysis:

In this illustration, an existing industrial facility currently emits an air pollutant in the amount of 1,000 pounds per day. By the year 2020, if no new project is undertaken at the facility, emissions of the pollutant are projected to fall to 500 pounds per day due to enforcement of regulations already adopted and to turnover in the facility's vehicle fleet. The operator proposes to use the facility for a new project that will emit 750 pounds per day of the pollutant upon implementation and through at least 2020. An analysis comparing the project's emissions to existing emissions would conclude the project would reduce pollution and thus have no significant adverse impact, while an analysis using a baseline of projected year 2020 conditions would show the project is likely to increase emissions by 250 pounds per day, a (presumably significant) 50 percent increase over baseline conditions.

(*Neighbors, supra*, 57 Cal. 4th at 453, n 5.)

The first sentence in subdivision (a)(2) also describes the procedural requirement that the lead agency must expressly justify its decision not to use existing conditions as the baseline for environmental analysis, and that justification must be supported with substantial evidence in the record. (See *id.* at 457.) The second sentence provides that if future conditions are to be used, they must be based on reliable projections grounded in substantial evidence. This

provision reflects the court’s concern regarding gamesmanship and manipulation as stated in the *Neighbors* decision, as well as the concern that predictive modeling may not be readily understood by the public. (Id. at pp. 455-456; see also Pub. Resources Code, §§ 21003(b) (CEQA documents shall “be organized and written in a manner that will be meaningful and useful to decision makers and to the public”), 21080(e)(2) (“Substantial evidence” does not include “speculation ... or ... evidence that is clearly inaccurate or erroneous”).)

### **Subdivision (a)(3) – Hypothetical Conditions**

Subdivision (a)(3) specifies that hypothetical conditions may not be used as a baseline. Specifically, this proposed subdivision states that lead agencies may not measure project impacts against conditions that are neither existing nor historic, such as those that might be allowed under existing permits or plans. As the Supreme Court explained in its *CBE* decision: “[a]n approach using hypothetical allowable conditions as the baseline results in ‘illusory’ comparisons that ‘can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts,’ a result at direct odds with CEQA’s intent.” (*Communities for a Better Environment, supra*, 48 Cal. 4th at 322 (quoting *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal. App. 3d 350, 358).)

These changes reflect in large part suggestions of the Association of Environmental Professionals and American Planning Association, and, to a degree, those submitted by the California Building Industry Association. (See “Recommendations for Updating the State CEQA Guidelines American Planning Association, California Chapter; Association of Environmental Professionals; and Enhanced CEQA Action Team (August 30, 2013), at pp. 1-2; see also Letter from the California Building Industry Association, February 14, 2014.) This proposal, however, breaks the new guidance into subdivisions to more clearly identify (1) the general rule, (2) acceptable exceptions to the general rule and conditions for using alternative baselines, and (3) prohibited alternative baselines.

### **Necessity**

This clarification is necessary to reflect the California Supreme Court’s decision in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4<sup>th</sup> 439. The description of the environmental setting plays a key role in the CEQA process by providing the baseline against which the project’s potential impacts are measured. It is necessary to guide lead agencies in the choice between potential alternative baselines.

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

The Natural 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 Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with the California Supreme Court's decision, and the proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

## **15126.2. CONSIDERATION AND DISCUSSION OF SIGNIFICANT ENVIRONMENTAL IMPACTS**

### **Specific Purposes of the Amendment**

This section of the CEQA Guidelines describes how an EIR must identify and focus on the significant environmental effects, unavoidable significant environmental effects, unavoidable significant environmental effects, significant irreversible environmental changes, and growth-inducing impacts which may result from a project. The Natural Resources Agency proposes two separate additions to this section.

### **Changes in Subdivision (a), Relating to Hazards**

First, the Natural Resources Agency proposes changes to subdivision (a) to specifically address the California Supreme Court's decision in *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4<sup>th</sup> 369. In that case, the Court held that "agencies subject to CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users or residents" but they must analyze hazards the project might risk exacerbating. In reaching that conclusion, the Court also found that two sentences in existing Section 15126.2, subdivision (a), were invalid.

Changes are proposed in the first, as well as the fifth through the eighth, sentences in existing Section 15126.2(a).

The first proposed change clarifies that the focus of a CEQA analysis is the project's effect on the environment.

Second, these changes add the words "or risks exacerbating" to the fifth sentence regarding impacts a project may cause by bringing people or development to the affected area. This addition clarifies that an EIR must analyze not just impacts that a project might cause, but also existing hazards that the project might make worse. This clarification implements the Supreme Court's holding in the *CBIA* case. (62 Cal. 4th at 377 ("when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users".)) In this context, an effect that a project "risks exacerbating" is similar to an "indirect" effect. Describing "indirect effects," the CEQA Guidelines state: "If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment." (State CEQA Guidelines § 15064(d)(2).) Just as with indirect effects, a lead agency should confine its analysis of exacerbating effects to those that are reasonably foreseeable. (*Id.* at subd. (d)(3).)

Notably, by stating that EIRs should analyze effects that a project might "cause or risk exacerbating," this clarification also makes clear that EIRs need not analyze effects that the project does not cause directly or indirectly.

The third change deletes the sentences (using developing on a fault-line as an example of a hazard that requires analysis) that the Supreme Court specifically held exceeded CEQA's scope. This change is necessary to implement the Court's holding regarding the scope of analysis that CEQA requires.

Notably other laws require analysis of seismic hazards. Public Resources Code Section 2697, for example, requires cities and counties to prepare a site-specific geologic report prior to approval of most projects in a seismic hazard zone. Regulations further clarify that such "project shall be approved only when the nature and severity of the seismic hazards at the site have been evaluated in a geotechnical report and appropriate mitigation measures have been proposed." (Cal. Code Regs, tit. 14, § 3724.) Further, the California Building Code contains provisions requiring all buildings to be designed to withstand some seismic activity. (See, e.g., tit. 24, § 1613.1.)

The safety elements of local general plans will also describe potential hazards, including: "any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence; liquefaction; and other seismic hazards ..., and other geologic hazards known to the legislative body; flooding; and wildland and urban fires." (Gov. Code § 65302(g)(1).) Hazards associated with flooding, wildfire and climate change require special consideration. (*Id.* at subd. (g)(2)-(g)(4).) Lead

agencies must “discuss any inconsistencies between the proposed project and applicable general plans” related to a project’s potential environmental impacts in a project’s environmental review. (State CEQA Guidelines § 15125(d).) Local governments may regulate land use to protect public health and welfare pursuant to their police power. (Cal. Const., art. XI, § 7; *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal. 4th 435, 455 (“so long as a land use restriction or regulation bears a reasonable relationship to the public welfare, the restriction or regulation is constitutionally permissible”).)

The fourth change clarifies that a project’s direct and indirect and cumulative effects may affect the hazardous condition, and therefore, must still be evaluated in CEQA. In fact, such effects are particularly important when a project locates in a hazardous location. For example, a project proposed on a coastline may not itself cause pre-existing erosive forces. However, according to the Court in the *CBIA* case, a lead agency would need to include any relevant hazards in the environmental document’s description of the environmental setting. Further, in the case of coastal development, if sea walls or other shoreline structures are necessary to protect the project from erosion, the sea wall may contribute to cumulative erosion impacts nearby on the coast. Such a development might also lead to indirect effects such as dispersion of pollutants from inundation, increased maintenance and repair-related construction, impedance of evacuation routes, increased demand on emergency services, etc. Thus, harm to the project would not mandate a finding of a significant effect; however, any environmental effects that might result from the harm to the project, and predictable responses to that harm, are properly evaluated in a CEQA evaluation.

The final addition clarifies that a lead agency should consider not just existing hazards, but the potential for increasing severity of hazards over time. This change is necessary because certain types of hazards are expected to be more severe in the future due to our changing climate. Examples include increased flooding (resulting from more precipitation falling as rain instead of snow as well as from rising sea levels) and more intense wildfires. These types of climate change impacts may worsen a proposed project’s direct, indirect, or cumulative environmental effects in the future. A lead agency need not engage in speculation regarding such effects. Rather, hazard zones may be clearly identified in authoritative maps, such as those found on the Cal-Adapt website (<http://cal-adapt.org/>), or in locally adopted general plan safety elements and local hazard mitigation plans. Notably, pursuant to new requirements in Government Code section 65302(g)(4), added by Senate Bill 379, general plans will identify “geographic areas at risk from climate change impacts[.]” Focus on both short-term and long-term effects is also necessary to implement express legislative policy. (Pub. Resources Code §§ 21001(d), (g); 21083(b)(1).)

Consideration of future conditions in determining whether a project’s impacts may be significant is consistent with CEQA’s rules regarding baseline. “[N]othing in CEQA law precludes an agency ... from considering both types of baseline—existing and future conditions—in its primary analysis of the project’s significant adverse effects.” (*Neighbors for Smart Rail v. Exposition Metro Line Construction*

*Authority* (2013) 57 Cal. 4th 439, 454.) “The key ... is the EIR’s role as an informational document.” (*Id.* at 453.)

### **New Subdivision (b), Relating to Energy Impacts**

Additionally, the Natural Resources Agency proposes to add a new subdivision (b) to Section 15126.2 discussing the required contents of an environmental impact report. The new subdivision would specifically address the required analysis of a project’s potential energy impacts which is currently housed within Appendix F of the CEQA Guidelines. Appendix F was revised in 2009 to clarify that analysis of energy impacts is mandatory. The Agency proposes to add a subdivision on energy impacts to further elevate the issue and remove any question about whether such an analysis is required.

As background, in 1974, the Legislature adopted the Warren-Alquist State Energy Resources Conservation and Development Act. (Pub. Resources Code, § 25000 et seq.) That act created what is now known as the California Energy Commission, and enabled it to adopt building energy standards. (See, e.g., *id.* at § 25402.) At that time, the Legislature found the “rapid rate of growth in demand for electric energy is in part due to wasteful, uneconomic, inefficient, and unnecessary uses of power and a continuation of this trend will result in serious depletion or irreversible commitment of energy, land and water resources, and potential threats to the state’s environmental quality.” (*Id.* at § 25002; see also § 25007 (“It is further the policy of the state and the intent of the Legislature to employ a range of measures to reduce wasteful, uneconomical, and unnecessary uses of energy, thereby reducing the rate of growth of energy consumption, prudently conserve energy resources, and assure statewide environmental, public safety, and land use goals”).)

The same year that the Legislature adopted Warren-Alquist, it also added section 21100(b)(3) to CEQA, requiring environmental impact reports to include “measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.” As explained by a court shortly after that provision was enacted, the “energy mitigation amendment is *substantive* and not procedural in nature and was enacted for the purpose of requiring the lead agencies to focus upon the energy problem in the preparation of the final EIR.” (*People v. County of Kern* (1976) 62 Cal.App.3d 761, 774 (emphasis added).) It compels an affirmative investigation of the project’s potential energy use and feasible ways to reduce that use.

Though Appendix F of the CEQA Guidelines has contained guidance on energy analysis for decades, implementation among lead agencies has not been consistent. (See, e.g., *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 209.) While California is a leader in energy conservation, the importance of addressing energy impacts has not diminished since 1974. On the contrary, given the need to avoid the effects of climate change, energy use is an issue that we cannot afford to ignore. As the California Energy Commission’s Integrated Energy Policy Report (2016) explains:

Energy fuels the economy, but it is also the biggest source of greenhouse gas emissions that lead to climate change. Despite California’s leadership, Californians are experiencing the impacts of climate change including higher temperatures, prolonged drought, and more wildfires. There is an urgent need to reduce greenhouse gas emissions and increase the state’s resiliency to climate change. . . . ¶ . . . With transportation accounting for about 37 percent of California’s greenhouse gas emissions in 2014, transforming California’s transportation system away from gasoline to zero-emission and near-zero-emission vehicles is a fundamental part of the state’s efforts to meet its climate goals. . . . ¶ . . . Energy efficiency and demand response are also key components of the state’s strategy to reduce greenhouse gas emissions.

(*Id.* at pp. 5, 8, 10.)

Appendix F was revised in 2009 to clarify that analysis of energy impacts is mandatory. The Agency now proposes to add a subdivision in section 15126.2 on energy impacts to further elevate the issue, and remove any question about whether such an analysis is required.

The first sentence clarifies that an EIR must analyze whether a project will result in significant environmental effects due to “wasteful, inefficient, or unnecessary consumption of energy.” This clarification is necessary to implement Public Resources Code section 21100(b)(3). Because the duty to impose mitigation measures arises when a lead agency determines that the project may have a significant effect, section 21100(b)(3) necessarily requires both analysis and a determination of significance in addition to energy efficiency measures. (Pub. Resources Code, § 21002.)

The second sentence further clarifies that all aspects of the project must be considered in the analysis. This clarification is consistent with the rule that lead agencies must consider the “whole of the project” in considering impacts. It is also necessary to ensure that lead agencies consider issues beyond just building design. (*See, e.g., California Clean Energy Com. v. City of Woodland, supra*, 225 Cal.App.4th at pp. 210-212.) The analysis of vehicle miles traveled provided in proposed section 15064.3 (implementing Public Resources Code section 21099 (SB 743)) on transportation impacts may be relevant to this analysis.

The third sentence signals that the analysis of energy impacts may need to extend beyond building code compliance. (*Ibid.*) The requirement to determine whether a project’s use of energy is “wasteful, inefficient, and unnecessary” compels consideration of the project in its context. (Pub. Resources Code, § 21100(b)(3).) While building code compliance is a relevant factor, the generalized rules in the building code will not necessarily indicate whether a particular project’s energy use could be improved. (*Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 933 (after analysis, lead agency concludes that project proposed to be at least 25% more energy efficient than the building code requires would have a less than significant

impact); *see also* CEQA Guidelines, Appendix F, § II.C.4 (describing building code compliance as one of several different considerations in determining the significance of a project’s energy impacts.) That the Legislature added the energy analysis requirement in CEQA at the same time that it created an Energy Commission authorized to impose building energy standards indicates that compliance with the building code is a necessary but not exclusive means of satisfying CEQA’s independent requirement to analyze energy impacts broadly.

The new proposed subdivision (b) also provides a cross-reference to Appendix F. This cross-reference is necessary to direct lead agencies to the more detailed provisions contained in that appendix.

Finally, new proposed subdivision (b) cautions that the analysis of energy impacts is subject to the rule of reason, and must focus on energy demand caused by the project. This sentence is necessary to place reasonable limits on the analysis. Specifically, it signals that a full “lifecycle” analysis that would account for energy used in building materials and consumer products will generally not be required. (See also Cal. Natural Resources Agency, Final Statement of Reasons for Regulatory Action: Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97 (Dec. 2009) at pp. 71-72.)

### **Necessity**

The changes in subdivision (a) are necessary to assist lead agencies in applying the California Supreme Court’s holding agencies subject to CEQA are generally are not required to analyze the impact of existing environmental conditions on a project’s future users or residents unless the impacts of the project risk exacerbation of the impact. Further, the proposed changes will assist lead agencies in applying the principles identified by the California Supreme Court in the *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369 decision.

Additionally, it is necessary to add the language to the CEQA Guidelines regarding energy impact analyses because CEQA has long required energy impact analyses. However, the description of the required analysis is currently located in a stand-alone Appendix and goes largely unnoticed and implementation among lead agencies has not been consistent. Further, the proposed changes will assist lead agencies in applying the principles identified by courts in several recent cases, including *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4<sup>th</sup> 256.

The additional language in both subdivisions will ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.



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

The Natural 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 Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with case law, and the proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

## **15126.4. CONSIDERATION AND DISCUSSION OF MITIGATION MEASURES PROPOSED TO MINIMIZE SIGNIFICANT EFFECTS**

### **Specific Purposes of the Amendment**

When a lead agency identifies a potentially significant environmental impact, it must propose feasible mitigation measures in the environmental document for a project. (Pub. Resources Code, §§ 21002 (duty to mitigate), 21080(c)(2) (mitigated negative declaration), 21100(b)(3) (EIR must include mitigation measures).) The formulation of mitigation measures cannot be deferred until after project approval. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92 (“reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA’s goals of full disclosure and informed decisionmaking; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment”).)

Practical considerations, however, sometimes preclude development of detailed mitigation plans at the time of project consideration. In such cases, courts have permitted lead agencies to defer some of the *details* of mitigation measures provided that the agency commits itself to mitigation and analyzes the different mitigation alternatives that might ultimately be incorporated into the project. (See, e.g., *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028–1030.)

A line of recent cases developed more specific rules on what details may or may not be deferred. (See, e.g., *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260; *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899; *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70; *Sheryl Gray v. County of Madera* (2008) 167 Cal.App.4th 1099; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261.)

In light of those cases, and stakeholder requests for clarification in the CEQA Guidelines, the Natural Resources Agency proposes several amendments to Section 15126.4.

First, the proposed amendments clarify in section 15126.4, subdivision (a)(1)(B), that the lead agency “shall” not defer identification of mitigation measures. This binding requirement is clearly stated in a number of cases. (See, e.g., *Preserve Wild Santee, supra*, 210 Cal.App.4th 260; *Rialto Citizens for Responsible Growth, supra*, 208 Cal.App.4th 899; *City of Maywood, supra*, 208 Cal.App.4th 362; *CBE, supra*, 184 Cal.App.4th 70; *Gray v. County of Madera, supra*, 167 Cal.App.4th 1099; *San Joaquin Raptor Rescue Center, supra*, 149 Cal.App.4th 645; *Endangered Habitats League, supra*, 131 Cal.App.4th 777; *Defend the Bay, supra*, 119 Cal.App.4th 1261.) Therefore, replacing the word ‘should’ with ‘shall’ will conform the Guidelines to case law. (State CEQA Guidelines § 15005.)

Second, the proposed amendments describe situations when deferral of the *specific details* of mitigation may be allowable under CEQA, including which commitments the agency should make in the environmental document. Specifically, the proposed amendments would explain that deferral may be permissible when it is impractical or infeasible to fully formulate the details of a mitigation measure at the time of project approval and the agency commits to mitigation. (See, e.g., *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884 (deferral of mitigation was proper where practical considerations prohibited devising mitigation measures early in the planning process, and the agency committed to performance criteria); *Defend the Bay, supra*, 119 Cal.App.4th 1261 (deferral of specifics of mitigation measures was permissible where practical considerations prohibited devising such measures for a general plan amendment and zoning change); and *Preserve Wild Santee, supra*, 210 Cal.App.4th 260 (deferral of mitigation details was improper where performance standards were not specified and lead agency did not provide an explanation for why such standards were impractical or infeasible to provide at the time of certification of the EIR).)

Further, these changes clarify that when deferring the specifics of mitigation, the lead agency should either provide a list of possible mitigation measures, or adopt specific performance standards. The first option is summarized in *Defend the Bay v. City of Irvine, supra*. In that case, the court stated that deferral may be appropriate where the lead agency “lists the alternatives to be considered, analyzed and possibly incorporated into the mitigation plan.” (*Defend the Bay, supra*, at p. 1275; see also *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376; *Rialto*

*Citizens for Responsible Growth, supra*, 208 Cal.App.4th 899; *Gray v. County of Madera, supra*, 167 Cal.App.4th 1099; *San Joaquin Raptor Rescue Center, supra*, 149 Cal.App.4th 645; *Endangered Habitats League, supra*, 131 Cal.App.4th 777.)

Alternatively, the lead agency may adopt performance standards in the environmental document, as described by the court in *Rialto Citizens for Responsible Growth v. City of Rialto, supra*. There, the court ruled that where mitigation measures incorporated specific performance criteria and were not so open-ended that they allowed potential impacts to remain significant, deferral was proper. (*Rialto Citizens for Responsible Growth, supra*, 208 Cal.App.4th 899; see also *Laurel Heights, supra*, 47 Cal.3d 376; *Preserve Wild Santee, supra*, 210 Cal.App.4th 260; *City of Maywood, supra*, 208 Cal.App.4th 362; *CBE, supra*, 184 Cal.App.4th 70; *Gray v. County of Madera, supra*, 167 Cal.App.4th 1099; *San Joaquin Raptor Rescue Center, supra*, 149 Cal.App.4th 645; *Endangered Habitats League, supra*, 131 Cal.App.4th 777.)

Finally, the proposed amendments explain that such deferral may be appropriate “where another regulatory agency will issue a permit for the project and is expected to impose mitigation requirements independent of the CEQA process so long as the EIR included performance criteria and the lead agency committed itself to mitigation.” (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 237; see also *Oakland Heritage Alliance, supra*, 195 Cal.App.4th 884; *Defend the Bay, supra*, 119 Cal.App.4th 1261.)

### **Necessity**

The amendments are necessary to bring the current CEQA Guidelines in conformance to recent case law. The amendments will ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Agency’s determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with case law. Additionally, the proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

### **15152. TIERING**

#### **Specific Purposes of the Amendment**

The tiering concept authorized in this section is designed to promote efficiency in the CEQA review process. This section recognizes that the approval of many projects will move through a series of separate public agency decisions, going from approval of a general plan, to approval of an intermediate plan or zoning, and finally to approval of a specific development proposal. Tiering is an effort to focus environmental review on the environmental issues which are relevant to the approval being considered. At the same time, tiering requires the lead agency to analyze reasonably foreseeable significant effects and does not allow deferral of such analysis to a later tier document.

The Natural Resources Agency proposes to amend CEQA Guidelines, Section 15152, subdivision (h). As currently written, that section states that “[t]here are various types of EIRs that may be used in a tiering situation.” The Agency proposes to rewrite this section to clarify that tiering is only one of several streamlining mechanisms that can simplify the environmental review process. (See, e.g., CEQA Guidelines, § 15006 (lists methods to reduce or eliminate duplication in the CEQA process).) Tiering is one such efficiency measure. (See, e.g., Pub. Resources Code, § 21093 (states that tiering may be appropriate “to exclude duplicative analysis” completed in previous EIRs), § 21094 (states that a lead agency may examine significant effects of a project by using a tiered EIR).) Public Resources Code Section 21094 is broadly worded to potentially be used for any number of programs, plans, policies, or ordinances, with a wide variety of content. (*Ibid.*) In adopting Section 21094, the legislature did not indicate that it intended to replace any other streamlining mechanisms. For example, the legislature did not override existing provisions including, but not limited to, Program EIRs (CEQA Guidelines, § 15168) and mitigation measures under a prior EIR (Pub. Resources Code, § 21083.3). In fact, the legislature created additional streamlining mechanisms after tiering was adopted. (See, e.g., Pub. Resources Code, § 21157 (Master EIR), § 21158 (Focused EIR).) Thus, this revision clarifies that tiering describes one mechanism for streamlining the environmental review process, but where other methods have more specific provisions, those provisions shall apply.

## **Necessity**

The amendments are necessary to clarify that tiering describes one mechanism for streamlining the environmental review process, but where other methods have more specific provisions, those provisions shall apply. The amendments will ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with Public Resources Code as well as internally consistent with other sections of the CEQA Guidelines. The proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

## **15155. CITY OR COUNTY CONSULTATION WITH WATER AGENCIES**

### **Specific Purposes of the Amendment**

California recently experienced the worst water crisis in our state's modern history over multiple consecutive years of extremely dry conditions. During that time, precipitation and snowpack were a small fraction of their normal averages, reservoirs were at extremely low levels, and rivers had severely diminished flows. In response to the growing crisis, Governor Brown proclaimed a [state of emergency](#) in January 2014 and called on all Californians to reduce their water consumption by 20 percent. In April 2014, the Department of Water Resources announced a five percent allocation of the State Water Project—the lowest ever. (DWR, [Water Conditions](#).) Allocations remained low in 2015. The State Water Resources Control Board began to notify water rights holders that they must curtail their diversions in

certain watersheds. (See State Water Resources Control Board, [“Notices of Water Availability \(Curtailed and Emergency Regulations\)”](#).) In September 2014, Governor Brown signed into law the [Sustainable Groundwater Management Act](#), historic legislation to strengthen local management and monitoring of groundwater basins most critical to the state's water needs. Responding to continuing dry conditions, in April 2015, the Governor issued Executive Order B-29-15, calling on Californians to redouble their water conservation efforts. Specifically, urban water agencies are required to reduce water use by a combined 25 percent. After unprecedented water conservation efforts and high levels of winter water and snow, Governor Brown issued Executive Order B-40-17 in April 2017, lifting the drought emergency in all counties except Fresno, Kings, Tulare, and Tuolumne.

Even so, climate change is expected to increase long-term variability in California's water supplies. (Esther Conrad, [“Preparing for New Risks: Addressing Climate Change in California's Urban Water Management Plans”](#) (June 2013).)

The Department of Water Resources has identified several climate change effects that could affect water supplies, including:

- Water Demand — Hotter days and nights, as well as a longer irrigation season, will increase landscaping water needs, and power plants and industrial processes will have increased cooling water needs.
- Water Supply and Quality — Reduced snowpack, shifting spring runoff to earlier in the year ..., increased potential for algal bloom, and increased potential for seawater intrusion—each has the potential to impact water supply and water quality.
- Sea Level Rise — It is expected that sea level will continue to rise, resulting in near shore ocean changes such as stronger storm surges, more forceful wave energy, and more extreme tides. This will also affect levee stability in low-lying areas and increase flooding.
- Disaster — Disasters are expected to become more frequent as climate change brings increased climate variability, resulting in more extreme droughts and floods. This will challenge water supplier operations in several ways as wildfires are expected to become larger and hotter, droughts will become deeper and longer, and floods can become larger and more frequent.

(Department of Water Resources, [“Guidebook to Assist Urban Water Suppliers to Prepare a 2010 Urban Water Management Plan,”](#) (March 2011), at G-3.) These risks are now being incorporated into long-term water supply planning.

California courts have long recognized CEQA's requirement to analyze the adequacy of water supplies needed to serve a proposed project. (See, e.g., *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818.) Accordingly, the sample initial study checklist in Appendix G asks whether the

project would have “sufficient water supplies available to serve the project....” (CEQA Guidelines, App. G., § XVII(d).)

In recent years, the California Legislature added water supply assessment and verification requirements for certain types of projects. (See Wat. Code, §§ 10910 et seq. (water supply assessments); Gov. Code, § 66473.7 (water supply verifications).) Shortly after those statutory requirements were enacted, the California Supreme Court articulated several principles describing the content requirements for an adequate water supply evaluation in CEQA. (*Vineyard, supra*, 40 Cal.4th 412.) The Natural Resources Agency added section 15155 to the CEQA Guidelines to describe the consultation and documentation that must be occur between water suppliers and lead agencies. (CEQA Guidelines, § 15155.) Because that section was developed before the Supreme Court’s decision in *Vineyard*, it focuses on compliance with the consultation requirements in SB 610, and does not discuss the issue of adequacy of a water supply analysis in CEQA more broadly.

CEQA Guidelines section 15155 describes the process city or county lead agencies must follow with respect to the development of a water supply assessment for specified types of projects and required the inclusion of the water supply assessment and other information in any environmental document prepared for the project. Because water is such a critical resource in California, and because California courts have required specific content in environmental documents regarding water supply, the Natural Resources Agency proposes to revise section 15155 to incorporate the adequacy principles described in the Supreme Court’s decision in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412. Doing so should ensure that lead agencies consistently develop the information needed to evaluate the impacts associated with providing water to their projects.

#### **New Subdivision (f) – Water Supply Analysis and Degree of Specificity**

The Natural Resources Agency proposes to add a new subdivision (f) to section 15155 to set forth the content requirements for a water supply analysis in CEQA. While subdivision (f) describes these content requirements, it is important to note that the Agency is not creating new requirements. Rather, it is merely stating explicitly in the CEQA Guidelines the Supreme Court’s holding in the *Vineyard* case. (See, Pub. Resources Code, § 21060.5 (“environment” defined as “the physical conditions that exist within the area which will be affected by a proposed project, including ... water ...”); *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 4th 412 (setting forth the required elements of a water supply analysis).)

The first two sentences in subdivision (f) state the rule that the level of certainty regarding water supplies will increase as the analysis moves from general to specific. (*Vineyard, supra*, 40 Cal. 4th at 434 (“we emphasize that the burden of identifying likely water sources for a project varies with the stage of project approval involved; the necessary degree of confidence involved

for approval of a conceptual plan is much lower than for issuance of building permits”).) This rule is consistent with other portions of the CEQA Guidelines governing forecasting and the degree of specificity required in environmental documents. (CEQA Guidelines, §§ 15144 “[w]hile foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can”), 15146 (“degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR”).)

#### **Subdivision (f)(1) – Purpose**

Subdivision (f)(1) states the requirement that a water supply analysis provide enough information to the lead agency to evaluate the pros and cons of providing water to the project. (*Vineyard, supra*, 40 Cal. 4th at 431; *Santiago, supra*, 118 Cal. App. 3d at pp. 829-831.) This will necessarily require information regarding the project’s water demand as well as the quantity of water that is available to serve the project.

#### **Subdivision (f)(2) – Environmental Impacts of Supplying the Water**

Subdivision (f)(2) states the requirement to analyze the environmental effects of supplying water to the project. This sentence further specifies that the analysis must account for all phases of the project, over the life of the project. (*Vineyard, supra*, 40 Cal. 4th at 431 (“an adequate environmental impact analysis for a large project, to be built and occupied over a number of years, cannot be limited to the water supply for the first stage or the first few years”).) This is an important clarification because the water supply assessment and verification statutes only require looking twenty years into the future. Some projects may have a lifespan of fifty or more years. In that circumstance, some degree of forecasting may be required. (CEQA Guidelines § 15144.) Pure speculation, however, is not required. (*Id.* at § 15145.)

Additionally, the focus of this subdivision should be on the environmental impacts associated with a particular water supply. (*Vineyard, supra*, 40 Cal. 4th at 434 (the “ultimate question under CEQA ... is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts of supplying water to the project”) (emphasis in original).) For example, after establishing the amount of water a project will need, the analysis might examine whether supplying that amount from groundwater might lead to subsidence or unsafe yield, or whether diverting that amount from surface flow might adversely affect fish and wildlife.

#### **Subdivision (f)(3) – Circumstances Affecting the Likelihood of Supplies**

Since water supply availability is variable in California, subdivision (f)(3) requires acknowledging any circumstances that might affect the availability of water supplies identified for a project. (*Vineyard, supra*, 40 Cal. 4th at 432 (an environmental document “must address the impacts of



likely future water sources, and the EIR's discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water's availability").) The magnitude of variability should also be disclosed. (*Id.* at p. 434 ("an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved").) Subdivision (f)(3) also provides a list of circumstances that might potentially affect water supplies, including but not limited to: "drought, salt-water intrusion, regulatory or contractual curtailments, and other reasonably foreseeable demands on the water supply."

#### **Subdivision (f)(4) – Alternatives and Mitigation**

Subdivision (f)(4) provides that when supplies for the project are not certain, the analysis should address alternatives. (*Vineyard, supra*, 40 Cal. 4th at 432.) Again, the focus of the analysis should be on the environmental impacts that would flow from using those alternative sources of supply. (*Ibid.*) However, the level of detail of that analysis need not be as great as that provided for the project itself. (See, CEQA Guidelines § 15126.6(d) ("If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed").) Thus, subdivision (f)(4) states that the analysis of impacts from alternative sources should be stated "at least in general terms." (*Napa Citizens for Honest Government v. Napa County Bd. of Sup.* (2001) 91 Cal. App. 4th 342, 373.) Further, subdivision (f)(4) provides that in addition to analyzing alternative water supplies when identified supplies are uncertain, a lead agency may also consider project alternatives that require less water. For example, if supplies are certain up to a certain amount, a lead agency should be able to consider alternative project designs that would use less water and that could be confidently served.

Finally, subdivision (f)(4) provides that if water supplies are not certain, and if the agency has fully analyzed water supply availability as described above, curtailing later project phases may be an appropriate mitigation measure.

#### **Necessity**

The additions are necessary to ensure that the CEQA Guidelines are consistent with current case law. The amendments will ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with the Public Resources Code as well as current case law. The proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

### **15168. PROGRAM EIR**

#### **Specific Purposes of the Amendment**

Administrative efficiency has long been an explicit policy in CEQA. (See Pub. Resources Code, § 21003(f) (statement of legislative intent that “[a]ll persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment”).) The CEQA Guidelines encourage efficiency in several ways, including the provisions regarding program EIRs.

Program EIRs can be used to evaluate a series of connected actions, such as adoption and implementation of regulations or land use plans, in one environmental document. Section 15168 of the CEQA Guidelines governs the preparation and later use of program EIRs. It suggests that program EIRs are particularly useful in addressing big picture alternatives and cumulative impacts. When a program EIR is sufficiently detailed, later activities may be approved on the basis of that document without conducting further environmental review. The key question in determining whether additional review is required is whether the later activity falls “within the scope” of the program analyzed in the EIR. (CEQA Guidelines, § 15168(c)(2).)

Courts have treated the determination of whether an activity is within the scope of a program EIR to be a question of fact to be resolved by the lead agency. Several organizations representing CEQA practitioners have suggested that additional guidance should be provided to help lead agencies make that determination. (See, [“Recommendations for Updating the State CEQA Guidelines,”](#) American

Planning Association, California Chapter; Association of Environmental Professionals; and Enhanced CEQA Action Team (August 30, 2013).)

In response to those cases, and suggestions from stakeholders, the Natural Resources Agency proposes several updates to Section 15168 on Program EIRs.

First, the proposed additions to subdivision (c)(2) would clarify that the determination of whether a later activity falls within the scope of the program EIR is a question of fact to be resolved by the lead agency, and supported with substantial evidence in the record. This addition implements judicial opinions that have addressed the issue. (See, e.g., *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 610 (*CREED*) (“the fair argument standard does not apply to judicial review of an agency’s determination that a project is within the scope of a previously completed EIR”); *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1320-1321 (“evidence does not support a determination that [the] proposed site-specific project was either the same as or within the scope of the project, program, or plan described in the program EIR”).)

Second, the proposed additions to subdivision (c)(2) provide a list of factors that may assist a lead agency in determining whether a later activity is within the scope of a program EIR. Again, those factors have been recognized in judicial opinions as being instructive. Those factors include:

- Consistency with allowable land uses included in the project description (*compare Sierra Club, supra*, 6 Cal.App.4th at pp. 1320-1321 (later activity could not have been within the scope of the prior EIR because it involved engaging “in terrace mining on land which was specifically designated in the Plan as an agricultural resource”) *with CREED, supra*, 134 Cal.App.4th at p. 616 (“the Community Plan designated the area where the hotel [project] is to be built as a “Commercial/Office District” in which “hotels and motels” would be emphasized as among the allowable land uses”));
- Consistency with densities and building intensities included in the project description (see *ibid* (the “MEIR forecast[ed] that a total of 5,880 additional hotel rooms would be constructed over a 35-year period within the Planning Area, and expressly contemplate[d] the completion of the Horton Plaza Redevelopment Project, which the hotel project will complete”));
- Being within the geographic area that the program EIR analyzed for potential impacts (see, e.g., *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 704 (the project “will use recycled water in the same way and in the same general location evaluated by the previous studies”));
- Being included in the infrastructure described in the program EIR (see *ibid*).

Notably, this list of factors is not intended to be exclusive.

Third, the Natural Resources Agency proposes to add a sentence to subdivision (c)(1) to clarify how to proceed with the analysis of a later activity that a lead agency determines is not “within the scope” of the program EIR. Specifically, the new sentence states that if additional analysis is needed, that analysis should follow the tiering process described in section 15152. This addition is necessary to clarify that even if a project is not “within the scope” of a program EIR, the lead agency might still streamline the later analysis using the tiering process. This might allow a lead agency, for example, to focus the analysis of the later activity on effects that were not adequately analyzed in the program EIR. (See CEQA Guidelines, § 15152(d).) This addition promotes administrative efficiency. (Pub. Resources Code, § 21093(b) (“environmental impact reports shall be tiered whenever feasible”).) This addition also follows the analysis in the *Sierra Club* decision, which addressed the relationship between program EIRs and tiering. (*Sierra Club, supra*, 6 Cal.App.4th at pp. 1320-1321 (because the project was not within the scope of the program EIR, “section 21166 was inapplicable, and the [agency] was obligated by section 21094, subdivision (c), to consider whether [the] site- specific new project might cause significant effects on the environment that were not examined in the prior program EIR”).)

Fourth, in subdivision (c)(5), the Natural Resources Agency proposes to add that program EIRs will be most useful for evaluating later activities when those activities have been included in the program EIR’s project description. (*CREED, supra*, 134 Cal.App.4th at p. 616.)

Finally, the Natural Resources Agency proposes a number of minor word changes throughout this section to improve clarity.

### **Necessity**

This addition is necessary to clarify rules from case law governing whether a project is “within the scope” of a program EIR. These additions are also necessary to assist lead agencies in making the CEQA process as efficient as possible. Finally, these changes are necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Agency’s determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with the Public Resources Code as well as current case law and to add clarity. The

proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

## **15182. RESIDENTIAL PROJECTS PURSUANT TO A SPECIFIC PLAN**

### **Specific Purposes of the Amendment**

In 1978, the Governor adopted California's first Environmental Goals and Policy Report. Known as the Urban Strategy, it set forth key statewide environmental goals as well as an action plan to attain those goals. One of the recommendations in the action plan was to exempt certain types of projects that are consistent with a specific plan from further CEQA review. ([An Urban Strategy for California](#) (February 1978), at p. 14.) Shortly after adoption of the Urban Strategy, the legislature created an exemption, found in the Government Code, for residential projects that are consistent with a specific plan. (See Gov. Code, § 65453 (added in 1979, later renumbered to section 65457).) That exemption is described in existing section 15182 of the CEQA Guidelines.

The exemption in the Government Code was much more limited than the Urban Strategy's original recommendation. First, its provisions were difficult to apply in practice. For example, if changed circumstances occurred, the exemption could not be used until a supplemental EIR was prepared to cover the entire specific plan, even if the analysis remained valid for the individual project. Second, rather than exempting a variety of uses, section 65457 exempts only purely residential development. Commercial projects, or even projects that included a commercial component, could not use the exemption. In the decades since the exemption was first enacted, planners have recognized that promoting mixed use developments may reduce land consumption, air pollution, and other environmental ills.

In 2013, Governor Brown's administration proposed, and the Legislature enacted, a set of amendments to CEQA designed to better align the statute with other environmental goals, including the reduction of greenhouse gas emissions and promotion of infill development. ([Senate Bill 743, Steinberg 2013](#).) One of those amendments added section 21155.4 to the Public Resources Code. That section resembles Government Code section 65457, but extends beyond purely residential projects to include commercial and mixed-use projects as well. The trigger for requiring additional review also is more closely tied to the project under consideration, instead of to the entire specific plan area. This expanded exemption is

available to projects that are located near transit and that are consistent with regional plans for reducing greenhouse gas emissions.

Section 15182 of the CEQA Guidelines discusses special provisions regarding specific plans. The Natural Resources Agency proposes to amend existing CEQA Guidelines section 15182 to reflect the new exemption in Public Resources Code section 21155.4 as well as the exemption in Government Code section 65457. The Agency proposes to include cross-references for further clarification to alert planners of the relevant statute of limitations. The specific amendments are explained in detail below.

#### **Subdivision (a)**

The Natural Resources Agency proposes to reorganize section 15182 to describe both the exemption in Public Resources Code section 21155.4 as well as the exemption in Government Code section 65457. As amended, subdivision (a) would be a general section that points to the more specific provisions in subdivisions (b) and (c). Importantly, subdivision (a) clarifies that a specific plan is a plan that is adopted pursuant to the requirements set forth in Article 8, Chapter 3 of the Government Code. This clarification is necessary because cities and counties may give qualifying plans various titles, such as Master Plan or Downtown Plan. So long as the plan includes the contents described in the Government Code, it should enable use of the exemptions described in section 15182.

#### **Subdivision (b)**

As amended, subdivision (b) would contain the provisions applicable to projects within transit priority areas.

Subdivision (b)(1) describes the eligibility criteria for use of the exemption. Those eligibility criteria are drawn directly from Section 21155.4(a). Notably, while section 21155.4 uses the term “employment center project,” proposed subdivision (b)(1) clarifies that term by referring to a commercial project with a floor area ratio of at least 0.75. (See Pub. Resources Code § 21099(a)(1) (defining “employment center project”).

Subdivision (b)(2) describes the limitation to the exemption. Specifically, it clarifies that additional review may be required if the project triggers one of the requirements for further review described in section 15162. New review may be required if, for example, the project requires changes in the specific plan that would result in new or worse significant impacts, or if circumstances have changed since adoption of the specific plan that would lead to new or worse significant impacts.

Subdivision (b)(3) includes a cross reference to the statute of limitation periods described in section 15112. This subdivision is necessary to alert planners that, unlike the exemption in

section 65457 which provides for a 30 day statute of limitations regardless of whether a notice of exemption is filed, the exemption in section 21155.4 is subject to CEQA's normal statute of limitations.

### **Subdivision (c)**

As amended, subdivision (c) would contain the provisions that apply to purely residential projects. The content in subdivision (c) largely mirrors the text in existing section 15182. The Natural Resources Agency does propose several clarifications, however. For example, section 15182 currently states that no further environmental impact report or negative declaration is required for residential projects that are consistent with a specific plan. Section 65457 actually states that such projects are exempt from any of CEQA requirements, not just preparation of a new environmental document. Therefore, the Agency proposes to clarify in subdivision (c) that such projects are exempt.

Also, the Natural Resources Agency proposes to pull the existing description of the special statute of limitations into subdivision (c)(3).

### **Subdivision (d)**

Subdivision (d) in existing section 15182 allows local governments to collect fees to cover the cost of preparing a specific plan. This authority is found in Government Code section 65456. Since fees may be collected to cover the preparation of specific plans, regardless of whether the plans cover residential, commercial or other uses, the Natural Resources Agency proposes to leave subdivision (d) as currently written.

### **Necessity**

This clarification is necessary to alert planners to the important differences between two similar statutory exemptions for projects that are consistent with a specific plan. Additionally, clarification is necessary to alert planners of the relevant statute of limitations. The amendments will ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with current law. The proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

## **15222. PREPARATION OF JOINT DOCUMENTS**

### **Specific Purposes of the Amendment**

This section strongly encourages state and local agencies to try to work with the federal agency involved with the same projects.

The Natural Resources Agency proposes to amend CEQA Guidelines, section 15222 to add a sentence encouraging a lead agency to enter into a Memorandum of Understanding with appropriate Federal agencies. This addition will encourage increased cooperation between the state and Federal agencies to coordinate project requirements, timelines, and reduce duplication under CEQA and NEPA provisions. OPR and the White House Council on Environmental Quality prepared a sample Memorandum of Understanding to assist state and Federal agencies in this process.

### **Necessity**

This amendment is necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Agency's



determination that the proposed action is necessary to update the CEQA Guidelines to be clarify current law. The proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

## **15234. REMEDIES AND REMAND**

### **(NEW SECTION)**

#### **Specific Purposes of the Amendment**

CEQA is in most instances enforced through a form of judicial review known as a writ of mandate proceeding.<sup>1</sup> In reviewing a petition for writ of mandate, the court examines an agency's administrative record to determine whether it properly implemented CEQA in connection with a project approval. If the court concludes that the agency did not comply with CEQA, it may order the agency to take further action before proceeding with the project. At that point, questions may arise regarding what further environmental review is needed, and what project activities, if any, may continue while the agency takes further action. Proposed new section 15234 will assist agencies in complying with CEQA in response to a court's remand, and help the public and project proponents understand the effect of the remand on project implementation. Specifically, proposed new section 15234 reflects the language of the statutory provision governing remedies in CEQA cases, Public Resources Code section 21168.9, as well as case law interpreting that statute.

The Natural Agency proposes to add a new section to the CEQA Guidelines, Section 15234, to codify the California Supreme Court's ruling in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439. That court in that case held that not every

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<sup>1</sup> Exceptions apply where challenges to certain types of agency actions specifically require a different procedure. For example, Government Code section 56103 requires that any challenge to any change of organization, reorganization, or sphere of influence determination approved by a local agency formation commission be accomplished through a validating action pursuant to Code of Civil Procedure section 860 et seq. (See *Protect Agricultural Land v. Stanislaus County Local Agency Formation Com.* (2014) 223 Cal.App.4th 550.)

violation of CEQA will compel a court to set aside project approvals and further explains that the court may order the agency to set aside all or a portion of the project approvals, and may require the agency to conduct additional environmental review.

Proposed subdivision (a) is necessary to explain to public agencies and the public how CEQA litigation may affect project implementation. First, it clarifies that not every violation of CEQA will compel a court to set aside project approvals. Public Resources Code Section 21005 provides that “courts shall continue to follow the established principle that there is no presumption that error is prejudicial.” The California Supreme Court recently reiterated that “[i]nsubstantial or merely technical omissions [are not grounds for relief.” (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439, 463.) In order to justify setting aside a project approval, a violation must “preclude relevant information from being presented to the public agency.” (Pub. Resources Code, § 21005, subd. (a).)

Second, subdivision (a) states that, except as provided in Public Resources Code section 21168.9 itself, CEQA does not limit the traditional equitable powers of the judicial branch and that remedies may be tailored based on the circumstances of the project. It further explains that the court may order the agency to set aside all or a portion of the project approvals, and may require the agency to conduct additional environmental review.

Next, subdivision (b) clarifies that in certain circumstances, portions of the project approvals or the project itself may proceed while the agency conducts further review. Specifically, Section 21168.9 of the Public Resources Code provides that a court may allow certain project approvals or activities to proceed as long as continued implementation of the project would not prevent the agency from fully complying with CEQA. In 1993, the legislature amended that section “to expand the authority of courts to fashion a remedy that permits a part of the project to continue while the agency seeks to correct its CEQA violations.” (*Poet, LLC v. State Air Resources Bd.* (2013) 218 Cal.App. 4th 681, 756.)

Next, subdivision (c) codifies the outcome in *Poet, LLC v. State Air Resources Bd.* (2013) 218 Cal. App. 4th 681, in which the Court of Appeal found that the California Air Resources Board had failed to fully comply with CEQA in enacting Low Carbon Fuel Standards regulations, but nevertheless exercised its equitable discretion to leave the challenged regulations in place during the remand period. The court reasoned that a remedy that left the regulations in place would achieve a higher level of environmental protection than would a remedy that left them inoperative.

Finally, subdivision (d) addresses how an agency should proceed with additional environmental review if required by a court. Specifically, it indicates that where a court upholds portions of an agency’s environmental document, additional review of topics covered in the upheld portions is only required if the project or circumstances surrounding the project have changed in a way that

results in new or worse environmental impacts. To illustrate, assume that a court concludes that an agency's analysis of noise impacts is inadequate, but that the remainder of its environmental impact report complies with CEQA. The agency may prepare a revised environmental impact report that focuses solely on noise. It would only need to revise the air quality analysis, for example, if the agency concluded that changes in the circumstances surrounding the project would result in substantially more severe air quality impacts.

### **Necessity**

The new CEQA Guidelines section is necessary to explain to public agencies how CEQA litigation may affect project implementation and to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Agency's determination that the proposed action is necessary to update the CEQA Guidelines to clarify existing case law. The proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

### **15269. EMERGENCY PROJECTS.**

#### **Specific Purposes of the Amendment**

This section identifies the emergency exemptions from CEQA. The Natural Resources Agency proposes to amend subdivisions (b) and (c) of Section 15269. Currently, subdivisions (b) and (c) state that emergency repairs may be exempt under CEQA and that this exemption does not

apply to long-term projects undertaken for the purpose of preventing or mitigating an emergency. The Agency proposes to add a sentence to subdivision (b) clarifying that emergency repairs may require planning and qualify under this exemption. Further, the Agency proposes to add two subsections under subdivision (c) clarifying how imminent an emergency must be to fall within the statutory exemption. (See *CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal.App.4th 529, 537 (emergency repairs need not be “unexpected” and “in order to design a project to prevent an emergency, the designer must anticipate the emergency”).

### **Necessity**

These additions are necessary to clarify the application of this emergency exemption and to maintain consistency with a Court of Appeal decision stating that an emergency repair may be anticipated and to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Agency’s determination that the proposed action is necessary to update the CEQA Guidelines to clarify current case law. The proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

## 15301. EXISTING FACILITIES

### Specific Purposes of the Amendment

Section 15301 of the CEQA Guidelines exempts operations and minor alterations of existing facilities from CEQA. The key in determining whether the exemption applies is whether the project involves an expansion to an existing use. Projects that involve no or only a negligible expansion may be exempt. This exemption plays an important role in implementing the state's goal of prioritizing infill development.

The Natural Resources Agency proposes to make two changes to Section 15301.

The first change appears in the first sentence of the exemption. It would delete the phrase "beyond that existing at the time of the lead agency's determination." Stakeholders have noted that this phrase could be interpreted to preclude use of this exemption if a facility were vacant "at the time of the lead agency's determination," even if it had a history of productive use, because compared to an empty building *any* use would be an expansion of use. (See, [Comments of the Building Industry Association](#), August 30, 2013.) Such an interpretation is inconsistent with California's policy goals of promoting infill development.

It would also not reflect recent case law regarding "baseline." Those cases have found that a lead agency may look back to historic conditions to establish a baseline where existing conditions fluctuate, again provided that it can document such historic conditions with substantial evidence. (See *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327-328 ("Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods") (quoting *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125); see also *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.)

The phrase at issue was apparently added in response to *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307. The court in that case was asked to decide whether the fact that the facility in question had never undergone CEQA review triggered an exception to the exemption. In analyzing that question, the court in *Bloom* relied on the analysis of a prior Supreme Court decision. It explained:

Under *Wine Train's* analysis, the term "existing facility" in the class 1 exemption would mean a facility as it exists at the time of the agency's determination, *rather than a facility existing at the time CEQA was enacted*. For purposes of the exception to the categorical exemptions, "significant effect on the environment" would mean a change in the environment existing at the time of the agency's determination, rather than a change in the environment that existed when CEQA was enacted.

(*Id.* at p. 1315 (citing *Napa Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370, 378, fn. 12) (emphasis added).) Nothing in that decision indicates, however, that a lead agency could not consider actual historic use in deciding whether the project would expand beyond that use.

The second change appears in subdivision (c). The purpose of this change is to clarify that improvements within a public right of way that enable use by multiple modes (i.e., bicycles, pedestrians, transit, etc.) would normally not cause significant environmental impacts. This change is consistent with the Complete Streets Act of 2008, which requires cities and counties to plan for the needs of all users of their streets. In this regard, because such improvements involve operation of public rights of way, they may be similar to the imposition of water conservation requirements for existing water facilities (see, *Turlock Irrigation Dist. v. Zanker* (2006) 140 Cal. App. 4th 1047,1065), or the regulation of the right of way for parking (see, *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 793 (“it is clear that the Class 1 exemption applies to the legislation/project here[; it] involves adjusting the particular group of persons permitted to use ‘existing facilities,’ in other words, the existing, unmetered, curbside parking on residential streets”)). Improvements to the existing right of way have long been understood to fall within the category of activities in subdivision (c), provided that the activity does not involve roadway widening. (See, *Erven v. Board of Supervisors* (1975) 53 Cal. App. 3d 1004.)

### **Necessity**

These additions are necessary to maintain consistency between this CEQA Guideline section and current case law. These additions are also necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Agency’s determination that the proposed action is necessary to update the CEQA Guidelines to clarify current case law. The proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

### **15357. DISCRETIONARY PROJECT**

#### **Specific Purposes of the Amendment**

The Natural Resources Agency proposes to amend Section 15357 to clarify that a discretionary project is one in which a public agency can shape the project in any way to respond to concerns raised in an environmental impact report. This addition reflects various cases distinguishing the term “discretionary” from the term “ministerial.” (See, e.g., *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 267 (“[T]he touchstone is whether the approval process involved allows the government to shape the project in any way that could respond to any of the concerns ... in an environmental impact report”).) The California Supreme Court and Fourth District Court of Appeal have consistently followed this interpretation. (See, e.g., *Mountain Lion Foundation v. Fish & Game Comm.* (1997) 16 Cal.4th 105, 177; *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 933; *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 299.) This clarification is necessary to maintain consistency in determining “discretionary” projects and to improve practitioners’ ability identify when a project is required to complete environmental review under CEQA.

The Natural Resources Agency also proposes to add the words “fixed standards” to the end of the first sentence in the definition to be consistent with the holding in *Health First v. March Joint Powers Authority* (2009) 174 Cal. App. 4th 1135. Notably, the definition of “discretionary” in these Guidelines may need to be read in context with other statutes. For example, Government Code sections 65583(a)(4) and 65583.2(h) require that local governments zone specified areas for specified uses for “use by right.” In those circumstances, local government review cannot be considered discretionary pursuant to CEQA.

#### **Necessity**

This clarification is necessary to maintain consistency in determining “discretionary” projects and to improve practitioners’ ability identify when a project is required to complete environmental review under CEQA. This change is necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

## **Reasonable Alternatives to the Regulations, Including Alternatives that Would lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

The Natural 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 Agency's determination that the proposed action is necessary to update the CEQA Guidelines to clarify current case law as well as other statutory law. The proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

## **15370. MITIGATION**

### **Specific Purposes of the Amendment**

This definition of the term "mitigation" adopts the definition contained in the federal NEPA regulations. The federal definition is used so that this term will have identical meanings under NEPA and CEQA for projects which are subject to both acts.

The Natural Resources Agency proposes to revise Section 15370 of the CEQA Guidelines to clarify in the CEQA Guidelines that permanent protection of off-site resources through conservation easements constitutes mitigation. The proposed changes incorporate the First District Court of Appeal holding in *Masonite Corporation v. County of Mendocino* (2013) 218 Cal.App.4th 230 wherein the court ruled that off-site agricultural conservation easements constitute a potential means to mitigate for direct, in addition to cumulative and indirect, impacts to farmland.

### **Necessity**

These additions are necessary to maintain consistency between this CEQA Guideline section and current case law. These additions are also necessary to ensure that the CEQA Guidelines best



serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Agency's determination that the proposed action is necessary to update the CEQA Guidelines to clarify current case law. The proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

## **APPENDIX C. NOTICE OF COMPLETION & ENVIRONMENTAL DOCUMENT TRANSMITTAL**

### **Specific Purposes of the Amendment**

After a lead agency completes its environmental document for a project, the agency must file with OPR the Notice of Completion and Environmental Document Transmittal form found in CEQA Guidelines Appendix C. The form serves to facilitate public notice of the environmental document and timely public review and comments for that document.

The Natural Resources Agency proposes to amend Appendix C to incorporate the proposed changes to Appendix G, including changes based on new statutory requirements and previously adopted amendments to the CEQA Guidelines (e.g., the addition of "Greenhouse Gases" and "Tribal Cultural Resources" to the list of project issues discussed in the environmental document). The Agency also proposes to amend the list of reviewing agencies to which the State Clearinghouse distributes environmental documents. Some agency names have changed (e.g., Department of Fish and Game is now the Department of Fish and Wildlife).

## **Necessity**

These additions are necessary to maintain consistency between Appendix C and current legal requirements and updated public agency names. These additions are also necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Agency's determination that the proposed action is necessary to update the CEQA Guidelines to maintain consistency with current legal requirements and public agency names. The proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

The proposed action implements and clarifies existing law, and reflects the current names of public agencies. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## **APPENDIX D. NOTICE OF DETERMINATION**

### **Specific Purposes of the Amendment**

CEQA Guidelines Appendix D, the Notice of Determination, announces a public agency's conclusion about a project's anticipated environmental impacts based on the agency's environmental document. The effect of filing the notice is to start a short statute of limitations period. If the notice is not filed, a longer period would apply. Failure to comply with all of the requirements for filing notices of determination results in the longer, 180-day, statute of limitations.

Pursuant to Assembly Bill 320 (Hill, 2011), the Resources Agency proposes to amend CEQA Guidelines Appendix D. AB 320 amended Public Resource Code, sections 21108 and 21152 requiring information to be included in the Notice of Determination consistent with CEQA Guidelines section 21065, subdivisions (b) and (c). Specifically, AB 320 requires the Notice of Determination to include the identity of the person undertaking an activity, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use. To that end, the Natural Resources Agency proposes to amend Appendix D to include identification of the project applicant.

### **Necessity**

The proposed amendment to CEQA Guidelines Appendix D is necessary to reflect the Legislative changes. The language of this section of the CEQA Guidelines follows the direction of the Legislature and ensures that that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

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

The Natural 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 Agency's determination that the proposed action is necessary to update CEQA Guidelines Appendix D to be consistent with Sections 21108 and 21152 of the Public Resources Code, and the proposed action adds no new substantive requirements. Rather, additional information regarding the project applicant must be included in the forms filed by public agencies. The 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 the change is a clarifying change only.

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

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

## **APPENDIX E. NOTICE OF EXEMPTION**

### **Specific Purposes of the Amendment**

CEQA Guidelines Appendix E, Notice of Exemption, announces a public agency's conclusion that a project is exempt under CEQA. As part of the Notice of Exemption, agencies must also state reasons why the project is exempt. Agencies are authorized but not required to file this notice. Filing the notice, however, starts a short statute of limitations period. If the notice is not filed, a longer period would apply. Failure to comply with all of the requirements for filing notices of exemption results in the longer, 180-day, statute of limitations.

Pursuant to Assembly Bill 320 (Hill, 2011), the Natural Resources Agency proposes to add a new subdivision (a)(6) to Section 15062 of the CEQA Guidelines. AB 320 amended Public Resource Code, sections 21108 and 21152 requiring information to be included in the Notice of Exemption consistent with CEQA Guidelines section 21065, subdivisions (b) and (c). Specifically, AB 320 requires the Notice of Exemption to include the identity of the person undertaking an activity, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use. To that end, the Natural Resources Agency proposes to amend Appendix E to include identification of the project applicant.

### **Necessity**

This addition is necessary to implement the requirements of AB 320 (Hill, 2011) and be consistent with Public Resources code, sections 21108 and 21152.

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

The Natural 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 Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with Sections 21108 and 21152 of the Public Resources Code, and the proposed action adds no new substantive requirements. Rather, additional information regarding the project applicant must be included in the forms filed by public agencies. The 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 the change is a clarifying change only.

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

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

### **APPENDIX G. ENVIRONMENTAL CHECKLIST FORM**

#### **Specific Purposes of the Amendment**

Appendix G in the CEQA Guidelines contains a sample initial study format. The purpose of an initial study is to assist lead agencies in determining whether a project may cause a significant impact on the environment. (CEQA Guidelines, § 15063.) To help guide that determination, Appendix G asks a series of questions regarding a range of environmental resources and potential impacts. Appendix G's questions are not an exhaustive list of all potential impacts. (*Protect the Historic Amador Waterways, supra*, 116 Cal.App.4th at pp. 1109-1112 (seasonal reduction of surface flow in local streams may be an impact on the environment, even though that particular impact is not specifically listed in Appendix G).) For that reason, Appendix G advises that “[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered.” Appendix G further advises that its environmental checklist is only a *sample* form that can be tailored to address local conditions and project characteristics.

When the checklist was originally developed, it contained only a handful of questions. Over time, the list of questions has grown in response to increasing awareness of the effects of development on the environment. Currently, the sample checklist contains 89 questions divided into 18 categories of potential impacts. Depending on the project's location and circumstances, the sample checklist questions may be both under- and over-inclusive. Because the purpose of an initial study is to provoke thought and investigation, and because the checklist cannot contain an exhaustive list, the sample in Appendix G should, in the Natural Resources Agency's view, contain questions that are (1) broadly worded, (2) highlight environmental issues *commonly* associated with *most* types of new development, and (3) alert lead agencies to environmental issues that might otherwise be overlooked in the project planning and approval process.

The Natural Resources Agency proposes to revise the sample environmental checklist in several ways. First, it proposes to reframe or delete certain questions that should be addressed in the planning process to focus attention on those issues that must be addressed in the CEQA process. Second, it proposes to add questions that, although required by current law, tend to be overlooked in the environmental review process. Finally, it proposes to revise the questions related to transportation impacts, and wildfire risk as required by SB 743 and SB 1241, respectively, and relocate questions related to paleontological resources as required by AB 52 (Gatto, 2014).

While OPR originally proposed a far more streamlined and consolidated set of questions, stakeholders objected that confusion might ensue. Both OPR and the Natural Resources Agency agree that additional

discussion of ways to streamline the checklist is appropriate. The changes proposed in this package are more narrowly tailored. A narrative description of the changes, and the intent behind those changes, is provided below.

### **Deleted or Consolidated Questions**

The Natural Agency proposes to delete or consolidate numerous questions from the Appendix G checklist. Those questions, and the reason that they are proposed for deletion, are discussed below.

**Soils Incapable of Supporting Septic Systems:** In Section VI (Geology and Soils), Appendix G currently asks whether a project would “[h]ave soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water.” According to the [U.S. Environmental Protection Agency](#), inappropriately placed or operated septic systems may be a source of significant groundwater contamination. The Natural Resources Agency proposes to revise the questions in Appendix G related to water quality. Specifically, among other revisions, the Agency proposes to clarify that the question asking whether a project would “substantially degrade water quality” refers to both surface and ground water quality. Thus, as revised, the broader question about groundwater quality would capture not just impacts from inappropriately placed septic tanks, but also any other possible sources of uncontrolled leachate.

**Conflicts with a Habitat Conservation Plan:** Existing Appendix G asks whether a project would conflict with a habitat conservation plan and other related plans in two separate sections: biological resources and land use planning. The Natural Agency proposes to delete the question from the land use planning section. The question in the biological resources section would remain unchanged.

**Wastewater Treatment Requirements:** In the section on utilities, Appendix G currently asks whether a project would exceed wastewater treatment requirements of an applicable regional water quality control board. Similarly, in the water quality section, Appendix G asks whether a project would violate any waste discharge requirements. Since the question in the water quality section would encompass wastewater treatment requirements as well as other water quality standards, the Natural Resources Agency proposes to delete the question from the utilities section.

### **Updated Considerations**

As part of the reorganization of Appendix G, the Natural Resources Agency also proposes to update some considerations or questions to the checklist. Those considerations, and the reason that they are proposed to be revised, are discussed below.

**Aesthetics:** Existing Appendix G asks whether a project would degrade the existing visual character of a site. Visual character is a particularly difficult issue to address in the context of environmental review, in large part because it calls for exceedingly subjective judgments. Both federal and state courts have struggled with the issue of precisely what questions related to aesthetics are relevant to an analysis of

environmental impact. (See, e.g., *Maryland-National Cap. Pk. & Pl. Com'n. v. U.S. Postal Serv.* (D.C. Cir. 1973) 159 U.S. App. D.C. 158; see also *Bowman v. City of Berkeley* (2006) 122 Cal.App.4th 572.) As a practical matter, infill projects are often challenged on the grounds of aesthetics. (See, e.g., Pub. Resources Code, § 21099(d) (exempting certain types of infill projects from the requirement to analyze aesthetics).)

For these reasons, the Natural Resources Agency proposes to recast the existing question on “visual character” to ask whether the project is consistent with zoning or other regulations governing visual character. This change is intended to align with the analysis of the aesthetics issue in the *Bowman* case, *supra*. The court in that case, which involved a challenge to a multifamily residential project in an urban area, noted:

Virtually every city in this state has enacted zoning ordinances for the purpose of improving the appearance of the urban environment” ..., and architectural or design review ordinances, adopted “solely to protect aesthetics,” are increasingly common... While those local laws obviously do not preempt CEQA, we agree with the Developer and the amicus curiae brief of the Sierra Club in support of the Project that aesthetic issues like the one raised here are ordinarily the province of local design review, not CEQA.

(*Bowman, supra*, 122 Cal.App.4th at p. 593 (citations omitted).) This revision is also consistent with the proposed changes in sections 15064 and 15064.7 that recognize the appropriate role of environmental standards in a CEQA analysis.

**Air Quality:** Existing Appendix G asks whether the project would create objectionable odors. The Natural Resources Agency proposes to update this question in several ways. First, the term “objectionable” is subjective. Sensitivities to odors may vary widely. Therefore, the package proposes to recast the question to focus on the project’s potential to cause adverse impacts to substantial numbers of people. (See *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 492–493 (“Under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons”)); see also *Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 279.) Similarly, the Agency proposes to include odor as one of several examples of potential localized air quality impacts.

**Biological Resources and State Wetlands:** Appendix G currently asks whether a project would substantially adversely affect a federally protected wetland. California law protects all waters of the state, while the federal Clean Water Act governs only “navigable waters”. Since nothing in CEQA’s definition of environment limits consideration to federally regulated resources, the Natural Resources Agency proposes to clarify in Appendix G that lead agencies should consider impacts to wetlands that are protected by either the state or the federal government.

Cultural Resources: AB 52 required an update to Appendix G to separate the consideration of paleontological resources from tribal cultural resources and update the relevant sample questions, and to add consideration of tribal cultural resources with relevant sample questions. In September 2016, the Office of Administrative Law approved changes to Appendix G adding consideration of tribal cultural resources. This proposed package includes an amendment to Appendix G that separates the consideration of paleontological resources from cultural resources, and includes consideration of paleontological resources among the relevant sample questions related to geology and soils.

Energy: As explained in the discussion of proposed amendments to section 15126.2, CEQA has long required analysis of energy impacts. (Pub. Resources Code, § 21100(b)(3) (added in 1974, requiring EIRs to include measures to avoid wasteful and inefficient uses of energy); *California Clean Energy Com. v. City of Woodland* (2014) 225 Cal.App.4th 173.) However, the description of the required analysis sits largely unnoticed in a stand-alone Appendix F in the CEQA Guidelines. To better integrate the energy analysis with the rest of CEQA, the Natural Resources Agency proposes to add relevant questions regarding potential energy impacts to the sample environmental checklist in Appendix G.

Impervious Surfaces: Appendix G currently asks a series of questions about hydrology, one of which asks whether the project will alter the drainage patterns of the site through alteration of the course of a stream or river. Another relevant factor in determining the effect of a project on existing drainage systems, however, is how much impervious surfaces a project might add. (See State Water Resources Control Board, Non-Point Source Encyclopedia, § 3.1 ([Impervious Surfaces](#)).) OPR's Technical Advisory on "low impact design" identifies the development of new impervious surfaces as a contributor to non-point source pollution and hydromodification. (Office of Planning and Research, "[CEQA and Low Impact Development Stormwater Design: Preserving Stormwater Quality and Stream Integrity Through California Environmental Quality Act \(CEQA\) Review](#)" (August 2009).) Therefore, the Natural Resources Agency proposes to add "impervious surfaces" to the considerations in the hydrology portion of the checklist.

Notably, the proposed addition of impervious surfaces as a consideration is not intended to imply that *any* addition of impervious material will necessarily lead to a significant impact. Rather, the modified question asks whether the addition of impervious surface would lead to substantial erosion, exceed the capacity of stormwater drainage systems, etc. Also, some water quality permits do already address the addition of impervious surfaces, and, as provided in updated sections 15064 and 15064.7, a project's compliance with those requirements will be relevant in determining whether the added surfaces create a significant impact.

Geology and Soils: The Natural Resources Agency proposes amendments to the questions in Appendix G related to geology and soils by clarifying that agencies should consider the direct and indirect impacts to those resources. This change is consistent with CEQA's general requirement that agencies consider the direct and indirect impacts caused by a proposed project. (See generally, Pub. Resources Code, §§ 21065 [definition of a "project"], 21065.3 [definition of a "project-specific effect"].) And as noted earlier, this



proposed package includes an amendment to Appendix G that separates the consideration of paleontological resources from cultural resources, and includes consideration of paleontological resources among the relevant sample questions related to geology and soils.

Groundwater: The Natural Resources Agency proposes to make two changes to the existing question in Appendix G asking about a project's impacts to groundwater. First, the existing question asks whether a project will "substantially *deplete*" groundwater supplies. The word "deplete" could be interpreted to mean "empty". Therefore, the Agency proposes to revise the question to ask whether the project would "substantially *decrease* groundwater supplies." Second, the existing question asks whether the project would lower the groundwater table level and provides the following example: "e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted." There are many other potential impacts that could result from lowering groundwater levels, including subsidence, altering surface stream hydrology, causing migration of contaminants, etc. Therefore, the Agency proposes to delete the example from the question. These proposed changes are consistent with the new regime governing groundwater passed in 2014.

Land Use Plans: Appendix G currently asks whether a project conflicts with certain land use plans. The question largely mirrors section 15125(d), which requires an EIR to analyze any inconsistencies with any applicable plans. The Natural Resources Agency proposes to revise that question in two ways in order to better focus the analysis.

First, the Agency proposes to clarify that the focus of the analysis should not be on the "conflict" with the plan, but instead, on any adverse environmental impact that might result from a conflict. For example, destruction of habitat that results from development in conflict with a habitat conservation plan might lead to a significant environmental impact. The focus, however, should be on the impact on the environment, not on the conflict with the plan. (See, e.g., *Marin Mun. Water Dist. v. Kg Land Cal. Corp.* (1991) 235 Cal.App.3d 1652, 1668 ("A local agency engaged in EIR analysis may not ignore regional needs and the cumulative impacts of a proposed project. ... Thus the Guidelines require an EIR to discuss any inconsistencies between the proposed project and applicable general and regional plans"); see also Pub. Resources Code, § 21100(e) ("Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, *may be used in cumulative impact analysis*") (emphasis added).) Application of a density bonus to exceed limits in a general plan or zoning, on the other hand, might not lead to any environmental impact. (See, e.g., *Wollmer v. City of Berkeley* (2009) 179 Cal.App.4th 933.)

Second, the Agency proposes to delete the phrase "with jurisdiction over the project" from the question, again for the purpose of focusing the analysis on any *actual environmental impacts* that might result from the project. Finally, the Agency proposes to delete the list of examples of plans from the question. Section 15125(d) contains numerous examples of potentially relevant land use plans, and so repetition in the question in Appendix G is not necessary.

Population Growth: Appendix G currently asks whether a project will cause substantial population growth. The Natural Resources Agency proposes to clarify that the question should focus on whether such growth is *unplanned*. Growth that is planned, and the environmental effects of which have been analyzed in connection with a land use plan or a regional plan, should not by itself be considered an impact.

Transportation: The Natural Resources Agency proposes several changes to the questions related to transportation in Appendix G. First, the Agency proposes to revise the questions related to “measures of effectiveness” so that the focus is more on the circulation element and other plans governing transportation. Second, the Agency proposes to delete the second question related to level of service, and proposes to insert references to proposed new Guideline section 16054.3, subdivisions (b)(1) and (b)(2). Third, the Agency proposes to clarify the question related to design features.

Water Supply: Appendix G currently asks whether the project has adequate water supplies. The Natural Resources Agency proposes to update the question to better reflect the factors identified by the Supreme Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, as well as the water supply assessment and verification statutes. (Wat. Code, § 10910; Gov. Code, § 66473.7.)

Wildfire: Senate Bill 1241 (Kehoe, 2012) required the Office of Planning and Research, the Natural Resources Agency, and CalFire to develop “amendments to the initial study checklist of the [CEQA Guidelines] for the inclusion of questions related to fire hazard impacts for projects located on lands classified as state responsibility areas, as defined in section 4102, and on lands classified as very high fire hazard severity zones, as defined in subdivision (i) of section 51177 of the Government Code.” (Pub. Resources Code, § 21083.01 (emphasis added).) Proposed additions implementing SB 1241 are included in this package.

## **Necessity**

These changes are necessary to make the process simpler for lead agencies. These additions are also necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

## **Reasonable Alternatives to the Regulations, Including Alternatives that Would lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

The Natural 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 Agency’s

determination that the proposed action is necessary to update the CEQA Guidelines to clarify existing law. The proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

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

### **APPENDIX M. PERFORMANCE STANDARDS FOR INFILL PROJECTS ELIGIBLE FOR STREAMLINED REVIEW**

#### **Specific Purposes of the Amendment**

Appendix M in the CEQA Guidelines contains the performance standards that must be met for the streamlined environmental review process for infill projects under CEQA Guidelines section 15183.3. The Natural Resources Agency proposes to revise Appendix M to correct typographical errors in Sections 4.A, 4.C, and 4.E to be consistent with the adopted regulatory text.

#### **Necessity**

These changes are necessary to correct the typographical errors in Appendix M and thus to clarify the substantive requirements for performance standards applying to certain infill projects. These additions are also necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

#### **Reasonable Alternatives to the Regulations, Including Alternatives that Would lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

The Natural 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 Agency's determination that the proposed action is necessary to update the CEQA Guidelines to clarify existing law. The proposed action adds no new substantive requirements. The 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 the change is a clarifying change only.

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

The proposed action clarifies existing law by correcting typographical errors. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

**Attachment 1:  
Standardized Regulatory Impact Assessment: CEQA Guidelines Updates**

# Standardized Regulatory Impact Assessment: CEQA Guidelines Updates

## 1. Summary

### a. Background on the California Environmental Quality Act

The California Supreme Court recently observed regarding the California Environmental Quality Act (Public Resources Code section 21000 and following), also known as CEQA, that:

In CEQA, the Legislature sought to protect the environment by the establishment of administrative procedures drafted to '[e]nsure that the long-term protection of the environment shall be the guiding criterion in public decisions.' ... At the "heart of CEQA" ... is the requirement that public agencies prepare an [environmental impact report, or EIR] for any "project" that "may have a significant effect on the environment." ... The purpose of the EIR is "to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." ... The EIR thus works to "inform the public and its responsible officials of the environmental consequences of their decisions before they are made," thereby protecting "not only the environment but also informed self-government."

*(Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 944 (citations omitted).)

Importantly, while CEQA's administrative procedures require that agencies study potential impacts, they do not specify precisely how to analyze or mitigate impacts. Lead agencies determine the specific methodology of a study and its outcome depending on the project and its surrounding circumstances.

Generally, the CEQA process follows several steps. First, the lead agency determines whether CEQA applies at all (in other words, whether the activity meets the definition of a "project" and if so, whether any exemption applies). If a project is not exempt from CEQA, a public agency typically evaluates a proposed project's potential impacts in a public document known as an initial study, which briefly describes an array of potential impacts including air quality, biological resources, water quality, etc. If the initial study shows that a project would cause no impacts, an agency may prepare a negative declaration, or a mitigated negative declaration if impacts can be avoided through the imposition of feasible mitigation measures. Before adopting the project, the lead agency would invite public review of the initial study and proposed negative declaration.

If evidence in the record indicates that the project may cause adverse environmental impacts, the agency must prepare a detailed environmental impact report. The purpose of an environmental impact report is to analyze a project's potential impacts, propose mitigation measures to lessen those impacts, and describe alternatives to the project that may avoid impacts. Agencies must invite public review and comment on environmental impact reports. If the significant impacts of a project cannot be avoided, an agency may approve the project if it adopts a statement of overriding considerations describing in the public record why the benefits of the project outweigh its adverse environmental impacts.

b. Proposed Regulatory Amendments and the Statement of the Need for those Amendments

The CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, section 15000 and following) are administrative regulations governing implementation of CEQA. According to the California Supreme Court, the CEQA Guidelines “are ‘central to the statutory scheme’; they ‘serve to make the CEQA process tractable for those who must administer it, those who must comply with it, and ultimately, those members of the public who must live with its consequences.’” (*Friends, supra*, 1 Cal.5th at 954.) The CEQA Guidelines reflect requirements set forth in the Public Resources Code, as well as court decisions interpreting the statute and practical planning considerations.

Among other things, the CEQA Guidelines explain how to determine whether an activity is subject to environmental review, what steps are involved in the environmental review process, and the required content of environmental documents. The CEQA Guidelines apply to public agencies throughout the state, including local governments, special districts, and state agencies. In practice, many agency staff look to the CEQA Guidelines as a plain English guide to the requirements set forth in statute and case law, and therefore, use the Guidelines as a primary source of information about CEQA.

Public Resources Code section 21083 requires the Office of Planning and Research (OPR) and the Natural Resources Agency to periodically update the CEQA Guidelines. Though there have been several updates addressing discrete topics over the years, there has not been a comprehensive update to the CEQA Guidelines since the late 1990s. Beginning in 2013, the Office of Planning and Research and the Natural Resources Agency began the update process. Together, after seeking input from the public, they identified numerous potential changes that could make the CEQA process more efficient, lead to improved environmental outcomes, and clarify developments in case law. That same year, the Legislature enacted, and the Governor signed, Senate Bill 743, which required an update to the CEQA Guidelines to modernize the analysis of transportation impacts.

Most of the changes proposed in this update consist of refinements and clarifications of existing requirements. The update related to transportation, however, will replacement one study methodology for another. That particular proposed regulatory amendment provides that transportation impacts of projects are, in general, best measured by evaluating the project's vehicle miles traveled (VMT). Methodologies for evaluating such impacts are already in use for most land use projects, as well as many transit and active transportation projects. VMT is also currently used to analyze a project's environmental impacts to other resources, including air quality and greenhouse gases. During the development of the proposal, some agencies advocated for greater discretion in selecting the metric to evaluate the transportation impacts of highway capacity projects. Therefore, the proposed amendments recognize a lead agency's discretion to analyze such projects using the appropriate measure of transportation impact consistent with CEQA and other applicable requirements. Because the economic impacts of using one methodology instead of another are capable of estimate, the update related to transportation is the primary focus of this SRIA.

c. Major Regulation Determination

Prior to filing a Notice of Proposed Action with the Office of Administrative Law (OAL), agencies proposing a major regulation must first prepare a statement of regulatory impact assessment (SRIA). A “major regulation” is defined as:

[A]ny proposed rulemaking action adopting, amending, or repealing a regulation subject to review by OAL that will have an economic impact on California business enterprises and individuals in an amount exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented (as estimated by the agency) computed without regard to any offsetting benefits or costs that might result directly or indirectly from that adoption, amendment, or repeal.

(Cal. Code. Regs., tit. 1, § 2000(g).)

The proposed regulatory amendment related to transportation analysis is expected to lead to a cost savings in document preparation of slightly less than \$50,000,000 over a 12-month period after full implementation. But because additional unquantifiable effects of the proposed regulation could aggregate to an economic impact of greater than \$50,000,000 over that period, the Natural Resources Agency determined that the proposal may constitute a major regulation, and prepared this SRIA.

d. Baseline Information

This section describes implementation of CEQA under the status quo. This baseline information will inform the potential economic impact of the proposed regulations. In considering the effect



of proposed changes to the transportation analysis of highway capacity projects, and to provide a conservative estimate of the potential economic impact of this proposal, this analysis assumes that for highway capacity projects, lead agencies will select VMT as the appropriate measure of transportation impacts. Appendix A includes a description of the changes in the analysis of common project types under the proposed regulation.

i. Estimate of Environmental Documents that Agencies Prepare Annually

CEQA applies broadly to nearly all public agency decisions that may affect the physical environment, “including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans” as well as “the issuance to a person of a lease, permit, license, certificate, or other entitlement for use[.]” (CEQA Guidelines, § 15378.) As a result, public agencies across the state produce thousands of environmental documents every year.

The following table summarizes the numbers of CEQA documents sent to the State Clearinghouse every year:

**Table 1. Summary of CEQA Document Submittals by Year and Type**

<b>Year</b>	<b>ND / MND</b>	<b>EIR</b>	<b>NOE</b>
<b>1999</b>	2,007	481	2,699
<b>2000</b>	2,243	475	3,840
<b>2001</b>	2,612	524	6,083
<b>2002</b>	2,676	544	5,737
<b>2003</b>	2,972	577	6,078
<b>2004</b>	2,903	625	5,898
<b>2005</b>	3,076	636	5,649
<b>2006</b>	2,882	649	4,716
<b>2007</b>	2,805	583	4,137
<b>2008</b>	2,583	570	4,307
<b>2009</b>	2,205	477	3,747
<b>2010</b>	1,771	464	3,646
<b>2011</b>	1,645	396	3,894
<b>2012</b>	1,594	373	4,334
<b>2013</b>	1,532	348	4,451
<b>2014</b>	1,732	406	4,576
<b>2015</b>	1,666	363	4,867

In the table above, “ND/MND” refers to a negative declaration, or mitigated negative declaration, which documents a lead agency’s determination that the project will not cause any significant environmental impacts.

“EIR” refers to an environmental impact report. CEQA requires preparation of an environmental impact report when substantial evidence suggests that a project may cause an adverse environmental impact.

“NOE” refers to a notice of exemption, which a lead agency may file following a determination that CEQA does not apply to a project. The Legislature has exempted certain types of projects from CEQA’s requirements. CEQA also authorizes the CEQA Guidelines to identify categories of projects that normally would not have a significant impact, and therefore are exempt from CEQA. An agency’s determination that a project is exempt typically does not require the preparation of detailed studies.

Note, CEQA requires that most, but not all, documents be submitted to the State Clearinghouse. Further, lead agencies are not required to file notices of exemption at all. Therefore, the numbers above do not fully reflect all CEQA documents prepared in any given year.

#### ii. Estimate of Cost to Prepare Environmental Documents

The cost to prepare environmental documents varies considerably. Factors affecting cost include the scope of the project, its location, and potential range of impacts. Generally, the greater number of technical studies needed to evaluate the project, the higher the overall cost of the environmental document. Environmental professionals report that the following costs are typical:

- Many environmental analyses require technical studies addressing, among others:
  - Air quality / greenhouse gas emissions
  - Biological resources
  - Cultural resources
  - Noise
  - Traffic
- Costs for such studies often range from about \$10,000 to \$15,000.
- Traffic studies typically cost more. Today, traffic studies measure impacts on roadway capacity. The measure of such impacts is expressed as a “level of service,” or LOS. Estimating LOS requires, among other things, estimating the number of trips associated with a project,

conducting traffic counts at numerous intersections surrounding the proposed project, and estimating volumes at those intersections years into the future. The starting price for a traffic study is usually \$15,000-\$20,000 but can be in the \$40,000-\$50,000 range for larger development projects. Development projects that involve plan changes (specific plans and general plan amendments) can be in the \$50,000-100,000 range.

- Completing the remainder of an initial study may cost another \$15,000.

A typical initial study and ND/MND, therefore, may be assumed to cost approximately \$65,000-\$90,000. With technical studies, a typical EIR may cost between \$300,000-\$400,000.<sup>2</sup> These costs will often be smaller for smaller projects, and can be larger for more complex projects. A recent report on costs associated with CEQA that sampled a few projects for case studies found that environmental documents typically fell below one percent of total project cost.<sup>3</sup>

Some agencies and large departments have technical staff in-house that can prepare these environmental documents. Many agencies do not, however, and so the work is commonly completed under contract with private consulting firms. CEQA provides that when an agency conducts environmental review for a private development application, the agency may pass CEQA compliance costs onto the applicant. (Pub. Resources Code § 21089.)

e. Public Outreach and Input Regarding the Development of the CEQA Guidelines Update

Since 2013, OPR and the Natural Resources Agency have engaged in an iterative process to develop the CEQA Guidelines proposal. Specifically, they:

- Distributed a formal Solicitation for Input on possible improvements in the Summer of 2013
- Published, and requested comment on, a possible list of topics to address in the update in December 2013
- Published, and requested comment on, an evaluation of alternative transportation metrics pursuant to Senate Bill 743, also in December 2013
- Released a first draft of Guidelines evaluating vehicle miles traveled in August 2014 for public comment

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<sup>2</sup> These cost estimates were provided by the Association of Environmental Professionals in a personal communication. To develop the estimate, the Board President conducted an informal poll of the Association's Legislative Committee. The Association's members are primarily environmental consultants that regularly produce environmental documents and assist lead agencies with CEQA compliance. Therefore, these estimates come from a knowledgeable, reliable source.

<sup>3</sup> Rose Foundation, Bay Area Economics, "CEQA in the 21st Century: Environmental Quality, Economic Prosperity, and Sustainable Development in California" (August 2016), see pages 25-43, available online at <https://rosefdn.org/wp-content/uploads/2016/08/CEQA-in-the-21st-Century.pdf>

- Released a first draft of a comprehensive update to the CEQA Guidelines in August 2015 for public comment
- Revised and released an updated draft of the Guidelines addressing vehicle miles traveled, together with a draft Technical Advisory, in January 2016, for additional public comment
- Developed changes and requested comments, in October 2016, to the Guidelines addressing hazards in response to the California Supreme Court’s decision in *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369.

In addition to these public comment periods, OPR, the Resources Agency, or both have gathered input from over 150 informal stakeholder meetings, presentations, conferences, and other venues. (See Appendix B.)

## 2. Example Case Studies: Moving from LOS to VMT Metrics

Currently, environmental review of transportation impacts focuses on the delay that vehicles experience at intersections and on roadway segments. That delay is measured by the LOS metric, which assigns the delay a letter grade assessed at the peak hour of the day. Table 2 provides an example of LOS for two intersection types – signalized and unsignalized intersections. Most jurisdictions specify an LOS threshold, or level beyond which LOS is deemed unacceptable. In practice, agencies often use those thresholds as CEQA significance thresholds; thus, if a project reduces LOS to an unacceptable level, the lead agency must mitigate that impacts to the extent feasible, generally by providing additional vehicle capacity (e.g., adding a traffic lane).

**Table 2. Intersection Levels of Service (LOS)**

LOS	Signalized Intersection	Unsignalized Intersection
A	≤10 sec	≤10 sec
B	10–20 sec	10–15 sec
C	20–35 sec	15–25 sec
D	35–55 sec	25–35 sec
E	55–80 sec	35–50 sec
F	≥80 sec	≥50 sec

In contrast to LOS, VMT analysis would characterize the total miles of auto travel generated by the project. Lead agencies could provide CEQA thresholds of significance for various project types (e.g., 15 percent below regional VMT per capita for residential projects). A project exceeding the significance threshold for the amount of vehicle travel onto the region’s roadways

would be required to mitigate the project’s significant adverse impacts. Lists of potential VMT mitigation measures for various project types and circumstances can be found in the California Pollution Control Officers Association’s (CAPCOA) 2010 document, *Quantifying Greenhouse Gas Mitigation Measures, A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures*. (*Id.* at pp. 155-331.) Section 2.a.i, below, provides some common examples of VMT mitigation measures.

The following sections present two case studies—an infill residential project and greenfield residential project—that are intended to illustrate the shift in the transportation metric from LOS to VMT. Specifically, these case studies show how the proposed regulation will streamline the analysis of some projects and may result in less costly and time-consuming transportation analysis.

a. Example Case Study: Infill Residential Project

To illustrate the effect of the proposal on infill projects, this SRIA considers a hypothetical centrally-located, multifamily infill residential project containing 350 units. Multifamily development (e.g., apartments) would generally be expected to generate 6.65 trips per unit per day, including 0.62 trips during each of the morning and evening peak hours (ITE Trip Generation Manual). However, a typical centrally-located infill development exhibits reduced trip generation due to an array of factors, including transit availability and walkability, and shorter than average trip lengths due to proximity to jobs and services. For this example, we assume a trip generation reduction of 25 percent, and trip length of five miles.

i. LOS Analysis

An LOS study for an infill project begins with field measurements taken to ascertain the traffic volume and LOS at each intersection affected by traffic from the project. Next, the expected routing of trips generated by the project through local intersections is determined, the additional volume of project-generated traffic arriving at each of those intersections as a result of the project is ascertained, and the resulting LOS is estimated.

In many infill areas, LOS already approaches the jurisdiction’s threshold at many intersections because infill projects are generally in denser areas served by already-loaded roadways with high traffic volumes. Thus, a proposed development project in an infill location is likely to push LOS past the threshold at some intersections. LOS can degrade quickly by adding a few additional vehicles, especially in infill areas that may already experience high traffic volumes. The hypothetical project presented above may generate approximately 217 peak hour trips, which may be enough to trigger LOS thresholds at multiple intersections depending on initial conditions (e.g., LOS would degrade from LOS D to LOS E with the proposed project). For example, just half of those 217 peak hour trips passing through an intersection near or

downstream of the project could add an average of more than two vehicles per traffic light cycle, introducing several seconds of additional delay. At any intersection where that additional delay pushed beyond the jurisdiction's LOS threshold and resulting in a significant environmental impact under CEQA, the project would be required to provide enforceable mitigation, if feasible, to reduce the impact to a less-than-significant level (such as supplying roadway capacity sufficient to bring LOS back above threshold levels). Alternatively, the project proponent would need to modify its project, such as reducing the number of units, to reduce trip generation.

## ii. VMT Analysis

To assess VMT generated by a residential project, the number of trips generated is multiplied by the average length of those trips. In general, many variables influence the number of trips generated per person and the average trip lengths, such as a project's characteristics, the surrounding land uses and their layout, available transit and transportation options, and a proximity to amenities and services, among others. Trip lengths in infill areas are generally shorter because potential destinations are likely to be closer in proximity, leading to lower VMT generation per person than in outlying projects.

Under the proposed regulation, many infill projects would bypass a VMT impact analysis altogether by demonstrating either proximity to transit or location in a low-VMT existing neighborhood via a map showing areas of existing low-VMT. Thus, a significant benefit of a VMT analysis would be a lead agency's ability to streamline a proposed infill project's environmental review. Even for those projects that would not fall within streamlined categories, as discussed below in Section 3, Direct Benefits, VMT analysis would take less time to complete thereby providing cost and time savings (including staff time) to lead agencies and project proponents. Streamlined environmental review may spur more low-VMT development, which would result in many environmental, land use, and health benefits as discussed below in Section 3.<sup>4</sup>

In the minority of infill projects where a VMT assessment would be necessary, the lead agency could assess trip generation, selecting from a variety of data sources, and trip length could be assessed using a travel model (e.g., data provided by Caltrans at <http://www.dot.ca.gov/hq/tpp/offices/omsp/SB743.html>), travel survey, or aggregated GPS data. If the VMT analysis demonstrated that the proposed project would result in significant transportation impacts, feasible and enforceable mitigation measures would be required to reduce the impacts to a less-than-significant level. As noted earlier, proposed projects can vary

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<sup>4</sup> See, e.g., "'Driving Miles' is best measure of new development," San Francisco Chronicle, Opinion by Curt Johansen and Jeremy Madsen (Nov. 19, 2014), available online at <http://www.sfgate.com/opinion/openforum/article/Driving-miles-is-best-measure-of-new-5904868.php>.

greatly and mitigation could include travel demand management measures, among others. One source of VMT mitigation measures is the 2010 CAPCOA report, *Quantifying Greenhouse Gas Mitigation Measures, A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures*. Common examples include:

- Improving or increasing access to transit.
- Increasing access to common goods and services, such as groceries, schools, and daycare.
- Incorporating affordable housing into the project.
- Incorporating neighborhood electric vehicle network.
- Orienting the project toward transit, bicycle and pedestrian facilities.
- Improving pedestrian or bicycle networks, or transit service.
- Providing bicycle parking.
- Limiting parking supply.
- Unbundling parking costs.
- Parking or roadway pricing or cash-out programs.
- Implementing a commute reduction program.
- Providing car-sharing, bike sharing, and ride-sharing programs.
- Providing transit passes.

b. Example Case Study: Greenfield Residential Project

To illustrate the effect of the proposed regulation in the context of greenfield single-family residential projects, this SRIA considers a hypothetical greenfield single-family residential project consisting of 350 units. A single-family development would generally be expected to generate 9.52 trips per unit per day, including 1.00 trips during each of the morning and evening peak hours (ITE Trip Generation Manual). Because it is built in an outlying area, average trip lengths would be longer than the regional average; for this example, we assume a typical greenfield average trip length of ten miles.

iii. LOS Analysis

An LOS study for a greenfield residential project also begins with field measurements taken to ascertain the traffic volume and LOS at each intersection affected by traffic from the project. Next, the expected routing of trips generated by the project through local intersections is determined, the additional volume of project-generated traffic arriving at each of those intersections as a result of the project is ascertained, and the resulting LOS is estimated.

This project would generate an estimated 350 trips in each peak hour. Greenfield projects are less likely to be located near existing congested intersections than an infill development. However, these projects are more likely to be located in areas of limited transportation infrastructure and thus greenfield projects often must build new and additional physical roadway capacity to accommodate the project's traffic. Because greenfield projects are less likely to be built near existing congested intersections, the development of these projects are less likely to trigger the LOS threshold at any intersection in the project's affected area. Further, at any intersection where that additional delay triggers the jurisdiction's LOS threshold and results in a significant environmental impact under CEQA, the project would be required to provide enforceable mitigation, if feasible, to reduce the impact to a less-than-significant level. Typical mitigation could include addition of through or turn lanes, or the addition of traffic stop devices such as signals.

#### iv. VMT Analysis

As with infill projects, many variables influence the number of trips generated per person and the average trip lengths, such as a project's characteristics, the surrounding land uses and their layout, available transit and transportation options, and a proximity to amenities and services, among others. Trip lengths in greenfield areas are generally longer than those in infill areas because potential destinations are generally farther away, leading to VMT generation per person greater than that of infill projects.

Again, agencies would assess VMT for a greenfield project as described above. Similarly, if the VMT analysis demonstrates that the proposed project would result in significant transportation impacts, feasible and enforceable mitigation measures would be required to reduce the impacts to a less-than-significant level. If the significant impacts of a project cannot be avoided, an agency may approve the project if it adopts a statement of overriding considerations describing in the public record why the benefits of the project outweigh its adverse environmental impacts. As noted earlier, proposed projects can vary greatly and VMT mitigation could include travel demand management measures, among others. One source of VMT mitigation measures is the 2010 CAPCOA report, *Quantifying Greenhouse Gas Mitigation Measures, A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures*, described above in Section 2.a.i. Because greenfield development is likely to generate higher VMT than infill, mitigation is more likely needed. However, because VMT mitigation may be less costly than LOS mitigation, agencies and project proponents may experience some savings,



especially when the cost savings of preparing a VMT analysis are factored in. As discussed below in Section 3, Direct Benefits, VMT analysis would take less time to complete, thereby providing cost and time savings (including staff time) to lead agencies and project proponents. Also as discussed in Section 3, VMT mitigation would result in many environmental, land use, and health benefits.<sup>5</sup>

c. Overall Effects on Housing Development, Affordability, and Other State Interests

Implementation of the proposed regulation will lower the costs of both transportation studies and mitigation for most infill residential development, and provide time savings associated with those studies and mitigation measures. Implementation of the proposed regulation will also reduce costs of transportation studies, and in many cases, may also reduce costs of mitigation, for greenfield development. Therefore, the proposed regulation would likely lead to overall lower housing development costs, which in turn may lead to an increase in supply and a decrease in housing prices. Because the increase in housing development would be greater in infill areas (where VMT is lower and transportation options are often more readily available), and because VMT mitigation would reduce the need for auto reliance, transportation costs would also likely decrease.

Reduction in VMT resulting from the proposed regulation would lead to an array of environmental, health, and cost savings benefits (Fang et al., 2017), including:

- Reduced greenhouse gas emissions
- Improved air quality
- Reduced incidence of chronic disease
- Reduced water use
- Reduced impervious surface resulting in less stormwater runoff, reducing flood risk and pollutant transport to waterways
- Reduced consumption of open space, e.g. agricultural land and sensitive habitat

The proposed regulation may also result in improvements in transportation system performance, i.e., the ability of people to reach destinations (Mondschein et al. 2015).

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<sup>5</sup> See, e.g., “‘Driving Miles’ is best measure of new development,” San Francisco Chronicle, Opinion by Curt Johansen and Jeremy Madsen (Nov. 19, 2014), available online at <http://www.sfgate.com/opinion/openforum/article/Driving-miles-is-best-measure-of-new-5904868.php>.

### 3. Direct Benefits

#### a. Benefits to Individuals

There are no benefits directly to individuals. Some individuals that are private developers may benefit from various aspects of the proposal that streamline the CEQA process. Such benefits are described below in the sections related to benefits to businesses.

#### b. Benefits to Typical Businesses

The proposed regulation would result in cost savings to developers from multiple sources. Because VMT studies are substantially less expensive than LOS studies, developers would experience cost savings associated with transportation studies as well as time savings. Further, projects near transit and most infill projects would not need to complete a transportation study under the proposed regulation, as noted in the infill residential case study above. Table 3 provides an estimate of the magnitude of those cost savings. Additionally, VMT analysis also takes less time to prepare than LOS analysis, allowing a development to move forward more quickly, further reducing development costs.

**Table 3. Total Change in Cost to Businesses, Years 2019-2023**

	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
Total change in cost to businesses statewide/year (\$ Million)	-\$23.96	-\$24.17	-\$24.37	-\$24.58	-\$24.78

#### c. Benefits to Small Businesses

In reducing the cost of transportation analyses, the proposed regulatory amendment would affect the public agencies and private developers that fund or undertake these studies, and the private consulting businesses working on behalf of those entities. Government Code section 11342.610, however, specifies that developers of any size are not considered small businesses.

#### d. Benefits of the Proposed Regulation to Public Health, Safety, Welfare, Environment, and Quality of Life

There are numerous potential direct and indirect benefits of reducing VMT. Realization of those benefits will depend on the degree to which, pursuant to this CEQA Guidelines proposal, lead agencies use the streamlined approaches for analysis of low-VMT projects, mitigate high-VMT

projects, or choose lower VMT project alternatives.<sup>6</sup> Some of the benefits that may result from reducing VMT are described qualitatively below:

- *Better health and avoided health care costs.* Higher VMT is associated with more auto collisions, more air pollution, more GHG emissions, less active transportation, and less transit use. If California achieves its goals of doubling walking and tripling biking (Caltrans Strategic Management Plan), 2,095 annual deaths will be avoided. Increasing active transit modes would help reduce air pollution and greenhouse gas emissions. Estimates of the annual monetized value of prevented deaths and disabilities in California resulting from achieving those targets ranges from \$1 billion to \$15.5 billion.<sup>7</sup>
- *Reduction in transportation, building energy, and water costs.* Less vehicle travel reduces vehicle fuel (or electricity), maintenance, parking, and in some cases vehicle ownership costs. Transportation costs are typically the second greatest category of household expenditure after housing itself (Bureau of Labor Statistics, Consumer Expenditures). Compact, low VMT development tends to consume less building energy and irrigation water, leading to savings to residents and businesses. Busch et al., 2015 estimated that if 85 percent of new housing and jobs added in the state until 2030 were located within existing urban boundaries, it would reduce per capita VMT by about 12 percent below 2014 levels.<sup>8</sup> That combination of reduced VMT and more compact development would, in turn, result in an estimated \$250 billion in household cost savings cumulative to 2030 (with an average annual savings per household in 2030 of \$2,000). Household costs analyzed in the Busch, et al. study included auto fuel, ownership and maintenance costs, as well as residential energy and water costs.
- *Reduction in travel times to destinations.* Reducing VMT reduces congestion regionally, decreasing travel times, and may also encourage more investment in multi-modal infrastructure. It may add congestion locally, due to increased density of development; however, even in those areas, travel times decrease because of better proximity (Mondschein, 2015).<sup>9</sup>
- *Cleaner water.* Motor vehicle travel can cause deposition of pollutants onto roadways, which can then be carried by stormwater runoff into waterways. Fuel, oil, and other liquids used in

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<sup>6</sup> As explained above, lead agencies determine whether any particular mitigation measure is feasible in the context of the project under review. (See, e.g., CEQA Guidelines § 15091.) Further, CEQA allows a lead agency to approve a project that has significant environmental impacts so long as it finds that the benefits of the project outweigh those impacts. (*Id.* at § 15093.)

<sup>7</sup> Maizlish N. *Increasing Walking, Cycling, and Transit: Improving Californians' Health, Saving Costs, and Reducing Greenhouse Gases. Final Report. California Department of Public Health (CDPH), 2016.* <https://www.cdph.ca.gov/programs/Documents/IncreasingWalkingCyclingTransitFinalReport2016rev2017-01-28.pdf>

<sup>8</sup> Busch C., et al., *Moving California Forward, How Smart Growth Can Help California Reach Its 2030 Climate Target While Creating Economic and Environmental Co-Benefits*, Nov. 2015, at p. 26.

<sup>9</sup> Mondschein A. *Congested Development: A Study of Traffic Delays, Access, and Economic Activity in Metropolitan Los Angeles*, Institute of Transportation Studies, UCLA Luskin School of Public Affairs, Sept. 2105.

motor vehicles can leak from vehicles onto the ground (Delucchi, 2000). Brake dust and tire wear can further cause particles to be deposited onto the ground (Thorpe and Harrison, 2008). Brake pads and tire compounds are made out of compounds that include metal. Further, motor vehicles require roadways for travel. Paved roadways are impervious surfaces which prevent infiltration of storm water in the ground. Impervious surfaces can increase the rate, volume, and speed, and temperature of stormwater runoff (US Environmental Protection Agency, 2003). Wearing down of roadways can further cause particles to be deposited onto the ground (Thorpe and Harrison, 2008). The Victoria Transportation Policy Institute (2015) estimates that in total that motor vehicle contributions to water pollution cost approximately 42 billion dollars per year or 1.4 cents per mile.

#### **4. Direct Costs**

##### **a. Direct Costs to Individuals**

There are no costs directly to individuals.

##### **b. Direct Costs on Typical Businesses**

As noted above, public agencies may require private project applicants to reimburse the cost of CEQA review. This SRIA refers to private applicants as developers. For the purpose of estimating costs to businesses, this SRIA assumes that half of CEQA documents (1,089 ND/MNDs and EIRs) are prepared to support private development applications, and that developers bear the costs of document preparation.

##### *i. Cost and time savings for analysis, and reduction in risk, for developers*

Transportation analysis for LOS studies for land use projects typically costs between \$15,000 and \$50,000. For the purpose of estimating costs, this SRIA assumes the estimated average cost of analysis for LOS studies is \$25,000. (Pers. Comm., Ron Milam, Fehr and Peers, 2017) This SRIA also assumes that analysis for VMT studies using readily available tools such as CalEEMod or URBEMIS, costs an estimated \$5,000 (Pers. Comm., Erik De Kok, Ascent Environmental, 2017). All study costs vary around these averages, influenced by project type, size, and complexity, among other factors. Assuming that only half of ND/MNDs require a traffic study, and all EIRs require a traffic study,<sup>10</sup> traffic studies today would cost businesses approximately \$27,000,000 per year. Using the same assumptions as to the types and number of CEQA documents, VMT studies would cost approximately \$3,200,000 per year—a savings of nearly \$24,000,000 per year. These figures could be expected to grow gradually (roughly in proportion to population) with time.

Part of the cost savings from VMT studies results from the acknowledgment that projects in areas near transit exhibit low VMT, and therefore agencies would not study VMT for those projects at all. Employing data from the Southern California Association of Governments and Sacramento Area Council of Governments, and a conservative estimate for the rest of the state (including no development in transit priority areas outside of the four biggest metropolitan planning organizations in the state<sup>11</sup>), approximately half of future growth would be streamlined by transit proximity.<sup>12</sup> Substantial additional areas would also benefit from the streamlining of CEQA analysis under the proposed regulatory change, due to being located in areas not in proximity to transit but in areas of existing low VMT development; however, to provide a conservative cost savings estimate, this SRIA does not count that CEQA streamlining.

Switching to a VMT analysis would also provide a significant time savings compared to LOS analysis because less time would be spent to prepare less complicated, more transparent analysis, as noted above in the case example in Section 2(a)(ii) of an infill project. For example, in 2015, the City of San Francisco undertook an economic feasibility study that examined time savings from shifting analysis from LOS to VMT. Due to the shift to VMT analysis, the City experienced direct time savings (including staff time) of between zero and five months, direct costs savings that varied by size and complexity of project, significant risk reduction to developers, and reduction in backlog in the City's processing of development permits. (*Transportation Sustainability Fee: Economic Feasibility Study, San Francisco Planning Department, 2015*, pp. 19-22) Thus, VMT analysis would likely streamline the environmental review process and result in a cost and time savings for project developers and, as noted in Section 4.d, similar savings for lead agencies.

c. Direct Costs on Small Businesses

In reducing the cost of transportation analyses, the proposed regulatory change would affect the public entities and private developers that fund or prepare VMT studies. Private consulting businesses that are considered small businesses, as defined under Government Code Section 11342.610, are expected to generate less revenue for preparing less expensive studies; but their receipts would vary depending on project-specific factors, including project complexity and location.

#### d. Direct Costs to State and Local Governments

Even when technical studies and document preparation are contracted out to private consultants, agency personnel must review the documents to ensure that they reflect the agency's independent judgment. Therefore, the shift to VMT analysis would likely result in lead agency staff reviewing a reduced volume of project-related materials, as noted above in the project examples in Section 2. As discussed in the infill project example, most infill projects in low-VMT areas would bypass a VMT impacts analysis altogether. Agencies would also likely experience time and cost savings, as noted in the greenfield project example. Reduced time needed to study a project could also decrease project management costs. Such savings would vary considerably depending on other factors, including project complexity and location. Therefore, the estimated savings for project management costs are not quantified in this analysis. But as to costs related to transportation studies prepared under the proposed regulation, Table 12 (Changes in Transportation Study Costs to State and Local Governments Under the Proposed Regulation, Years 2019-2023) shows the quantifiable cost savings to lead agencies in preparing VMT analysis.<sup>13</sup> The City of San Francisco's experience in preparing VMT analysis also demonstrates that lead agencies will likely experience time and cost savings related to staff time spent during the permitting process. VMT analysis would not necessarily translate into a lead agency's reduced revenues from development fees because jurisdictions could adjust their development fees to require VMT-based impact fees.

### 5. Economic Impacts

#### a. Methods for Determining Economic Impacts

Regional Economic Models, Inc. (REMI), Policy Insight Plus Version 1.7.2, is used to model the macroeconomic changes resulting from implementing the proposed regulation throughout the California economy. REMI is a structural economic forecasting and policy analysis model that integrates input and output, computable general equilibrium, econometric, and economic geography methodologies. REMI provides year-by-year estimates of the total impacts of the proposed regulatory change, pursuant to the requirements of Senate Bill 617 and the California Department of Finance. For this analysis, the REMI single-region, 160-sector model was adjusted to reflect the Department of Finance's June 2015 Conforming Forecast. Additionally, in analyzing the proposed regulation, REMI adjusted the costs to relevant sectors to reflect anticipated changes in the cost of CEQA transportation studies to businesses and public entities. Specifically, REMI modeled these anticipated changes by adjusting cost flows in the following

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<sup>13</sup> The quantifiable cost savings to state and local governments under Alternatives 1 and 2 related to transportation studies are presented *infra* in Tables 10 and 11, respectively.

sectors: developers (REMI code 23), consultants (REMI codes 5413 and 5416), and state and local agency entities.

b. Inputs for the Assessment

The number of anticipated CEQA transportation studies and the cost of both current LOS studies and proposed VMT studies are presented above. (See Section 4.b.) The estimated total number of VMT studies is divided by type, and between business-funded (i.e., developer-funded) and public entity-funded studies, to determine changes in costs to those entities. Table 4 below presents the total cost changes per year to businesses and public entities throughout the State.

**Table 4. Total Change in Cost to Businesses and Public Entities Statewide Resulting from VMT Studies, Years 2019-2023**

	2019	2020	2021	2022	2023
Total change in cost to businesses statewide/year	-	-	-	-	-
	\$23,957,90	\$24,166,48	\$24,373,555	\$24,580,06	\$24,784,96
	7	6		5	0
Total change in cost to public entities statewide/year	-\$2,818,038	-\$2,841,213	-\$2,864,221	-\$2,887,167	-\$2,909,933

c. Assumptions and Limitations of the Model

By inputting the number of anticipated transportation studies and consequent reductions in document production costs and volumes discussed above, REMI is able to ascertain the likely macroeconomic effects throughout the State. Variables that could alter these results include the number of studies and mix of CEQA documents, and unanticipated changes in development patterns.

d. Results of the Assessment

The values in Table 5 represent the incremental change in the referenced year between the baseline scenario (LOS analysis) and the proposed regulation scenario (VMT analysis).

**Table 5. Overview of the REMI Analysis of the Proposed Regulation, Years 2019-2023**

Category	Units	2019	2020	2021	2022	2023
Total Employment	Individuals (Jobs)	75	174	236	268	281
Private Non-Farm Employee	Individuals (Jobs)	89	180	236	262	271
Residence Adjusted Employee	Individuals	109	199	258	288	301
Population	Individuals	98	180	260	332	397
Labor Force	Individuals	101	149	196	235	266
Gross Domestic Product	\$M (2015)	\$15.7	\$28.7	\$38.4	\$45.1	\$49.5
Output	\$M (2015)	\$30.7	\$53.1	\$69.6	\$80.8	\$88.4
Value Added	\$M (2015)	\$16.0	\$29.1	\$38.8	\$45.4	\$49.8
Personal Income	\$M (2015)	\$0.2	\$8.4	\$14.6	\$18.9	\$21.8
Disposable Personal Income	\$M (2015)	\$0.1	\$7.0	\$12.1	\$15.7	\$18.2
Real Disposable Personal Income	\$M (2015)	\$40.6	\$44.0	\$48.3	\$51.4	\$53.3
PCE-Price Index	2009=100 (Nation)	-0.0026	-0.0023	-0.0022	-0.0022	-0.0021

i. California Employment Impacts

In the REMI model, total estimated employment includes the number of full-time and part-time jobs and place of work. And while the model includes employees, sole proprietors, and active partners, it does not include unpaid family workers and volunteers.

Overall, statewide employment impacts are positive but negligible. Cost reductions in document production lead to a small increase in the rate of growth, as indicated by small positive impacts to total California employment. Depending on the industry, the REMI model predicts negligible increases or decreases in employment. The slight increase in employment growth can be attributed to the decrease in production cost for state and local governments and developers (nested under NAICS 23: Construction). Increases in the rate of employment growth attributed to lower production costs outweigh any negative impact to employment growth in the private consulting industries because of lower demand for consulting services.

ii. California Business Impacts



Table 6 presents the change in each sector's contribution to the State's gross domestic product under the proposed regulation. The estimated sector impacts to gross value added<sup>14</sup> are overall positive across all industries, but are slightly negative (i.e., less than 0.01 percent) in the Professional, Scientific, and Technical Services (NAICS 54) industry across all years of the assessment. The small decrease in demand for services in the Professional, Scientific, and Technical Services industry explains the negative change in that industry.

If a significance finding under the proposed CEQA Guideline influences what types of projects are ultimately approved, businesses specializing in particular types of construction may benefit. For example, because highway widening may increase VMT, and transit, bicycle and pedestrian projects may reduce VMT, businesses specializing in the latter category may see increased demand. Similarly, because infill, mixed-use, small town and transit adjacent developments tend to exhibit lower VMT, the proposed regulation may increase the likelihood of approval of such projects. Higher VMT projects, such as greenfield developments, may need to include mitigation to address such VMT impacts. But for the reasons explained above, it is unclear whether the proposed regulation will result in a measurable differential impact to businesses associated with higher VMT projects (such as construction firms) versus businesses focused on lower VMT projects. Demand for professional services may shift for similar reasons, but again, are difficult to quantify given the large variability in project demand. The proposed regulation's impact on gross value added is less than 0.01 percent across all years of the assessment, with the highest positive impact ranging from 0.005% to 0.01 percent in the construction industry.

**Table 6. Changes to the State’s Gross Domestic Product by Business Sector Resulting from the Proposed Regulation (\$ Millions), Years 2019-2023**

Category	2019	2020	2021	2022	2023
Forestry, Fishing, and Related Activities	\$0.03	\$0.05	\$0.07	\$0.08	\$0.08
Mining	\$0.71	\$1.15	\$1.44	\$1.64	\$1.77
Utilities	\$0.64	\$0.81	\$0.96	\$1.07	\$1.15
Construction	\$5.55	\$8.74	\$10.57	\$11.52	\$11.90
Manufacturing	\$3.40	\$5.59	\$7.32	\$8.73	\$9.83
Wholesale Trade	\$1.28	\$1.78	\$2.18	\$2.45	\$2.67
Retail Trade	\$2.25	\$2.92	\$3.47	\$3.87	\$4.16
Transportation and Warehousing	\$0.47	\$0.77	\$0.99	\$1.15	\$1.25
Information	\$1.46	\$1.94	\$2.32	\$2.61	\$2.82
Finance and Insurance	\$2.41	\$3.03	\$3.50	\$3.81	\$4.00
Real Estate and Rental and Leasing	\$11.81	\$12.94	\$13.99	\$14.65	\$14.99
Professional, Scientific, and Technical Services	-\$16.91	-\$15.93	-\$15.28	-\$14.87	-\$14.56
Management of Companies and Enterprises	\$0.28	\$0.49	\$0.64	\$0.76	\$0.85
Administrative and Waste Management Services	\$0.26	\$0.56	\$0.79	\$0.95	\$1.06
Educational Services	\$0.22	\$0.28	\$0.33	\$0.36	\$0.39
Health Care and Social Assistance	\$1.34	\$1.79	\$2.17	\$2.43	\$2.62
Arts, Entertainment, and Recreation	\$0.41	\$0.53	\$0.64	\$0.71	\$0.76
Accommodation and Food Services	\$0.74	\$1.00	\$1.23	\$1.40	\$1.53
Other Services, except Public Administration	\$1.10	\$1.28	\$1.42	\$1.51	\$1.55

iii. Impacts on Investments in California

Table 7 shows the impact on gross private domestic investment in California. The REMI model defines private domestic investment as the demand for capital goods. Private investment consists of purchases of residential and nonresidential capital and software by private businesses. The proposed regulation would minimally increase the overall growth of gross private domestic investment, ranging from +0.00 percent to less than 0.01 percent annually across all years of the assessment.

**Table 7. Proposed Regulation’s Impact on Gross Private Investment in California (\$ Millions), Years 2019-2023**

Category	2019	2020	2021	2022	2023
Private Non-Farm	\$16.5	\$25.4	\$30.3	\$32.9	\$34.0

#### iv. Impacts on Individuals in California

Modeling results presented in Table 5 show negligible increases in personal income growth in all years of the assessment. Personal income includes income received by persons from all sources, including income received from participation in production as well as from government and business transfer payments.

The proposed shift to VMT analysis would benefit low-income earners in at least three ways. First, it streamlines transit and active transit modes, which a disproportionate number of low-income residents rely upon for transportation. Transit and active transit modes instead of private automobiles can save low-income residents money. Second, because low-income earners generate less household VMT, affordable housing is streamlined with VMT analysis. Third, the shift to VMT analysis would lead to more infill and transit-oriented development, and such development often allows lower living costs when transportation and housing costs are both taken into account (Center for Neighborhood Technology, Penny Wise, Pound Fuelish, 2010).

#### v. Impacts on Gross State Product

The REMI model defines “gross state product” as the market value of goods and services produced by labor and property in California. Table 5 shows that impacts on California’s gross state product are positive yet small relative to the size of the state economy, with an increase in gross state product growth of less than 0.01 percent across all years analyzed.

#### vi. Creation or Elimination of Businesses

The proposed change to VMT analysis would not lead to the creation or elimination of any businesses. The overall purpose of the proposed regulation is to modernize the analysis of transportation impacts, as Senate Bill 743 requires, and change the methodology of those impacts. Regulatory changes are not uncommon, and the proposed regulation would require a different metric for transportation analysis that is already required under CEQA. Existing developers, consulting firms, and public agencies would shift existing transportation analyses to reflect the new regulatory requirements for VMT analysis.

#### vii. Incentives for Innovation

The proposed regulation would require the adoption of a different metric of transportation impact, VMT, under CEQA. While lead agencies currently use VMT analysis in the CEQA process to ascertain emissions, noise, energy, and other impacts, the regulatory change to VMT for transportation impact analysis may lead to improved measurement techniques. Such improvements would lead to more accurate assessments of those other impacts as well. And for projects resulting in significant VMT impacts for which enforceable mitigation would be

required, if feasible, the proposed regulation may lead to developing new mitigation approaches for reducing vehicle travel. Additionally, the co-benefit of new VMT mitigation includes spurring new research efforts, tools, and techniques to develop VMT reduction and to verify those reductions.

#### viii. Competitive Advantage or Disadvantage

By providing slight increases in gross state product, investment, and employment, the proposed regulation would marginally increase California’s competitive advantage. The State’s competitive advantage may also increase with new VMT research efforts, tools, and techniques that may occur within the State to develop VMT reduction and to verify those reductions. The proposed regulatory change to add VMT analysis is not anticipated to create a competitive disadvantage because lead agencies already require VMT to analyze other impact areas under CEQA (i.e., air and GHG emissions, noise, energy impacts).

#### b. Summary and Agency Interpretation of the Assessment Results

The proposed regulation would have a positive but negligible impact on California’s overall economy. Likewise, it would have a positive but negligible effect on employment, investment, and gross state product.

### 6. Alternatives

As a first step in developing the proposed update to the CEQA Guidelines, public input was solicited on a number of possible alternatives to using a VMT metric, including auto trips generated, multimodal LOS, fuel use, and others. The results of that investigation are documented in the [Preliminary Evaluation of Alternative Methods of Transportation Analysis](#). The two alternatives described below are variants on the proposed regulation that were raised in public comments.

#### a. Alternative 1: Apply VMT Analysis Only Within Transit Priority Areas

##### i. Description

Under Alternative 1, the change from LOS to VMT would apply only to proposed projects within “transit priority areas.” This is the minimum scope of what Senate Bill 743 requires. Proposed projects outside of transit priority areas would continue to prepare traffic analyses using LOS. This SRIA conservatively estimates that 40 percent of growth will be in transit priority areas, based on data from two of the four largest metropolitan planning organizations.

Public Resources Code section 21099 defines “transit priority areas” to include only those areas within one-half mile of high quality transit. Geographically, those areas are quite small. According to the Southern California Association of Governments, such areas account for three

percent of total land area in the Southern California region. Nonetheless, the Southern California Association of Governments estimates that 46 percent of future household growth, and 55 percent of future employment growth, will occur within areas served by high quality transit.<sup>15</sup> In part due to other requirements of state law (primarily Senate Bill 375, which requires coordination between land use planning and transportation planning to reduce GHG emissions), larger metropolitan planning organizations focus much new growth near transit.

#### ii. Costs and Benefits (Total and Incremental)

As described above, VMT analysis is much cheaper and quicker to prepare than a study of LOS impacts. Thus, the proposed regulation is expected to result in benefits and cost savings to lead agencies and developers under this alternative. Here, the proposed regulation would apply only to a subset of new projects and thus the expected benefits would be reduced. Specifically, instead of a cost savings to businesses of approximately \$27,000,000, the savings would be approximately \$14,000,000.

#### iii. Economic Impacts

The reduced cost savings would impact the State's economy by creating a reduced overall economic benefit. Table 8 provides changes in statewide employment, gross state product, output, and other economic factors under Alternative 1.

**Table 8. Macroeconomic Effects of Alternative 1, Years 2019-2023**

Category	Units	2019	2020	2021	2022	2023
Total Employment	Individuals (Jobs)	37	84	113	128	134
Private Non-Farm Employee	Individuals (Jobs)	43	86	112	125	129
Residence Adjusted Employee	Individuals	53	95	123	137	143
Population	Individuals	46	85	123	157	187
Labor Force	Individuals	48	70	93	111	126
Gross Domestic Product	\$M (2015)	\$7.6	\$13.7	\$18.2	\$21.4	\$23.5
Output	\$M (2015)	\$14.7	\$25.2	\$33.0	\$38.2	\$41.8
Value Added	\$M (2015)	\$7.7	\$13.8	\$18.4	\$21.5	\$23.6
Personal Income	\$M (2015)	\$0.2	\$4.1	\$7.0	\$9.0	\$10.4
Disposable Personal Income	\$M (2015)	\$0.2	\$3.4	\$5.8	\$7.5	\$8.7
Real Disposable Personal Income	\$M (2015)	\$19.2	\$20.8	\$22.8	\$24.3	\$25.1
PCE-Price Index	2009=100 (Nation)	-0.0012	-0.0011	-0.0011	-0.0010	-0.0010

#### iv. Cost Effectiveness

Because Alternative 1 would forgo the cost savings described above, it would be less cost effective than the proposed regulation.

#### v. Reason for Rejecting

Alternative 1 was rejected for several reasons.

First, as illustrated above, this alternative would forgo substantial cost and time savings that are expected to result from studying VMT instead of LOS.

Second, this alternative would be more likely to cause confusion and increase litigation risk. Greater uncertainty would result because this alternative would require two different types of analyses to be conducted, depending on location. The definition of transit priority area in the Public Resources Code is not clear. For example, a transit priority area is defined to include areas with intersecting bus lines that run at 15-minute intervals. Bus routes and frequency levels often change. Similarly, transit priority areas include areas within one half mile of both existing and *planned* transit. Again, plans are subject to change. An agency that mistakenly identifies a project as inside a transit priority area would study transportation impacts using the wrong metric, and could face litigation as a result. A uniform metric of study, as proposed in the current proposal, would avoid that potential confusion and litigation risk.

Third, research indicates that a transportation analysis focused on VMT may result in numerous indirect benefits to individuals including improved health; savings on outlay for fuel, energy, and water; reduction of time spent in transport to destinations. Though such benefits are too indirect to attribute to the changes proposed in the CEQA Guidelines, potential benefits of reducing VMT are described qualitatively in Section 3.d above.

Finally, this alternative would be less likely to achieve the purposes of Senate Bill 743. That legislation requires the updated Guidelines “promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses.” As explained in the Preliminary Evaluation of Alternative Methods of Transportation Analysis, as a metric, VMT promotes those statutory purposes better than LOS.

b. Alternative 2: Apply the VMT Analysis Only to Land Use Projects

i. Description

Some public comments on the proposed regulation objected to applying the VMT metric to transportation projects. Senate Bill 743 requires the development of new metrics to analyze the “transportation impacts of projects[.]” CEQA defines “project” very broadly. This SRIA, however, includes analysis of a scenario applying VMT to land use projects only and not to transportation projects. In other words, under this alternative, LOS analysis would continue to apply to roadway, transit, bicycle and pedestrian projects reviewed under CEQA.

ii. Costs and Benefits (Total and Incremental)

Alternative 2 would forgo the benefits of the proposed regulation as to transportation projects. Specifically, the proposed regulation clarifies that transit, bicycle and pedestrian projects tend to reduce VMT, and such projects would not require further transportation impact analysis under CEQA. Under Alternative 2, those types of projects would be required to evaluate under CEQA the potential impacts on roadway capacity, motorist turning movements, etc.

The time and cost savings of having to study transportation impacts could be substantial. The San Francisco Bicycle Plan, for example, was delayed by several years to prepare an environmental impact report primarily studying impacts on roadway capacity. Bus rapid transit and other transit projects, which are meant to provide cost- and time-efficient transportation and provide social and environmental benefits such as reduced GHG emissions, are also required to prepare that type of study. The time and cost savings are likely to also be substantial for large metropolitan areas such as Los Angeles where significant portions of LA Metro’s transportation plan consist of transit, bicycle and pedestrian projects.

iii. Economic Impacts

The reduced cost savings propagate through the economy to create reduced overall benefit. Table 9 provides changes in statewide employment, gross state product, output, and other economic factors under Alternative 2.

**Table 9. Macroeconomic Effects of Alternative 2, Years 2019-2023**

Category	Units	2019	2020	2021	2022	2023
Total Employment	Individuals (Jobs)	0.00028	0.00069	0.00095	0.00107	0.00262
Private Non-Farm Employment	Individuals (Jobs)	0.00038	0.00082	0.00107	0.00120	0.00289
Residence Adjusted Employment	Individuals	0.00042	0.00079	0.00103	0.00115	0.00260
Population	Individuals	0.00023	0.00042	0.00060	0.00076	0.00106
Labor Force	Individuals	0.00049	0.00072	0.00095	0.00113	0.00163
Gross Domestic Product	\$M (2015)	\$0.0005	\$0.0010	\$0.0013	\$0.0015	\$0.0029
Output	\$M (2015)	\$0.0006	\$0.0011	\$0.0014	\$0.0016	\$0.0028
Value Added	\$M (2015)	\$0.0005	\$0.0010	\$0.0013	\$0.0015	\$0.0029
Personal Income	\$M (2015)	\$0.0000	\$0.0003	\$0.0006	\$0.0007	\$0.0019
Disposable Personal Income	\$M (2015)	\$0.0000	\$0.0003	\$0.0005	\$0.0007	\$0.0018
Real Disposable Personal Income	\$M (2015)	\$0.0020	\$0.0021	\$0.0023	\$0.0023	\$0.0034
PCE-Price Index	2009=100 (Nation)	-0.0020	-0.0018	-0.0017	-0.0016	-0.0016

iv. Cost Effectiveness

Because this alternative would forgo the cost savings described above, it would be less cost effective than the proposed regulation.

v. Reason for Rejecting

This alternative was rejected because it would forgo the cost and time benefits described above for transit, bicycle and pedestrian projects. Those types of projects in particular are more likely to provide healthier, lower cost, more equitable transportation options. They are also a key strategy to reducing greenhouse gas emissions. As a result, this alternative would be less likely to achieve the purposes of Senate Bill 743, requiring the Guidelines update to “promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses.”



c. Fiscal Impacts to State and Local Governments Related to Transportation Study Costs Under Alternatives 1 and 2

Tables 10 and 11 show the quantifiable changes in costs for lead agencies in preparing VMT analysis under Alternatives 1 and 2, respectively.

**Table 10. Change in Transportation Study Costs to State and Local Governments Under Alternative 1, Years 2019-2023**

<b>Costs: Alternative 1</b>	<b>Est. Share</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
Transportation project env. docs./y (all public entity)		-\$93,629	-\$93,629	-\$93,629	-\$93,629	-\$93,629
Est. share/cost transportation project env. docs state-driven	25%	-\$23,407	-\$23,407	-\$23,407	-\$23,407	-\$23,407
Est. share/cost transportation project env. docs local-driven	75%	-\$70,222	-\$70,222	-\$70,222	-\$70,222	-\$70,222
Land use project env. docs./year (public entity portion)		-	-	-	-	-
Est. share/cost transportation project env. docs state-driven	10%	-\$145,199	-\$146,464	-\$147,719	-\$148,970	-\$150,212
Transportation project env. docs local-driven	90%	-	-	-	-	-
Total state portion compared to proposal		\$1,306,795	\$1,318,172	\$1,329,467	\$1,340,731	\$1,351,907
Total local gov share compared to proposal		\$168,607	\$169,871	\$171,126	\$172,377	\$173,619
Total state portion compared to existing		\$1,377,017	\$1,388,394	\$1,399,688	\$1,410,953	\$1,422,129
Total local government portion compared to existing		-\$136,604	-\$137,658	-\$138,704	-\$139,747	-\$140,781
		-	-	-	-	-
		\$1,135,810	\$1,145,291	\$1,154,703	\$1,164,090	\$1,173,404

**Table 11. Change in Transportation Study Cost to State and Local Governments Under Alternative 2, Years 2019-2023**

<b>Costs: Alternative 2</b>	<b>Est. Share</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
Transportation project env. docs./year (all public entity)		-\$156,048	-\$156,048	-\$156,048	-\$156,048	-\$156,048
Est. share/cost transportation project env. docs state-driven	25%	-\$39,012	-\$39,012	-\$39,012	-\$39,012	-\$39,012
Est. share/cost transportation project env. docs local-driven	75%	-\$117,036	-\$117,036	-\$117,036	-\$117,036	-\$117,036
Land use project env. docs./year (public entity portion)		\$0	\$0	\$0	\$0	\$0
Est. share/cost transportation project env. docs state-driven	10%	\$0	\$0	\$0	\$0	\$0
Transportation project env. docs local-driven	90%	\$0	\$0	\$0	\$0	\$0
Total state portion compared to proposed regulation		\$39,012	\$39,012	\$39,012	\$39,012	\$39,012
Total local gov share compared to proposed regulation		\$117,036	\$117,036	\$117,036	\$117,036	\$117,036
Total state portion compared to existing		-\$266,199	-\$268,517	-\$270,817	-\$273,112	-\$275,388
Total local government portion compared to existing		\$2,395,791	\$2,416,649	\$2,437,355	\$2,458,007	\$2,478,496

## **7. Fiscal Impacts**

Currently, local governments fund transportation studies for land use projects (e.g., public buildings) and transportation infrastructure projects. Under the proposed regulation, local governments would continue to do so, but at a cost savings reflecting the reduced expense of VMT analysis.

Generally, public-funded projects represent a small proportion of land use projects; meanwhile, transportation projects are less numerous than land use projects and thus represent a small proportion of total projects. This SRIA assumes the following estimates were made: 10 percent of land use projects were estimated to be undertaken by public entities; of those projects, 10 percent were estimated to be state-driven, while the other 90 percent were estimated to be local entity-driven. This SRIA further assumes that all transportation projects would be undertaken by public entities; 25 percent would be state-driven projects, and the remaining 75 percent would be locally driven. These estimates were used to assess cost savings that state and local governments would experience from VMT analysis. Table 12 shows the estimated cost savings that state and local governments would experience in preparing VMT studies for government-led projects.

**Table 12. Changes in Transportation Study Costs to State and Local Governments Under the Proposed Regulation, Years 2019-2023**

<b>Changes in state-local split of public entity costs</b>	<b>Est. Share</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
Transportation project env. docs./year (all public entity)		-\$156,048	\$156,048	\$156,048	\$156,048	\$156,048
Est. share/cost transportation project env. docs state-driven	25%	-\$39,012	-\$39,012	\$39,012	\$39,012	-\$39,012
Est. share/cost transportation project env. docs local-driven	75%	-\$117,036	\$117,036	\$117,036	\$117,036	\$117,036
Land use project env. docs./year (public entity portion)		-\$2,661,990	\$2,685,165	\$2,708,173	\$2,731,118	\$2,753,884
Est. share/cost transportation project env. docs state-driven	10%	-\$266,199	\$268,517	\$270,817	\$273,112	\$275,388
Est. share/cost transportation project env. docs local-driven	90%	-\$2,395,791	\$2,416,649	\$2,437,355	\$2,458,007	\$2,478,496
<b>Total state portion</b>		<b>-\$305,211</b>	<b>\$307,529</b>	<b>\$309,829</b>	<b>\$312,124</b>	<b>\$314,400</b>
<b>Total local government portion</b>		<b>-\$2,512,827</b>	<b>\$2,533,685</b>	<b>\$2,554,392</b>	<b>\$2,575,043</b>	<b>\$2,595,532</b>

a. Local Government

Local government would save an estimated aggregate \$2.5 million per year across the state under the proposed regulation. Those savings would result from savings on transportation analysis of land use projects of an estimated \$2.4 million per year, and a savings on transportation analysis of transportation projects of an estimated \$0.12 million per year.

b. State Government

State government would save an estimated \$0.3 million per year under the proposed regulation. Those savings would result from savings on transportation analysis of land use projects of an estimated \$0.27 million per year, and a savings on transportation analysis of transportation projects of an estimated \$0.04 million per year.

c. Office of Planning and Research

OPR maintains and periodically updates the CEQA Guidelines, and also creates technical advisories for their implementation. None of the changes to the CEQA Guidelines would measurably alter any processes at OPR or require additional staffing and thus the update to the CEQA Guidelines, once adopted, is revenue neutral for OPR. Because OPR already provides planning assistance to state and local agencies, implementation of the proposed changes to the CEQA Guidelines would be folded into the normal functions of OPR and is not expected to create a measurable fiscal impact on it.

d. Other State Agencies

Savings in transportation analysis on land use projects described above would accrue to state agencies in proportion to their undertaking of land use projects requiring CEQA transportation analyses. Savings in transportation analysis on transportation projects would generally accrue to Caltrans.

## **8. Qualitative Discussion of the Other CEQA Guidelines Changes**

As discussed above, the SRIA must analyze reasonably foreseeable benefit and costs that flow from the proposed regulation. The proposed changes regarding the analysis of transportation impacts are foreseeable and quantifiable, and are analyzed in depth in this analysis. Other proposed changes to the CEQA Guidelines that are unrelated to Senate Bill 743, however, are less capable of quantitative analysis and so are discussed qualitatively below.

Quantification of the economic impact of many changes to the CEQA Guidelines is not possible for several reasons. First, though CEQA requires agency decisions to be informed, it leaves lead agencies wide discretion regarding how to study and mitigate impacts. (See, e.g., *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 371-373.)

Second, many variables will affect what studies are required, and to what depth, for any particular project. Such factors include, among others, the scope and type of project, the project's location, the presence of specific resources and sensitive receptors, the degree of community engagement, the number and type of other agencies that also have a secondary role in the project, etc. (CEQA Guidelines, § 15064(b) ("The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.").)

Third, many of the proposed changes merely clarify existing law, consistent with case law interpreting CEQA as well as statutory changes. Because CEQA practice varies so broadly, some changes may not actually alter agency behavior but will provide certainty that their practices are consistent with CEQA.

The primary changes to the CEQA Guidelines proposed in this update, and their potential economic effects, are qualitatively described below:

- **Regulatory Standards and Thresholds of Significance** (Sections 15064 and 15064.7): Clarifies that agencies may use compliance with environmental standards to determine whether impacts may be significant.
  - *Expected cost or benefit*: This change should result in the benefit of greater certainty. It may also save lead agencies the cost and time required to develop case-by-case thresholds. It is not possible to quantify these benefits, however, because the selection of a threshold is within a lead agency's discretion, and varies across the state.
- **Responses to Comments** (Section 15088): Clarifies that lead agencies need only respond to comments that raise specific issues.
  - *Expected cost or benefit*: This change should reduce costs and time required to respond to late comments, and information that is not adequately presented to lead agencies. It should also result in the benefit of greater certainty regarding legal requirements.
- **Baseline** (Section 15125): Clarifies when project impacts may be analyzed against future conditions.
  - *Expected cost or benefit*: This change should result in the benefit of greater certainty regarding legal requirements.
- **Energy Impacts Analysis** (Section 15126.2 and Appendix G): Clarifies the scope of analysis required of a project's energy use. Clarification is proposed because practice varies and recent cases provide additional direction.
  - *Expected cost or benefit*: This change is expected to reduce costs resulting from litigation over the failure to analyze energy impacts. It should also reduce costs due to uncertainty about the scope of the required analysis.
- **Hazards** (Section 15126.2): Clarifies that analysis of bringing development to hazardous locations is required when the project risks exacerbating the hazard; deletes provisions found invalid in *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369.

- *Expected cost or benefit:* This change is expected to reduce costs resulting from litigation over the failure to analyze hazards that a project might risk exacerbating. It should also reduce costs due to uncertainty about the scope of the required analysis.
- **Deferred Mitigation Detail** (Section 15126.4): Clarifies when an agency may defer details of mitigation measures until after project approval.
  - *Expected cost or benefit:* This change should result in the benefit of greater certainty regarding legal requirements.
- **Water Supply Analysis** (Section 15155): Codifies the California Supreme Court’s holding in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, which requires analysis of a proposed project’s possible sources of water supply over the life of the project and the environmental impacts of supplying that water to the project.
  - *Expected cost or benefit:* This change is expected to reduce costs resulting from litigation over the failure to adequately analyze water supply impacts. It should also reduce costs due to uncertainty about the scope of the required analysis.
- **Program EIRs and Tiering** (Sections 15152 and 15168): Clarifies when a project may be found to be “within the scope” of a program EIR, and no further review is needed.
  - *Expected cost or benefit:* This change will result in a cost benefit in those instances that, using the criteria described in this proposed change, the lead agency concludes that a project was adequately described in a program EIR and that no further review is necessary. These changes are expected to result in greater reliance on program EIRs to approve later projects. Because the determination of whether a project is “within the scope” depends on the project’s circumstances, it is not possible to quantify cost savings.
- **Exemption for Transit Oriented Development** (Section 15182): Codifies Public Resources Code section 21155.4, a statutory exemption for projects that are in a specific plan and near transit.
  - *Expected cost or benefit:* Projects that qualify from the exemption will benefit from not having to prepare any environmental document. That benefit arises from the Public Resources Code, not this proposed change. Because this change codifies that exemption in the CEQA Guidelines, however, it may result in a benefit where lead agency staff or applicants are unaware of the exemption.
- **Remedies and Remand** (Section 15234): Clarifies what project activities may continue while the agency takes corrective action following litigation.



- *Expected cost or benefit:* This change is expected to provide clarity and certainty to lead agencies regarding requirements following a court remand. Because those requirements will vary from case to case, the cost benefits of such greater certainty are not quantifiable.
- **Existing Facilities Exemption** (Section 15301): Broadens the categorical exemption for operations and minor alterations of existing facilities to allow reuse of vacant buildings.
  - *Expected cost or benefit:* These changes will clarify that reuse of existing buildings is normally exempt from CEQA, and so would avoid the cost of preparing an environmental document. Currently, some practitioners interpret the categorical exemption to not apply to vacant buildings, and so this change would result in a benefit to the extent that an agency would rely on the exemption where it previously would not.
- **Initial Study Update** (Appendix G): Updates and consolidates sample initial study checklist questions, and adds questions on wildfire risk (Senate Bill 1241).
  - *Expected cost or benefit:* This change should result in time and cost savings due to a shorter checklist. It should also have the benefit of providing greater certainty. The initial study checklist is voluntary, however, and so it is not possible to quantify the benefit to agencies.
- **Miscellaneous Updates** (various sections): The proposed updates to the CEQA Guidelines include many miscellaneous technical updates and correction suggested by stakeholders.
  - *Expected cost or benefit:* This change should result in the benefit of greater certainty regarding legal requirements.

## Appendix A: Qualitative Discussion of VMT Analysis of Common Projects

This section describes the effect of proposed changes to the transportation analysis of common projects under the proposed regulation, including infill housing, outlying housing, local-serving retail, regional-serving retail, transit, and roadway capacity projects. Section 2 of the SRIA discusses in more detail the effect of the proposed change to the VMT metric on infill and greenfield residential projects.

CEQA requires a lead agency to analyze a proposed project's transportation impacts, among other potential impacts. That analysis has traditionally focused on a project's potential to increase congestion on roadways and intersections, as measured using metric known as LOS.

To analyze LOS, the first step is to estimate future traffic volumes at each intersection where an LOS threshold might be triggered. Next, the LOS study would analyze traffic movements in each intersection, given traffic volume and characteristics of the intersection and surrounding streets to determine delay. Finally, the delay can be converted from a number of seconds into a letter grade.

This SRIA focuses on the proposed regulatory amendment requiring public agencies to analyze the impacts of VMT in the transportation analysis under CEQA. Analyzing VMT impacts associated with residential and office land uses involves two steps. The first step is assessing trip length, which can be accomplished using travel survey data, data from a travel demand model, or other data. The second step is assessing the number of trips generated, for which a variety of resources exist. VMT is the product of the number of trips generated and trip length.

Analyzing VMT impacts from retail development and transportation projects requires a travel demand model assessment of aggregate change in VMT between scenarios with and without the project. As noted earlier, this analysis assumes that for highway capacity projects, lead agencies will select VMT as the appropriate measure of transportation impacts. Unlike traditional LOS analysis, VMT analysis does not require examining results at individual intersections or microsimulation modeling at those intersections. In comparison, LOS analysis is generally more expensive and time-consuming (approximately five to ten times the cost and analysis time compared to a VMT analysis).

### **1. Infill Housing Projects**

Under LOS analysis, a proposed infill housing project is more likely than non-infill housing to require mitigation measures to address significant traffic impacts. This is so because infill housing is typically proposed in congested areas where the addition of even a few vehicle trips can trigger LOS thresholds. This disparity increases the cost in both an absolute sense and

relative to development elsewhere, ultimately reducing the amount of infill housing constructed.

Residential and office projects that locate in areas with low-VMT, such as in infill areas, and that incorporate similar features (i.e., density, mix of uses, transit accessibility), will tend to exhibit similarly low VMT. Under the proposal, lead agencies can screen out residential and office projects which are proposed in low-VMT areas, and such projects may not require a detailed VMT analysis. Thus, most infill areas will experience time and cost savings from the streamlining of transportation analysis under CEQA. Streamlining will also help expand the supply of dwellings that are affordable when the full cost of housing and transportation together is considered.

## **2. Outlying Housing Projects**

Housing projects proposed in outlying area may have few LOS impacts under existing conditions. However, they are often planned with expansive roadway infrastructure to avoid future congestion. Such roadway infrastructure investments may initially be funded with development fees; however, maintenance costs would fall to the local government.

Analyzing a similar development using VMT is expected to be less expensive and quicker for the reasons described above. In general, outlying developments can be expected to produce higher levels of VMT than housing in infill locations. In some cases, lead agencies may determine that level of VMT to be significant and require mitigation. Whereas LOS mitigation tends to consist of expanded infrastructure, VMT mitigation could include lower cost actions such as including mixed-use components, facilitating transit connections, and expanding bicycle and pedestrian pathways.

## **3. Local-serving Retail Projects**

For local-serving retail, existing LOS analysis is both expensive and time consuming for the same reasons discussed as to infill and outlying housing (see above).

Under the proposal, VMT analysis would generally not be necessary for locally-serving retail. Such retail typically reduces VMT.

## **4. Regional-serving Retail Projects**

For regional-serving retail, existing LOS analysis is both expensive and time consuming for the same reasons discussed as to locally-serving retail (see above).

Proposed VMT analysis would examine whether the project leads to more vehicle travel overall, or less. A VMT analysis could involve a travel demand model run, but would not require assessing traffic volume at individual intersections or running microsimulation modeling to

determine delay. Mitigation measures could consist of project-specific measures, or be accomplished via measures elsewhere in the county or region.

## **5. Transit Projects**

Similar to various projects discussed above, existing LOS analysis is expensive and time consuming for transit projects. For buses in mixed flow lanes, LOS in some cases will improve bus flow along with car flow. But because LOS does not weigh the number of passengers per vehicle, LOS will tend to penalize proposed projects that provide any priority to transit vehicles over single-occupancy private automobiles. LOS will also penalize transit projects that operate in separate rights-of-way where provision of that right-of-way slows auto travel or removes auto capacity, such as dedicated bus lanes.<sup>16</sup>

Because a transit project reduces VMT by creating mode shift away from auto use, those kinds of transit project would not likely create a transportation impact under CEQA and need not undertake a VMT analysis, streamlining such projects. As investments in transit increase, this will be a more significant cost and time savings.

## **6. Roadway Capacity Projects**

Currently, LOS analysis of a project which expands roadway capacity requires a travel demand model run and microsimulation of roadway segments or intersections which may trigger LOS thresholds. Travel demand model outputs also underlie greenhouse gas, noise, and other environmental analyses. Generally, projects which increase roadway capacity may improve LOS on the portion of the roadway that is expanded. But where they relieve bottlenecks and release that traffic downstream, roadway capacity projects may lead to heavier traffic volumes elsewhere, which can negatively impact LOS. Additionally, roadway capacity projects may induce additional vehicle travel, and that vehicle travel can also impact LOS beyond the area of increased capacity.

The proposed amendment states that agencies have discretion to apply the appropriate measure of environmental impact consistent with CEQA and other applicable requirements for highway capacity projects. In discussing the effect of proposed changes to the transportation analysis of highway capacity projects, this analysis assumes that for highway capacity projects, lead agencies will select VMT as the appropriate measure of transportation impacts. Proposed VMT analysis of a project which expands roadway capacity could include a travel demand model run, but would not require assessing traffic volume at individual intersections or running microsimulation modeling to determine delay. Travel demand model outputs also underlie GHG, noise, and other environmental analyses. Mitigation could consist of project specific

measures, or be accomplished via measures elsewhere in the county or region. Similar to analysis under LOS, roadway capacity projects that induce additional vehicle travel may increase VMT to a significant degree. Such increases may be mitigated by pairing capacity increases with other improvements that would not otherwise occur that reduce VMT either as part of the project or through a regional mitigation program.

## Appendix B: Public Outreach

OPR and the Natural Resources Agency have engaged in an iterative process to develop the CEQA Guidelines proposal, and in doing so, have solicited and received extensive public comments. Since the release of the preliminary discussion draft in August 2014, OPR, the Resources Agency, or both have engaged with the following stakeholders, among others, in over 150 meetings, presentations, conferences, and other venues, as listed below.

Additionally, for approximately two years, OPR participated in regular standing meetings with the Caltrans Director on a monthly basis, and Caltrans staff on a bi-weekly basis. In 2016, OPR spent five full days in working group meetings with the metropolitan planning organizations in 2016. OPR has also developed a series of training materials, including a module for the Association of Environmental Professionals Spring Workshop series, and an article published in the California Bar's "Environmental Law News."

- SPUR (August 13, 2014)
- Council of Infill Builders (August 15, 2014)
- Numerous meetings with San Francisco planning and transportation; mayoral support
- Southern California Association of Governments Staff (August 27, 2014)
- Natural Resources Defense Council (August 27, 2014)
- Meea Kang (Infill Builders Federation) (August 28, 2014)
- Nelson Nygaard (September 2, 2014)
- Greenbelt Alliance (September 5, 2014)
- Bay Area Rapid Transit (September 8, 2014)
- Building Industry Association (September 8, 2014)
- UC Davis Extension (September 8, 2014) (to develop course on analyzing VMT)
- Sacramento Metro Chamber of Commerce (September 9, 2014)
- Bay Area Transportation Agencies (hosted by Alameda County Transportation Commission) (September 9, 2014)
- City of Los Angeles (September 10, 2014)

- City Center Association of Los Angeles (September 10, 2014)
- Kittelson Associates (September 10, 2014)
- Circulate San Diego, American Planning Association, Institute of Transportation Engineers, Caltrans (September 12, 2014)
- American Planning Association, California Chapter (September 14, 2014)
- Orange County Business Council (September 15, 2014)
- Valley Transportation Authority (September 18, 2014)
- Women's Transportation Seminar Sacramento (September 23, 2014)
- Association of Environmental Professionals, Central Valley Chapter (September 24, 2014)
- High Speed Rail Authority (September 25, 2014)
- OPR Hosted Public Webinar (September 25, 2014)
- SANDAG phone call with modelers (September 26, 2014)
- SANDAG in person with planners (September 29, 2014)
- Circulate San Diego (September 29, 2014)
- Association of Environmental Professionals, North Bay (October 2, 2014)
- Law Seminars International, Santa Monica (October 6, 2014)
- California State Association of Counties (October 7, 2014)
- University of Southern California (October 7, 2014)
- California Transportation Commission (October 8, 2014) (in Glendale)
- California Air Pollution Control Officers Association, Planning Managers (October 10, 2014)
- Infill Builders Federation (October 13, 2014)
- Institute of Transportation Engineers (October 15, 2014)
- California Bar Association, Environmental Law Section (October 17, 2014)
- Transform (October 17, 2014)

- National Association of City Transportation Officials Conference (October 23, 2014)
- Sacramento APA Speaker Series (October 24, 2014)
- Southern California Association of Governments, Stakeholder Convening (October 28, 2014)
- Center City Association of Los Angeles (October 29, 2014) (follow-up)
- Association of Environmental Professionals, South Bay (October 30, 2014)
- Association of Environmental Professionals, San Francisco (October 30, 2014)
- OPR Hosted Public Workshop (livecast) (November 3, 2014)
- Governor's Office of Economic Development (November 4, 2014)
- American Planning Association, Santa Rosa (November 6, 2014)
- California State Association of Counties (November 7, 2014)
- Port of San Diego (November 7, 2014)
- Metropolitan Transportation Commission (November 10, 2014)
- CalChamber and Building Industry Association (November 18, 2014)
- California Transportation Commission (December 3, 2014)
- Caltrans Interagency Modeling Forum (December 3, 2014)
- Continuing Legal Education CEQA Conference (December 5, 2014)
- Caltrans Freight (December 19, 2014)
- Caltrans Operations (December 30, 2014)
- Air Resources Board Freight (January 6, 2015)
- Transportation for America (January 8, 2015)
- U.S. Department of Housing and Urban Development (January 8, 2015)
- State of Virginia Governor's Office (January 9, 2015)
- U.S. EPA Office of Sustainable Communities (January 9, 2014)



- U.S. Department of Transportation (January 9, 2015)
- Transportation Research Board Presentation on published paper on rural VMT reduction (January 12, 2015)
- Transportation Research Board Presentation to Major Cities Committee (January 12, 2015)
- U.S. Department of Housing and Urban Development (January 13, 2015)
- Brookings Institute (January 14, 2015)
- Association of Bay Area Governments (January 14, 2015)
- Housing and Transportation Steering Committee (January 15, 2015)
- League of Cities, Environmental Quality Committee (January 16, 2015)
- Land Use Seminar (Los Angeles) (January 19, 2015)
- Association of Environmental Professionals (January 27, 2015)
- Association of Bay Area Governments (Public Workshop) (February 4, 2015)
- Port of Long Beach (February 17, 2015)
- Association of Environmental Professionals, Spring Workshop (February 23, 2015)
- Kittelson Associates (February 25, 2015)
- California County Planning Directors Association (February 26, 2015)
- New City of Oakland Transportation Director (March 17, 2015)
- UC Berkeley (March 17, 2015)
- Institute of Transportation Engineers, Western Division (March 18, 2015)
- Association of Environmental Professionals Annual Conference (March 23-24, 2015)
- San Joaquin Valley Air Pollution Control District (April 2, 2015)
- City of San Pablo (April 6, 2015)
- American Society of Civil Engineers and Institute of Transportation Engineers, Riverside County, San Bernardino County (April 16, 2015)

- Institute of Transportation Engineers (April 23, 2015)
- Full day UC Davis Extension Course (May 6, 2015)
- Port of Long Beach (May 21, 2015)
- San Francisco Planning Department (May 22, 2015)
- MPO-State Agency Workgroup (May 26, 2015)
- California Air Pollution Control Officers' Association (June 4, 2015)
- San Francisco County Transportation Authority (June 10, 2015)
- State Smart Transportation Initiative (June 12, 2015)
- Keynote Speech at University of Michigan NECTAR Conference (June 15, 2016)
- Highway 50 Corridor Transportation Management Authority (July 15, 2016)
- Institute of Transportation Engineers (July 21, 2016)
- Southern California Association of Governments Convening (July 28, 2016)
- Circulate San Diego Stakeholder Roundtable (July 29, 2016)
- San Francisco Bay Area Convening at Alameda County Transportation Commission (July 30, 2016)
- Southern California Association of Governments staff (August 30, 2016)
- San Francisco Municipal Transportation Agency (August 18, 2015)
- North Natomas Transportation Management Authority (August 21, 2015)
- Southern California Association of Governments staff (September 15, 2015)
- Los Angeles Department of Transportation (September 24, 2015)
- City of Truckee (November 3, 2015)
- California Air Pollution Control Officers' Association (November 4, 2015)
- Southern California Association of Governments staff (January 20, 2016)
- California legislative staff (January 26, 2016)

- SPUR (January 28, 2016)
- U.S. Department of Transportation (February 1, 2016)
- Two statewide webinar presentations and Q&A sessions, attended by over 500 participants (February 1 and 9, 2016)
- Southern California Association of Governments staff (February 9, 2016)
- UC Davis Extension full-day course (February 10, 2016)
- Bay Area Working Group, Alameda County Transportation Authority (February 12, 2016)
- Southern California Association of Governments stakeholder convening (February 18, 2016)
- Sacramento stakeholder convening (February 22, 2016)
- Port of Long Beach (February 22, 2016)
- Sacramento Area Councils of Government staff (February 24, 2016)
- Shasta Regional Transportation Agency (February 29, 2016)
- California Legislative staff (March 1, 2016)
- Sacramento Area Councils of Government staff (March 3, 2016)
- Stanislaus County Planning Directors Meeting (March 4, 2016)
- Southern California Association of Governments staff (March 14, 2016)
- Sacramento Area Councils of Government staff (March 14, 2016)
- Bay Area Air Quality Management District (March 17, 2016)
- Big Cities DOTs (8 largest cities, ~25% state population) (March 18, 2016)
- ClimatePlan (March 29, 2016)
- Infill Builders (April 8, 2016)
- Southern California Association of Governments staff (April 8, 2016)
- Valley Industry and Commerce Association (April 13, 2016)
- Transportation For America Webinar (April 13, 2016)

- UC Davis ITS Seminar (April 15, 2016)
- MPO State Agency Working Group (April 27, 2016)
- AEP/APA/ITE/WTS/CSTF/Circulate San Diego (May 12, 2016)
- Southern California Association of Governments and Sacramento Area Councils of Government staff (May 24, 2016)
- Sacramento Area Councils of Government staff (July 22, 2016)
- ClimateResolve (July 27, 2016)
- Southern California Association of Governments staff (August 2, 2016)
- ClimateResolve (July 10, 2016)
- Institute of Transportation Engineers National Annual Meeting (August 15, 2016)
- San Francisco Municipal Transportation Agency (August 31, 2016)
- ClimatePlan (September 13, 2016)
- Portland State Symposium on transportation funding, national audience (September 21, 2016)
- Southern California Association of Governments staff (September 23, 2016)
- Railvolution Conference presentation (national audience) (October 11, 2016)
- Southern California Association of Governments stakeholder convening (November 14, 2016)
- Southern California Association of Governments staff (November 29, 2016)
- Southern California Association of Governments individual stakeholder follow-up (December 5, 2016)
- Southern California Association of Governments staff (November 7, 2016)
- Portland State, Big Four MPOs, San Joaquin Council of Governments, California Association of Councils of Government (January 6, 2017)
- Transportation Research Board (January 9, 2017)
- UC Davis Extension full day course (February 1, 2017)
- Erik Ruehr, Institute of Transportation Engineers (February 2, 2017)

- City of Sacramento (February 17, 2017)
- UC Davis CEQA Course (February 23, 2017)
- California State Association of Counties (March 2, 2017)
- Local Government Commission Yosemite Conference (March 18, 2017)
- Portland State, Big Four MPOs, San Joaquin Council of Governments, California Association of Councils of Government (April 4, 2017)
- Los Angeles NGOs, hosted by ClimateResolve (April 7, 2017)
- Congress for the New Urbanism Annual Conference (May 4, 2017)
- CAPCOA Planning Managers' Meeting (May 11, 2017)
- Clean Air Dialog (May 24, 2017)
- Sacramento Air Quality Management District (June 6, 2017)
- Bay Area Metro Planning Innovations (June 8, 2017)
- City of San Jose (July 14, 2017)
- Los Angeles Department of Transportation (July 14, 2017)
- ClimatePlan, Environmental Council of Sacramento, Transform (July 19, 2017)
- Association of Environmental Professionals, AEP Institute (August 4, 2017)
- City of Long Beach (September 7, 2017)
- Portland State University (September 12, 2017)
- Bay Area Metro (September 15, 2017)
- Sacramento Metropolitan Air Quality Management District (September 22, 2017)
- American Planning Association, California Chapter, Statewide Conference (September 25, 2017)  
(three separate panel presentations)
- City of San Jose (October 6, 2017)
- CAPCOA Planning Manager's Meeting (October 11, 2017)

- UCLA Lake Arrowhead Conference on Transportation and Environment (October 15, 2017)
- Caltrans, Legal Division (November 3, 2017)
- Rural Counties Task Force (November 17, 2017)
- VOLPE/Federal Highway Administration Webinar (November 30, 2017)

**Attachment 2:  
Bibliography of Materials Supporting the Proposed CEQA Guideline on Transportation Impacts**

## Bibliography of Materials Supporting the Proposed CEQA Guideline on Transportation Impacts

This bibliography identifies materials that support the proposed CEQA Guideline addressing transportation impacts, being added pursuant to Public Resources Code Section 21099. Materials supporting the remainder of the proposed CEQA Guidelines update are cited throughout the Initial Statement of Reasons.

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