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PUBLIC COMMENT ON "Title 14 NOTICE OF PROPOSED RULEMAKING Amendments to the State CEQA Guidelines, California Natural Resources Agency," January 26, 2018

I. THE PROPOSED GUIDELINES AMENDMENTS ARE NOT CONSISTENT WITH CEQA AND ARE NOT REASONABLY NECESSARY TO EFFECTUATE THE STATUTORY PURPOSES OF CEQA

According to the California Administrative Procedures Act ("APA"), "**[N]o regulation adopted is valid or effective unless consistent and not in conflict with the statute *and* reasonably necessary to effectuate the purpose of the statute."** (Cal. Gov. Code §11342.2 [emphasis added].) No proposed CEQA Guideline is valid without meeting both requirements.

The proposed Guidelines Amendments fail to comply with these basic requirements, since they are inconsistent with CEQA and other statutes and/or are not reasonably necessary to effectuate the purpose of CEQA

Many of the Proposed Amendments to the State CEQA Guidelines (14 Cal. Code Regs. §§15000 *et seq.* ["Guidelines"] released by the California Natural Resources Agency on January 26, 2018 in a voluminous "package," conflict with and undermine the purpose and intent of CEQA, case law interpreting CEQA's statutory and regulatory provisions, and existing regulations. Many of the proposed amendments conflict with and are not supported by any statutory provisions cited from CEQA or existing Guidelines, including Public Resources Code ["PRC"] §§ 21083, 21083.01, 21083.05, 21083.09, and 21099.

The proposed Guidelines Amendments far exceed the rulemaking authority contemplated as "regular updates" to the Guidelines in PRC §21083. Instead, the proposed "rulemaking" alters and revises statutory provisions without legislative authority and eviscerates the broad public goals and environmental protections that are the fundamental purpose of CEQA. For example, the proposed Guidelines amendments vastly expand

and contradict the language of PRC §21099, which only applies to "transportation impacts" of "projects within a transit priority area" to apply to *every proposed project in California*. (PRC §21099(b).) The same statutory provision only allows the Office of Planning and Resources ("OPR") to "recommend potential metrics" to establish criteria for determining transportation impacts that "may include but are not limited to…vehicle miles traveled," (PRC §21099(b)(1)), while the proposed Guidelines amendments instead *do* limit the entire analysis and criteria for determining "transportation impacts" to "vehicle miles traveled."

Other requirements also govern the validity of proposed regulations, including economic impacts. (See, *e.g.*, Cal. Gov. Code §§11346 *et seq.*) That requirement is not met by the rote boilerplate tacked onto each proposed amendment description in the January 26, 2018 Initial Statement of Reasons for Regulatory Actions ["Initial Statement of Reasons"], since quantified analysis supported by substantial evidence is required. The same is true for other conclusions of necessity, purposes, and alternatives in the Initial Statement of Reasons. For example, the Initial Statement of Reasons claims that the "necessity" of many proposed amendments is to clarify case law holdings. However, the only relevant definition of "clarity" is defined in the Administrative Procedures Act ("APA") as "written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them." (Cal. Gov. Code §11349(c).) Contrary to that definition, the convoluted proposed changes in Guidelines text are often inscrutable.

The January 26, 2018 Notice of Proposed Rulemaking admits that, instead of "simply complying with the Public Resources Code, the Natural Resources Agency identified several policy objectives in assembling this package of CEQA Guidelines Updates." (Notice, page 4.) However, the Natural Resources Agency has no legal authority to create regulatory amendments based on "policy objectives" solicited from and promulgated by unidentified "stakeholders." The Agency should identify those stakeholders and their interest in amending the Guidelines in ways that weaken and eviscerate the statutory mandates of CEQA. The only relevant "policy" objectives are those stated in the statute itself. (See PRC Division 13, Chapter 1. Policy, §§21000 *et seq.*) The real "stakeholders" are all the people of California whose environment is at stake.

The following are some examples of the proposed Amendments to specific Guidelines that do not meet the requirements of Gov. Code §§11342.2.

1. Proposed Amendment to §15004 "*Time of Preparation"*

Instead of conforming §15004 with case law, the proposed amendment is inconsistent with the case the law set forth by the California Supreme Court in *Save Tara v. City of West Hollywood ["Save Tara"]* (2008) 45 Cal.4th 116. In *Save Tara*, the Court voided a "preliminary" agency/developer agreement and held that CEQA *prohibited* the agency from entering into such a "preliminary agreement" with developers *prior to project approval* before environmental review is complete. (*Save Tara, supra,* 45 Cal.4th at pp.134-136.) The Supreme Court's holding stands for scrutinizing an agency's "preliminary" agreements *before they are made* to assure that they do not constitute a commitment to a project before project approval and environmental review. (*Id.*; see also, *e.g.*, *Laurel Heights Improvement Assn. v. Regents of University of California ["Laurel Heights I"]* (1988) 47 Cal.3d 376.) Contradicting *Save Tara*, the proposed §15004 amendment assumes the validity of an agency's "preliminary agreement," and declares that it "shall *not*, as a practical matter commit the agency to the project." (emphasis added.) Further, the proposed §15004 amendment is not necessary to effectuate CEQA's purpose, which is to protect the environment by identifying and mitigating a project's impacts before it is approved.

2. Proposed Amendment to §15051 "*Criteria for Identifying the Lead Agency*"

The proposed amendment changes the criteria for identifying a lead agency where two or more agencies are involved with a project by changing the language in Guidelines §15051(c) to make the agency that "will act first on the project in question" the lead agency, rather than the agency conducting environmental review of a project.

The proposed amendment contradicts existing Guidelines §15050(a), which defines the "lead agency" as the agency "responsible for preparing an EIR or negative declaration for the project." (Guidelines §15050(a).) Under existing Guidelines, agencies that "act" on the project are called "decisionmaking bod[ies] of each responsible agency," and each responsible agency "shall certify that its decisionmaking body reviewed and considered the information contained in the EIR or negative declaration on the project." (Guidelines

§15050(b).) Thus the proposed amendment contradicts the existing Guidelines definition, duties, function, and criteria for identifying the lead agency.

By making an agency that "will act first on the project" the lead agency, the proposed amendment muddies the review process and makes it more difficult for the public to receive notice and get information on a project, and to meaningfully participate in its environmental review, which is inconsistent with CEQA's informational purpose. The proposed amendment is not consistent with CEQA, and creates internal conflict within existing Guidelines.

3. Proposed Amendments to §15064. "*Determining the Significance of the Environmental Effects Caused by a Project"*

The proposed amendment adds a new section at §15064(b)(2) that provides an agency may use "thresholds of significance" *as amended* (in yet another proposed amendment of §15064.7), to "assist lead agencies in determining whether a project may cause a significant impacts." (emphasis added.) The Initial Statement of Reasons claims the amendment is "necessary to clarify that compliance with relevant standards may be a basis for determining that the project's impacts are less than significant." The Initial Statement of Reasons thus conflates "necessity" with an agenda to eliminate the requirement of substantial evidence from the impacts analysis.

Viewed together, the proposed amendments to §§15064 and 15064.7 invite a rote conclusion of ***no*** significant impact *without the required prerequisite of substantial evidence*. Since the proposed §15064.7 amendments eliminate the requirement of substantial evidence and instead allow an "ordinance, resolution, rule, regulation, order, plan or other plan" to become an "environmental standard as a threshold of significance," there is *no* requirement of substantial evidence for a threshold of significance in the proposed amendment to §15064.7. The proposed amendment at §15064(b)(2) improperly defers the agency's burden of providing substantial evidence on significant impacts until *after* the agency has already concluded *without substantial evidence* that a project will have no impacts: "Compliance with the threshold does not relieve a lead agency of the obligation to *consider* substantial evidence indicating that the project's environmental effects may still be significant." No guidance is provided on when that substantial evidence is "considered," even though that substantial evidence must go into the agency's determination of whether there is a fair argument that "there is substantial evidence in the record that the project may have a significant effect on the environment" requiring an EIR. (Existing Guidelines §15064(f).) Indeed, such evidence is reduced to an afterthought by the proposed amendment, since the agency would only "evaluate any substantial evidence supporting a fair argument that, despite compliance with the thresholds, the project's impacts are nevertheless significant" after already finding a project will have no impacts. ("Initial Statement of Reasons," p. 13.)

The proposed amendment conflicts with and is inconsistent with CEQA's requirements and purpose of identifying and mitigating significant impacts based on substantial evidence, and is unnecessary to effectuate CEQA.

4. Proposed New §15064.3 *"Determining the Significance of Transportation Impacts"*

The proposed new § 15064.3 is contrary to the fundamental mandates of CEQA to identify significant impacts on the environment and to mitigate those impacts. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.) The proposed amendments far exceed rulemaking authority under any statute or law, are inconsistent and conflict with CEQA, and are unnecessary to effectuate its purpose.

Further, any proposed amendments on analyzing transportation impacts require an analysis of economic impacts on businesses, including freight transport and loading, parking, and economic impacts on employers and employees who must commute to jobs in employment centers and hubs that are increasingly remote from affordable housing. The Initial Statement of Reasons here includes no such analysis, but only dubious conclusion that, "Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California." The proposed amendments of course adds substantive requirements and will of course have serious and significant direct, indirect, and cumulative impacts on businesses. Without an analysis of economic impacts, those proposed amendments are invalid. (Gov. Code

§§11346 *et seq.*; *e.g.*, *John R. Lawson Rock & Oil, Inc. v. State Air Resources Bd.* (2018) 20 Cal.App.5th 77, 114-116.)

Proposed New §15064.3(a) "*Purpose"*

Proposed new §15064.3(a) describes as its "purpose" the OPR's unsupported conclusion that "VMT" is the only way to analyze "transportation impacts," stating: "This section describes specific considerations for evaluating a project's transportation impacts. Generally, vehicle miles traveled is the most appropriate measure of transportation impacts. For the purposes of this section, 'vehicle miles traveled' refers to the amount and distance of automobile travel attributable to a project. Other relevant considerations may include the effects of the project on transit and non-motorized travel. Except as provided in subdivision (b)(2) below (regarding roadway capacity), a *project's effect on automobile delay does not constitute a significant environmental impact*." (Proposed Amendment §15064.3(a) [emphasis added].) That unsupported conclusion has nothing to do with the CEQA's purpose and is not supported by any authority, including PRC §21099. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

PRC section 21099 instead states that the OPR should prepare proposed Guidelines revisions for "determining the significance of transportation impacts of projects *within transit priority areas.*" (PRC §21099(1).) Section 21099 further provides: "In developing the criteria, the office shall recommend potential metrics to measure transportation impacts *that may include**, but are not limited to,** vehicle miles traveled, vehicle miles traveled per capita, automobile trip generation rates, or automobile trips generated.* The office may also establish criteria for models used to analyze transportation impacts to ensure the models are accurate, reliable, and consistent with the intent of this section." Finally, §21099 states: "(2) Upon certification of the guidelines by the Secretary of the Natural Resources Agency pursuant to this section, **automobile delay, as described *solely* by level of service or similar measures of vehicular capacity or traffic congestion**, shall not be considered a significant impact on the environment pursuant to this division, except in locations specifically identified in the guidelines, if any." (PRC §21099(b) [emphasis added].) The proposed amendment at §15064.3(a) misreads and contradicts PRC §21099 by dictating that automobile delay does not "constitute" a significant impact, regardless of how it is measured.

The proposed new amendment contradicts the authorizing statute by dictating that "VMT" is the only methodology for determining impacts, by completely eliminating automobile delay as a significant impact, and by eliminating level of service or similar measures of vehicular capacity or traffic congestion as usable methodologies for determining impacts in combination with other possible methodologies, as in PRC §21099. Section 21099(b) explicitly states that recommended new "metrics" to measure transportation impacts ***may*** include, but ***are not limited to"*** VMT. (emphasis added.)

Contrary to the proposed new amendment, Section 21099(b) explicitly DOES include automobile delay as a significant impact. (PRC §21099(b)(2).) That provision only states that automobile delay *as described solely by level of service or similar measures of vehicular capacity or traffic congestion"* shall not be a significant impact. (PRC §21099(b)(2) [emphasis added].) That does not mean that automobile delay is not a significant impact under CEQA, but only that such delay may not *solely* be measured by level of service or similar measures.

Here, VMT does *not* measure automobile delay at all, does not apply to public transportation projects and other projects that do not result in additional miles traveled, and does not measure the obvious greenhouse gas and other emissions caused by automobile delay. VMT does not comply with CEQA's requirement to begin with existing conditions (baseline) and then measure a project's impacts on those conditions. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2; existing Guidelines §§15065, 15125, 15126.2, 15126.4, 15130, etc.)

Nor does VMT measure cumulative transportation impacts as CEQA requires, since it isolates only individual development projects for generic, abstract data-driven and unproven impacts analysis.

The proposed guideline's conclusion that VMT is the only way to measure transportation impacts conflicts with CEQA's requirements to identify and mitigate significant impacts on the environment. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

Proposed New §15064.3(b)(1) "*Criteria for Analyzing Transportation Impacts" "Land Use Projects"*

Contrary to the law, the new §15064.3(b) contains no "criteria" for analyzing transportation impacts, and instead only dictates what should be "presumed" or "considered" to not have any impacts. Contrary to PRC §21099, §15064.3(b)(1) states that the *only* criterion for "analyzing" transportation impacts of "Land use projects" may be "Vehicle miles traveled exceeding an applicable threshold of significance." The statute states that VMT is only one of several possible ways to determine impacts, and that automobile delay must still be analyzed, which VMT does not do. Further, the proposed new amendment fails to provide criteria for analyzing cumulative impacts of "land use projects," meaning unregulated development that is the root of most transportation impacts.

The proposal is not supported by the authorities cited or any other, and is not necessary to effectuate the purpose of CEQA. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

Proposed New §15064.3(b)(2) "*Transportation Projects"*

The proposed §15064.3(b)(2) again dictates that VMT can be the *only* criterion for analyzing impacts, even though VMT does not measure impacts of transportation projects. This new amendment incredibly states that transportation projects that have no impact on *VMT*, *i.e., **ALL*** transportation projects, are *presumed to have no impacts on the environment under CEQA*. Thus, even where a project that eliminates traffic lanes and parking will obviously cause significant traffic delay and congestion, under this proposed amendment, it is presumed to have no "transportation" impacts. The proposed amendment contradicts the purpose and requirements of CEQA to identify and mitigate significant impacts on the environment.

Proposed §15064.3(b)(2), on "roadway capacity projects," gives "agencies" broad discretion to determine "the appropriate measure of transportation impacts." Why and how would any "agency" determine anything other than the presumption of *no* impacts with the circular finding *no* impacts dictated by this provision?

The proposal again improperly *omits* all methods (other than VMT) for determining impacts of transportation impacts, ignores the requirement to include automobile delay and degraded roadway capacity in the analysis, and fails to address cumulative impacts. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

Proposed New §15064.3(b)(3) "*Qualitative Analysis"*

The proposed §15064.3(b)(3) again provides *NO* way to analyze "transportation impacts" other than VMT, which does not measure transportation impacts at all, since it does not require a baseline (existing conditions), and does not measure a project's impacts on those existing conditions, violating CEQA's basic procedural requirements. (Guidelines §15125.) Nor does VMT measure or acknowledge the existence of cumulative or indirect impacts. (*e.g.*, Guidelines §§15064(h)(1), 15065(a)(3), 15130, 15300.2(b), 15355.)

Here, the proposed new §15064.3(b)(3) states that where "existing models or methods are not available to estimate" the VMT of a project, "a lead agency may analyze the project's vehicle miles traveled qualitatively. Such a qualitative analysis would evaluate factors such as the availability of transit, proximity to other destinations, etc. For many projects, a qualitative analysis of construction traffic may be appropriate." The proposed amendment proposes *no* standards and *no* substantial evidence for "qualitatively" measuring impacts.

The proposal again improperly omits all methods (other than VMT) for determining transportation impacts, and ignores the requirement to include automobile delay and degraded roadway capacity in the analysis, and fails to address cumulative impacts. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

Proposed New §15064(b)(4) "*Methodology"*

Contrary to PRC §21099, which states that VMT is only one of several methodologies for measuring significant impacts of a project on transportation, the proposed amendment §15064(b)(4) states that VMT is the only possible way to measure transportation impacts. As noted, VMT does not measure delay or traffic congestion due to a project or cumulative impacts. The proposed amendment states that a "lead agency" has broad discretion to "choose the most appropriate methodology to evaluate a project's vehicle miles traveled, including whether to express the change in absolute terms, per capita, per household or in any other measure," and that a "lead agency" need not support its measurement with substantial evidence, but may instead "use

models to estimate" VMT and later "*may revise* those estimates to reflect professional judgment based on substantial evidence."

The proposed amendment contradicts CEQA's requirements and is not supported by any authority.

Proposed New §15064(c) "*Applicability"*

Proposed §15064(c) adds a new provision that directly conflicts with §15007(b), and generally with the prospective applicability of any regulatory provision under the law. The proposed new §15064(c) states: "The provisions of this section shall apply prospectively as described in section 15007. *A lead agency may elect to be governed by the provisions of this section immediately*. Beginning on July 1, 2019, the provisions of this section shall apply statewide." (emphasis added.) By allowing a lead agency to "elect to be governed" by the proposed amendment "immediately," the proposed amendment negates both its own prospective application provision and the prospective application provision *already* in §15007(b), which states: **"***Amendments to the guidelines apply prospectively only."* (Guidelines §15007(b) [emphasis added]; see also, *e.g.*, *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 299-300, fn.6 [LOS standards remain in effect].)

No authority allows a lead agency to exempt itself from the prospective applicability of amendments to CEQA Guidelines that have *not yet been adopted or certified.*

5. Proposed Amendment to §15064.4 *"Determining the Significance of Impacts from Greenhouse Gas Emissions"*

The proposed amendment to §15064.4 is not included in the Initial Statement of Reasons. Lacking such a statement, it should not be included with the present package of Guidelines amendments and should be deferred for separate consideration and public input only after an initial statement of reasons for its adoption is published and publicly noticed. (*e.g.*, Gov. Code §11346.2.)

6. Proposed Amendment to §15064.7 "*Thresholds of Significance"*

The proposed Guidelines amendments would radically expand the lead agency's power to determine the significance of a project's impacts by using arbitrary, agency-created "thresholds of significance" with no standards for determining the validity of such "thresholds." The authorities cited do not support the proposed amendment, which conflicts with CEQA's basic policies, purpose and requirements to identify and mitigate a proposed project's significant impacts before approving the project, both to inform the public and decisionmakers and to allow the public participation in the CEQA process. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

The proposed amendment to §15064.7(b) conflicts with and effectively eliminates existing provisions requiring thresholds of significance to be supported by substantial evidence. Instead the proposed amendment would allow lead agencies to "use thresholds on a case-by-case basis as provided in Section 15064(b)(2)," meaning transportation projects would be *presumed* to "cause a less than significant transportation impact," and that presumption would become a "threshold of significance." (*Id.*)

The proposed amendments add a section 15064.7(d) that also conflicts with CEQA, allowing any public agency to adopt *or* use (*without* adopting) "an environmental standard" as a threshold of significance that may be found in any "ordinance, resolution, rule, regulation, order, plan, or other environmental requirement" without supporting that document's rhetoric or conclusory text with substantial evidence.

The proposed amendment(s) plainly conflict with CEQA and have no supporting authority. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

7. Proposed Amendment to §15087 *"Public Review of Draft EIR"*

The proposed amendment to §15087(c)(5) would change CEQA's requirement to disclose the address of the location where copies are publicly available of an EIR "and all documents referenced in the EIR." Instead, the proposed amendment states that disclosure must only be of "documents *incorporated by reference* in the EIR." (Proposed amendment to §15087(c)(5), emphasis added.) Thus, the proposed amendment *eliminates* the requirement to make publicly available for public review at a specified address "*all documents* referenced in the EIR" as presently required by §15087(c)(5) (emphasis added).

The proposed amendment to §15087 contradicts CEQA's fundamental legislative purpose to disclose information to the public so that the public can meaningfully participate in environmental review of a project. The proposed amendment is also contrary to PRC §21167.6(e), which requires comprehensive information to be available and included in the administrative record of the agency's proceedings on approving any project.

The proposed amendment to §15087 must be rejected, since it is contrary to CEQA, is unnecessary to implement its mandate, and is designed to prevent the public disclosure that CEQA requires.

8. Proposed Amendment to § 15088 ***"Evaluation of and Response to Comments"***

Contrary to CEQA, the proposed amendment to §15088(a) limits the agency's obligation to respond to public comment on a draft EIR, unless the lead agency determines that the comment raises "*significant* environmental issues." The existing regulation requires the lead agency to evaluate *all comments* on "environmental issues" on a draft EIR; but the proposed amendment eliminates the public's right to receive agency responses on *all* comments received on a draft EIR. That, again, is contrary to the public disclosure mandate of CEQA, and CEQA's imperative to provide the public the opportunity for meaningful input on the environmental review of a project. It is also contrary to the existing Guidelines, requiring "good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice." (Existing Guidelines §15088(c).) Instead, the amendment invites such conclusory, unsupported statements, or worse, no response at all, based on an agency's subjective notion of whether a comment raises "significant" issues.

The proposed amendment is contrary to CEQA and is unnecessary. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

9. Proposed Amendment to § 15124 "*Project Description"*

The proposed amendment to § 15124 changes that section from requiring a "clearly written statement of project objectives" that "should include the underlying purpose of the project" to add proselytizing on behalf of a project. Instead of an objective description as required by the existing Guidelines, the proposed amendment adds that the Project Description "*may discuss the project benefits."* The purpose of an EIR's Project Description is to inform the public and decisionmakers of the project's impacts on the existing conditions of the environment, not to avoid mitigating those impacts by promoting claimed "benefits" of a project and anticipating the need for a statement of overriding considerations.

The proposed amendment is contrary to CEQA's requirement of objective identification of a project's impacts to the public and decisionmakers, and it does not in any way contribute to implementing CEQA's requirements, but only creates another loophole to avoid them. Nothing in the statute or authorities supports this proposed amendment. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

10. Proposed Amendment to §15125 "*Environmental Setting"*

The proposed amendment to §15125 completely eviscerates CEQA's requirement to identify and mitigate a project's impacts by describing the physical environmental conditions in the vicinity of the project as they exist at the time the notice of preparation of an EIR is published or when preparation of the EIR begins. (Existing Guidelines §15125.) When combined with an accurate, stable and finite Project Description, this provision enables objective analysis of the project's impacts on the existing environment, an essential beginning to CEQA's analytical path that must precede project approval.

Instead of this clear, logical method of describing existing conditions, the amendment allows a lead agency to "define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational," and states "a lead agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record." (Proposed Amendments to §15125(a).)

The failure to accurately state existing conditions results in an inaccurate baseline for analyzing impacts in violation of CEQA. (*e.g., Poet, LLC. v. State Air Resources Bd. ["Poet II"]* (2017) 10 Cal.App.5th 764,797 [agency's failure to justify use of correct baseline is an abuse of discretion and invalidates the impacts analysis].) The required baseline for analyzing impacts must establish, with substantial evidence, the existing

conditions. The baseline of existing conditions is then compared with an accurate Project description to determine whether the Project will have significant impacts. (*Id.*)

The proposed amendment is not authorized by any statutory provision, including PRC §21099 and is contrary to CEQA's purpose and procedures for implementation. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

11. Proposed Amendment to §15126.2 "*Consideration and Discussion of Significant Environmental Impacts"*

The proposed amendment to §15126.2(b) allows the analysis of energy consumption impacts to be "included in related analyses of air quality, greenhouse gas emissions or utilities in the discretion of the lead agency." The impacts of a project's energy consumption requires independent analysis and mitigation, even if it is also included in analyses of air quality, greenhouse gas emissions or utilities.

12. Proposed Amendment to §15126.4 *"Consideration and Discussion of Mitigation Measures proposed to Minimize Significant Effects"*

The proposed amendment to §15126.4(a)(1)(B) contradicts CEQA's central purpose to mitigate the significant impacts of a project identified in an EIR by allowing an agency to defer mitigating those impacts. The proposed amendment allows an agency to *defer* "*specific details of a mitigation measure. . .* when it is impractical or infeasible to include those details in the project's environmental review." (emphasis added.) The proposed amendment allows an agency to simply list "the potential actions to be considered, analyzed and potentially incorporated in the mitigation measures," without saying *when* the public and decisionmakers will consider those "potential actions" and without requiring that those "potential actions" be enforceable and effective as required by CEQA before a project can be approved. (*e.g.*, PRC §§21002, 21002.1(b), 21081.)

The result, if adopted, means that ***no*** actual mitigation would be required for each significant impact identified in an EIR as required by CEQA's substantive mandate. (See, *e.g.*, *City of San Diego v. Board of Trustees of the California State University* (2015) 61 Cal.4th 945, 960 ["Mitigation is the rule"] and 962-963 [CEQA's mitigation requirement is a fundamental mandate]; *Mountain Lion Foundation v. Fish and Game Comm.* (1997) 16 Cal.4th 105, 104; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92 [mitigation may not be deferred].)

Further, the proposed amendment at §15126.4(a)(1)(B) allows that "compliance with a regulatory permit process may be identified as a future action" justifying deferring mitigation details "if compliance is mandatory and would result in implementation of measures that would be reasonably expected…to reduce the significant impact to the specified performance standards." That gobbledygook apparently allows an agency to defer identifying mitigation measures in an EIR or even avoid mitigating a project's impacts identified in an EIR by simply complying with "specified performance standards" of a "regulatory permit process" that may be irrelevant to environmental review of the project and may never have itself received environmental review.

Mitigating the impacts of a project is central to CEQA's purpose, and deferring mitigation as proposed in the amended §15126.4 (a)(1)(B) conflicts with CEQA's substantive mandate, is contrary to the law's fundamental purpose, and is unnecessary. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

13. Proposed Amendment to §15152 *"Tiering"*

The proposed amendment adding §15152(h) gives discretion to a lead agency to choose from "multiple methods" to "streamline the environmental review process," and excuses such methods from the requirements of §15152 "where other methods have more specific provisions." (Proposed new amendment §15152(h).) The proposed amendment lists as "other methods" what in the existing §15152(h) are "*types of EIRs* that may be used in a tiering situation." (Guidelines §15152(h) [emphasis added].)

Thus, where the existing §15152(h) indicates an initial EIR is required for tiering, the proposed amendment would apparently *not* require an initial EIR for the "methods" described at, *e.g.*, subsection (h)(5) "Multiple family residential development/residential and commercial or retail mixed-use development §15179.5," (6) "Redevelopment project Section 15180," (7) "Projects consistent with community plan, general plan, or zoning (section 15183)." The proposed amendment adds "Infill projects" to its list of "methods" to

"streamline the environmental review process." (Section 15183.3) However, instead of an EIR for those projects, the amended §15152(h) apparently allows the project itself to be a "method" to "streamline the environmental review process" with *no* EIR. A project is not a method of tiering.

The proposed Guideline does not clarify §15152, and appears to eliminate the existing provision of a required EIR for several types of projects, and therefore conflicts with existing statutory requirements.

14. Proposed Amendment to §15155 ***"Water Supply Analysis; City or County Consultation with Water Agencies"***

The proposed amendment changes the title and expands §15155, which presently is only about "City or County Consultation with Water Agencies."

The proposed amendment adds a new subsection "(f)" that conflicts with the California Supreme Court's holding in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova ["Vineyard"]* (2007) 40 Cal. 4th 412. In *Vineyard*, the Court made clear that environmental review cannot be deferred for long-term water supply. (*Id.* at pp. 439-443.) The proposed §15155(f) takes text of the *Vineyard* decision out of context to allow *uncertainty* in an EIR about the availability and adequacy of water supplies.

Vineyard holds that an initial EIR on a project must inform the public and decisionmakers, at minimum, with a quantitative analysis supported by explaining the long-term availability and likely sources of water, including competing demands, and an analysis of mitigation of impacts of supplying water in the long term (and the short term) before a project is approved. (*Vineyard, supra,* at pp. 439-443.)

Contrary to *Vineyard* and to CEQA, the proposed amendment §15155(f)(1) instead requires only "[s]ufficient information regarding the project's proposed water demand and proposed water supplies to permit the lead agency to evaluate the pros and cons of supplying the amount of water that the project will need." The analysis, however, is not about the pros and cons of supplying the needed amount of water, but about informing the public and decisionmakers of the actual availability of an adequate long-term water supply to meet the demand of a project, and the environmental impacts of meeting that demand, including impacts on other demands.

The proposed amendment at §15155(f)(3) implies that CEQA would be satisfied by an EIR that analyzed "circumstances affecting the likelihood of the water's availability" and "the degree of uncertainty involved." The amendment ignores the obvious factor in that analysis of unregulated growth due to overdevelopment, claiming only that "relevant factors may include but are not limited to drought, salt-water intrusion, regulatory or contractual curtailments, and other reasonably foreseeable demands on the water supply."

The proposed amendment at §15155(f)(4) misstates the *Vineyard* holding and excuses the lead agency from determining whether a water supply is available for a project. Alternatives to a project must already be included in an EIR. However, that does not make an EIR adequate that fails to determine the long-term availability of water to meet the demands of a project and mitigating the impacts of supplying that water.

The proposed amendments improperly weaken CEQA's EIR requirements to identify to the public and decisionmakers the long-term water sources for projects, including large development projects, before a project is approved, and the proposed mitigation of the impacts of supplying that water. Further, this proposed amendment is unnecessary to effectuate CEQA's purposes.

15. Proposed Amendment to §15168 ***"Program EIR"***

The proposed amendments to §15168 seeks to eliminate existing provisions requiring subsequent environmental review after a program EIR. The proposed amendment eliminates the following (bold) language in §15168(c)(2): "If the agency finds that pursuant to Section 15162, no **new effects could occur or no new mitigation measures would be required**, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required." (emphasis added.)

The proposed amendment changes that criteria for determining whether a new environmental document would be required to: "Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and

building intensity, geographic area analyzed for environmental impacts, and description of covered infrastructure, as presented in the project description or elsewhere in the program EIR." (Proposed §15168(c)(2).)

The proposed amendment thus changes the criteria for requiring subsequent environmental review from the *impacts and mitigation of subsequent parts of a project* to planning jargon that is irrelevant to whether the subsequent parts of the project will have significant impacts or require mitigation.

Claiming they are minor word changes, other proposed amendments improperly change the meaning of §15168. For example, the existing terms "Subsequent actions" "subsequent project," or "parts" of the project or program are changed to "later activities." (Proposed amendment to, *e.g.*, §15168(c)(3), (c)(5), (d).) Determining whether impacts of later site specific actions require subsequent environmental review is changed from whether they were "covered in" the program EIR to whether they were "within the scope of" the program EIR. (Proposed amendment to §15168(c)(4).)

The proposed amendment therefore contradicts CEQA's mandate and purpose to identify and mitigate impacts on the environment. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.) It is not "necessary" to "clarify" case law or to effectuate CEQA's statutory purpose, which it contradicts.

16. Proposed Amendment to §15182 ***"~~Residential~~ Projects Pursuant to a Specific Plan"***

The Initial Statement of Reasons claims that this amendment to §15182 comes from a document created by Governor Brown in 1978 that was adopted in a "much more limited" form as Gov. Code §65457, exempting from CEQA certain residential development projects that conformed with a specific plan. The Initial Statement of Reasons claims that Gov. Code §65487 does not apply where a subsequent project under PRC §21166 occurs "unless and until a supplemental environmental impact report for the specific plan is prepared and certified" under CEQA. (Gov. Code §65487(a).) However, a political agenda is not a valid reason to amend regulations to eliminate environmental review required by CEQA.

The Initial Statement of Reasons (p. 53) also claims that legislation only applies to residential projects and does not conform with new "exemptions" for other types of projects in PRC §21154.4. However, that new provision (legislated under SB743), also requires that any new "exemptions" under §21155.4 can only be invoked (along with other requirements) where the "project is undertaken to implement and is consistent with a specific plan *for which an environmental impact report has been certified*," and that subsequent review must be conducted "if any of the events specified in Section 21166 have occurred." Further, PRC §21155.4 does not require any Guidelines amendments and none are necessary. In any event, PRC §21155.4 does not authorize the proposed amendments to Guidelines §15182.

The proposed amendment improperly changes the title of §15182, eliminating its restriction to "**Residential** Projects Pursuant to a Specific Plan." The proposed amendment substantively expands §15182 to also apply to "mixed use projects" and "commercial" projects. (Proposed amendment §115182(a).) The proposed amendment does not specify whether the required prior EIR for a specific plan that exempts such a project was only for a residential project.

The proposed amendment to §15182 is unauthorized by any underlying legislation, is an attempt to substitute rulemaking for legislation, is contrary to CEQA, and is unnecessary to effectuate CEQA's purposes, which are to identify and mitigate the impacts of proposed projects.

17. Proposed Amendment to §15222 "*Preparation of Joint Documents"*

The proposed amendment allowing a lead agency to "enter into a Memorandum of Understanding with the federal agency to ensure that both federal and state requirements are met" is not authorized by CEQA or NEPA. Separate environmental documents are required to satisfy the different statutory and case law requirements of CEQA and NEPA.

18. Proposed *New* § 15234. ***"Remand."***

The proposed new § 15234 conflicts with statutory requirements at Public Resources Code section 21168.9 "Requirement of court order for noncompliance" and with established case law on mandamus and writ procedure, and infringes on the basic right to a remedy.

PRC §21168.9(a) requires:

"If a court finds, as a result of a trial, hearing, or remand *from an appellate court*, that any determination, finding, or decision of a public agency has been made without compliance with this division, the court shall *enter* ***an order*** that includes one or more of the following:

(1) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.

(2) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision, that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision into compliance with this division.

(3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division."

(emphasis added.) That statutory provision is clear, narrow, and does not allow regulation to expand its terms.

The proposed new Guidelines §15234 confuses the roles of a court of appeal and a trial court, and gives the trial court the power to issue a writ without first issuing an order or judgment directing the writ, which is contrary to the California Supreme Court's landmark decision in *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal. 3d 171, 181-182, which explicitly requires a court, including a trial court, to issue an order directing a writ before issuing that writ. Without that procedural provision, a petitioner who has achieved success in a court of appeal is without a remedy to appeal the court's action on remand. (*Id.*) Therefore, a court may not issue a peremptory writ of mandate without issuing an order or judgment directing such a writ. (*Id.*)

The proposed new § 15234 would also give an agency the power to proceed with a project or parts of it that a court finds "severable," or "will not prejudice the agency's compliance with CEQA as described in the court's peremptory writ of mandate" and "complied with CEQA." That is not consistent with PRC section 21168.9 or with CEQA. Section 21168.9(b) only limits the *order* referred to in Section 21168.9(a) to "the specific project activity or activities found to be in noncompliance only if a court finds that (1) the portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division." (emphasis added.) Shifting the determination of whether an agency can proceed with the project from the court to the agency is contrary to §21168.9.

Contrary to the proposed new language, PRC section 21168.9(b) does *not* allow a project to proceed under such findings, but only limits the *order* referred to in Section 21168.9(a) to addressing "the specific project activity or activities found to be in noncompliance" only if a court finds that all three requirements of subsection (b) are met. Further, and again contrary to the proposed new language, noncompliance with specific sections must already have been found *before* such limitations can be imposed. Such limitations cannot be imposed without all of the explicit findings in PRC section 21168.9(b)(1), (2), and (3).

None of the cited authorities or statutory provisions support the drastic changes proposed in the new section 15234, which eliminates the fundamental right of appeal after remand. The proposed amendment contradicts case law, constitutional provisions affecting the fundamental right of review, mandamus procedure, the right to a remedy under CEQA, is contrary to CEQA, and is unnecessary to effectuate the purposes of CEQA. (*e.g.*, PRC §§ 21000 *et seq.*, 21002, 21002.1, 21168.9; Gov. Code §11342.2.)

19. Proposed Amendment to §15301 *"Existing Facilities"*

The proposed amendment to §15301 illegally expands the categorical exemption to include *non*-existing "facilities" as "existing facilities." First, the amendment removes (bold text below) the existing substantive

language that defines the "existing facilities" categorical exemption as "the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, **involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination**…the key consideration is whether the project involves negligible or no expansion of **an existing** use." (Guidelines §15301 [emphasis added].) The proposed amendment deletes that language, gutting the substance of the existing facilities exemption, and replaces the former clause with language that negates the terms of the exemption to make "existing" include "existing or former."

The proposed amendment contradicts case law that prohibits the existing facilities categorical exemption where a project proposes a change of use. (*e.g.*, *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 967; *Save Our Carmel River v. Monterey Peninsula Water Mgmt. Dist.* (2006) 141 Cal.App.4th 677, 697.)

The proposed amendment then adds language that allows a proposed project to be an "existing facility," contradicting the meaning of the categorical exemption to include *future* proposed projects as "existing facilities." For example, the proposed amendment adds the contradictory language at §15301(c) (proposed addition in bold in following): "Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety, **and other alterations, such as the *addition* of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities, and bicycle lanes, pedestrian crossings, and street trees, and other similar improvements that do not create additional automobile lanes."**

The proposed amendments contradict and violate CEQA by expanding the language of the existing facilities exemption. Well-established case law holds that exemptions are construed narrowly and may not be expanded beyond their terms or CEQA's statutory purpose. (*e.g.*, *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 966; *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1192.)

The proposed amendments are also contrary to and undermine CEQA's requirements to establish existing conditions (§15125) and identify and mitigate a proposed project's impacts on those existing conditions. (See, *e.g.*, *County of Amador v. El Dorado County Water* Agency, supra, 76 Cal.App.4th at pp. 953-954; *Poet, LLC v. State Air Resources Board ["Poet II"]* (2017) 12 Cal.App.5th 52, 79-81.) The failure to accurately state existing conditions results in an inaccurate baseline for analyzing impacts in violation of CEQA. (*e.g., Poet, LLC. v. State Air Resources Bd. ["Poet II"]* (2017) 10 Cal.App.5th 764,797 [agency's failure to justify use of correct baseline is an abuse of discretion and invalidates the impacts analysis].) The required baseline for analyzing impacts must establish, with substantial evidence, the existing conditions. The baseline of existing conditions is then compared with an accurate Project description to determine whether the Project will have significant impacts. (*Id.*)

Further, the proposed amendments are contrary to recent case law that holds that CEQA does not allow a proposed project to be included in "existing conditions." (*e.g.*, *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2016) 2 Cal.App.5th 1067, 1073; *Parker-Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 783.)

The *addition* of "bicycle facilities," particularly where such "facilities" *remove* existing traffic lanes and street parking, is not an *"existing*" facility, but is a project affecting existing facilities. The existing facility is the existing street configuration and its *existing use*. Existing "bicycle facilities" are ones that already exist at the time of the lead agency's determination, not projects that are proposed for future implementation. The redefining of such projects and "other projects" as "improvements" is false and misleading. Such projects do not fit in the existing facilities categorical exemption, both because they are not existing, but are proposed, and because they may have significant impacts on actually existing conditions.

The expansion of the exemption to include "other similar improvements that do not create additional automobile lanes" is contrary to the narrow construction of categorical exemptions in established case law, and it improperly creates a new exception to its broadening of §15301 so that creating any new "facilities" would be categorically exempt under "existing" facilities, except creating "additional automobile lanes." Neither the expansion of the terms of §15301 nor creating an exception to that expansion is authorized under established case law.

The Initial Statement of Reasons falsely claims that the amendments to §15301 "adds no new substantive requirements." In fact the proposed amendments clearly broaden the existing facilities categorical exemption to include examples of physical changes to existing facilities, and therefore require economic impact analysis, including analyzing energy use and waste from increased traffic congestion from reducing traffic capacity of streets where traffic lanes and parking are eliminated to construct "bicycle facilities" and other projects.

The proposed amendment contradicts and violates CEQA's requirements and purpose to identify and mitigate the impacts of proposed projects, is not supported by any authority, and is contrary to and unnecessary to effectuate CEQA's statutory purpose. (Gov. Code §§11340 *et seq.*, 11342.2.)

20. Proposed Amendment to §15357 *"Discretionary Project"*

The proposed amendment creates an exception to the definition of a "discretionary project" and vastly expands the definition of "ministerial" projects for which no environmental review is required. The existing language contrasts a discretionary project requiring agency approval and CEQA review to "situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations." The amendment adds the undefined term, *"or other fixed standards*." Thus, the proposed amendment would enable agency approval with *no* CEQA review of any project where the agency claims conformity with "other fixed standards."

Claiming that this significant reduction of the requirement of CEQA review of proposed discretionary projects is a "clarification" is false and disingenuous, since the proposed amendment does not clarify the definition of "discretionary project," but instead hugely expands the definition of projects that are not subject to CEQA review.

The proposed amendment is contrary to CEQA's mandate and purpose to identify and mitigate a project's impacts before it is approved, and is unnecessary to effectuate CEQA's purpose. PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

21. Proposed Amendment to Appendix G *"Environmental Checklist Form"*

The proposed Amendment to Appendix G contradicts CEQA and case law, including, for example, the following (bold type indicates proposed amendment deletions).

Proposed III. (b) [AIR QUALITY]: Eliminates language that require identification of impacts that **"[v]iolate an air quality standard or contribute substantially to an existing or projected air quality violation**."

Proposed III. (b) [AIR QUALITY]: Changes language that requires the agency to identify cumulative impacts from increases in pollutants already in non-attainment, as shown bold in following: "Result in cumulatively considerable net increase of any criteria pollutant **for which the project region is in non-attainment** under an applicable federal or state ambient air quality standard **(including releasing emissions which exceed quantitative thresholds for ozone precursors)."**

Proposed III.(e) [AIR QUALITY]: Omits (bold): "**Create objectionable** odors affecting a substantial number of people."

Proposed VII (a) [GEOLOGY AND SOILS]: Eliminates checklist language protecting humans and changes it to a causation question: "**Exposes people or structures to** potential substantial adverse effects, including the risk of loss, injury, or death" from *e.g.,* earthquakes, landslides, and erosion.

Proposed IX(g) [HAZARDS AND HAZARDOUS MATERIALS]: Eliminates checklist language on wildfire impacts where **"wildfires are adjacent to urbanized areas or where residences are intermixed with wildlands."**

Proposed X(b) [HYDROLOGY AND WATER QUALITY]: Eliminates checklist language on factual criteria for determining whether a project would decrease or deplete groundwater supplies.

Proposed X(d-i) [HYDROLOGY AND WATER QUALITY]: Eliminates checklist language on determining impacts of stream alteration, degrading water quality, placing housing in 100-year flood areas, exposing people or structures to loss from flooding, including from failure of dams or levees, and inundation from tsunamis or mudflow.

Proposed XI(b) [LAND USE AND PLANNING]: Eliminates checklist language establishing impacts of a project's conflicts with a general plan, specific plan, local coastal program, or zoning ordinance.

Proposed XI(c) [LAND USE AND PLANNING]: Eliminates checklist language establishing impacts of a project's conflicts with a habitat conservation plan or natural community conservation plan.

Proposed XIII(a) and (b) [NOISE]: Eliminates checklist language establishing impact from "exposure of persons" to noise levels in excess of standards and "excessive vibration or groundbourne noise levels," and replaces those human impacts with "generation" of such noise levels.

Proposed XIII(c - f) [NOISE]: Eliminates several checklist items on impacts of noise.

Proposed XIV(a) [POPULATION AND HOUSING]: Allows projects unlimited leeway to induce population growth in an area so long as it is "planned," by adding the word "unplanned" to the checklist criteria for impacts of population growth.

Proposed XIV(b) and (c): [POPULATION AND HOUSING]: Eliminates checklist for impacts from a project's displacement of substantial numbers of people, and replaces that checklist item with impacts of displacing "substantial numbers of existing people or housing."

Proposed XVII. [TRAFFIC]: Changes the title of the checklist item to "TRANSPORTATION"

Proposed XVII (a) [TRAFFIC]: Eliminates language determining impacts from conflicts with an applicable plan, ordinance or policy **establishing measures of effectiveness for the performance of** the circulation system," including "intersections, streets, highways, and freeways, pedestrian and bicycle paths, and mass transit." Instead of the criteria of "establishing measures of effectiveness for the performance of the circulation system," the proposed amendment to the checklist only includes conflict with an applicable plan, ordinance or policy that "addresses the circulation system, including transit, roadways, bicycle lanes, and pedestrian paths," thus removing impacts on "intersections, streets, highways, and freeways."

Proposed XVII(b) [TRAFFIC]: Eliminates language determining impacts from "**conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures."** Instead, only ask "For a land use project, would the project conflict or be inconsistent with" the *amended* Guidelines §15064.3(b)(1).

Proposed XVII(c) [TRAFFIC]: Eliminates language determining impacts where projects "**result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks."** Instead of that provision, the proposed amendment changes the checklist XVII(c) to exempt all transportation projects from CEQA: "For a transportation project, would the project conflict with or be inconsistent with" the *amended* Guidelines §15064(b)(2)?

Proposed XVII(d) [TRAFFIC]: Qualifies determining an impact from "hazards due to a design feature…" by changing the language to "geometric hazards due to a design feature."

Proposed XIX(a) [UTILITIES AND SERVICE SYSTEMS]: Deletes question of whether project would **"exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board."**

Proposed XIX(b) [UTILITIES AND SERVICE SYSTEMS]: Changes the question at XIX(d) and eliminates language in checklist of whether water supplies to serve a proposed project are **"from existing entitlements and resources, or are new or expanded entitlements needed?"**

Proposed XIX(d): [UTILITIES AND SERVICE SYSTEMS]: Changes question at XIX(f) that asks if a project is **"covered by landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?"**

Proposed XIX(e): [UTILITIES AND SERVICE SYSTEMS]: Changes language in XIX(g).

Proposed XXI(a): [MANDATORY FINDINGS OF SIGNIFICANCE]: Changes language to add a new requirement (additions bold, underlined) that a project must "have the potential to **substantially** degrade the quality of the environment," and must "**substantially** reduce the number or restrict the range of a rare plant or animal."

These proposed amendments to Appendix G undermine and are inconsistent CEQA's requirements and purpose to identify and mitigate a project's impacts and are unnecessary to effectuate CEQA's purpose.

DATED: March 15, 2018

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PUBLIC COMMENT ON "Title 14 NOTICE OF PROPOSED RULEMAKING Amendments to the State CEQA Guidelines, California Natural Resources Agency," January 26, 2018

I. THE PROPOSED GUIDELINES AMENDMENTS ARE NOT CONSISTENT WITH CEQA AND ARE NOT REASONABLY NECESSARY TO EFFECTUATE THE STATUTORY PURPOSES OF CEQA

According to the California Administrative Procedures Act ("APA"), "**[N]o regulation adopted is valid or effective unless consistent and not in conflict with the statute *and* reasonably necessary to effectuate the purpose of the statute.**" (Cal. Gov. Code §11342.2 [emphasis added].) No proposed CEQA Guideline is valid without meeting both requirements.

The proposed Guidelines Amendments fail to comply with these basic requirements, since they are inconsistent with CEQA and other statutes and/or are not reasonably necessary to effectuate the purpose of CEQA

Many of the Proposed Amendments to the State CEQA Guidelines (14 Cal. Code Regs. §§15000 *et seq.* ["Guidelines"] released by the California Natural Resources Agency on January 26, 2018 in a voluminous "package," conflict with and undermine the purpose and intent of CEQA, case law interpreting CEQA's statutory and regulatory provisions, and existing regulations. Many of the proposed amendments conflict with and are not supported by any statutory provisions cited from CEQA or existing Guidelines, including Public Resources Code ["PRC"] §§ 21083, 21083.01, 21083.05, 21083.09, and 21099.

The proposed Guidelines Amendments far exceed the rulemaking authority contemplated as "regular updates" to the Guidelines in PRC §21083. Instead, the proposed "rulemaking" alters and revises statutory provisions without legislative authority and eviscerates the broad public goals and environmental protections that are the fundamental purpose of CEQA. For example, the proposed Guidelines amendments vastly expand and contradict the language of PRC §21099, which only applies to "transportation impacts" of "projects within a transit priority area" to apply to *every proposed project in California.* (PRC §21099(b).) The same statutory provision only

allows the Office of Planning and Resources ("OPR") to "recommend potential metrics" to establish criteria for determining transportation impacts that "may include but are not limited to...vehicle miles traveled," (PRC §21099(b)(1)), while the proposed Guidelines amendments instead *do* limit the entire analysis and criteria for determining "transportation impacts" to "vehicle miles traveled."

Other requirements also govern the validity of proposed regulations, including economic impacts. (See, *e.g.*, Cal. Gov. Code §§11346 *et seq.*) That requirement is not met by the rote boilerplate tacked onto each proposed amendment description in the January 26, 2018 Initial Statement of Reasons for Regulatory Actions ["Initial Statement of Reasons"], since quantified analysis supported by substantial evidence is required. The same is true for other conclusions of necessity, purposes, and alternatives in the Initial Statement of Reasons. For example, the Initial Statement of Reasons claims that the "necessity" of many proposed amendments is to clarify case law holdings. However, the only relevant definition of "clarity" is defined in the Administrative Procedures Act ("APA") as "written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them." (Cal. Gov. Code §11349(c).) Contrary to that definition, the convoluted proposed changes in Guidelines text are often inscrutable.

The January 26, 2018 Notice of Proposed Rulemaking admits that, instead of "simply complying with the Public Resources Code, the Natural Resources Agency identified several policy objectives in assembling this package of CEQA Guidelines Updates." (Notice, page 4.) However, the Natural Resources Agency has no legal authority to create regulatory amendments based on "policy objectives" solicited from and promulgated by unidentified "stakeholders." The Agency should identify those stakeholders and their interest in amending the Guidelines in ways that weaken and eviscerate the statutory mandates of CEQA. The only relevant "policy" objectives are those stated in the statute itself. (See PRC Division 13, Chapter 1. Policy, §§21000 *et seq.*) The real "stakeholders" are all the people of California whose environment is at stake.

The following are some examples of the proposed Amendments to specific Guidelines that do not meet the requirements of Gov. Code §§11342.2.

1. Proposed Amendment to §15004 "*Time of Preparation*"

Instead of conforming §15004 with case law, the proposed amendment is inconsistent with the case the law set forth by the California Supreme Court in *Save Tara v. City of West Hollywood ["Save Tara"]* (2008) 45 Cal.4th 116. In *Save Tara*, the Court voided a "preliminary" agency/developer agreement and held that CEQA *prohibited* the agency from entering into such a "preliminary agreement" with developers *prior to project approval* before environmental review is complete. (*Save Tara, supra,* 45 Cal.4th at pp.134-136.) The Supreme Court's holding stands for scrutinizing an agency's "preliminary" agreements *before they are made* to assure that they do not constitute a commitment to a project before project approval and environmental review. (*Id.*; see also, *e.g.*, *Laurel Heights Improvement Assn. v. Regents of University of California ["Laurel Heights I"]* (1988) 47 Cal.3d 376.) Contradicting *Save Tara*, the proposed §15004 amendment assumes the validity of an agency's "preliminary agreement," and declares that it "shall *not*, as a practical matter commit the agency to the project." (emphasis added.) Further, the proposed §15004 amendment is not necessary to effectuate CEQA's purpose, which is to protect the environment by identifying and mitigating a project's impacts before it is approved.

2. Proposed Amendment to §15051 "*Criteria for Identifying the Lead Agency*"

The proposed amendment changes the criteria for identifying a lead agency where two or more agencies are involved with a project by changing the language in Guidelines §15051(c) to make the agency that "will act first on the project in question" the lead agency, rather than the agency conducting environmental review of a project.

The proposed amendment contradicts existing Guidelines §15050(a), which defines the "lead agency" as the agency "responsible for preparing an EIR or negative declaration for the project." (Guidelines §15050(a).) Under existing Guidelines, agencies that "act" on the project are called "decisionmaking bod[ies] of each responsible agency," and each responsible agency "shall certify that its decisionmaking body reviewed and considered the information contained in the EIR or negative declaration on the project." (Guidelines §15050(b).) Thus the proposed amendment contradicts the existing Guidelines definition, duties, function, and criteria for identifying the lead agency.

By making an agency that "will act first on the project" the lead agency, the proposed amendment muddies the review process and makes it more difficult for the public to receive notice and get information on a project, and to meaningfully participate in its environmental review, which is inconsistent with CEQA's informational purpose. The proposed amendment is not consistent with CEQA, and creates internal conflict within existing Guidelines.

3. Proposed Amendments to §15064. "*Determining the Significance of the Environmental Effects Caused by a Project*"

The proposed amendment adds a new section at §15064(b)(2) that provides an agency may use "thresholds of significance" *as amended* (in yet another proposed amendment of §15064.7), to "assist lead agencies in determining whether a project may cause a significant impacts." (emphasis added.) The Initial Statement of Reasons claims the amendment is "necessary to clarify that compliance with relevant standards may be a basis for determining that the project's impacts are less than significant." The Initial Statement of Reasons thus conflates "necessity" with an agenda to eliminate the requirement of substantial evidence from the impacts analysis.

Viewed together, the proposed amendments to §§15064 and 15064.7 invite a rote conclusion of ***no*** significant impact *without the required prerequisite of substantial evidence.* Since the proposed §15064.7 amendments eliminate the requirement of substantial evidence and instead allow an "ordinance, resolution, rule, regulation, order, plan or other plan" to become an "environmental standard as a threshold of significance," there is *no* requirement of substantial evidence for a threshold of significance in the proposed amendment to §15064.7. The proposed amendment at §15064(b)(2) improperly defers the agency's burden of providing substantial evidence on significant impacts until *after* the agency has already concluded *without substantial evidence* that a project will have no impacts: "Compliance with the threshold does not relieve a lead agency of the obligation to *consider* substantial evidence indicating that the project's environmental effects may still be significant." No guidance is provided on when that substantial evidence is "considered," even though that substantial evidence must go into the agency's determination of whether there is a fair argument that "there is substantial evidence in the record that the project may have a significant effect on the environment" requiring an EIR. (Existing Guidelines §15064(f).) Indeed, such evidence is reduced to an afterthought by the proposed amendment, since the agency would only "evaluate any substantial evidence supporting a fair argument that, despite compliance with the thresholds, the project's impacts are nevertheless

significant" after already finding a project will have no impacts. ("Initial Statement of Reasons," p. 13.)

The proposed amendment conflicts with and is inconsistent with CEQA's requirements and purpose of identifying and mitigating significant impacts based on substantial evidence, and is unnecessary to effectuate CEQA.

4. Proposed New §15064.3 *"Determining the Significance of Transportation Impacts"*

The proposed new § 15064.3 is contrary to the fundamental mandates of CEQA to identify significant impacts on the environment and to mitigate those impacts. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.) The proposed amendments far exceed rulemaking authority under any statute or law, are inconsistent and conflict with CEQA, and are unnecessary to effectuate its purpose.

Further, any proposed amendments on analyzing transportation impacts require an analysis of economic impacts on businesses, including freight transport and loading, parking, and economic impacts on employers and employees who must commute to jobs in employment centers and hubs that are increasingly remote from affordable housing. The Initial Statement of Reasons here includes no such analysis, but only dubious conclusion that, "Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California." The proposed amendments of course adds substantive requirements and will of course have serious and significant direct, indirect, and cumulative impacts on businesses. Without an analysis of economic impacts, those proposed amendments are invalid. (Gov. Code §§11346 *et seq.*; *e.g.*, *John R. Lawson Rock & Oil, Inc. v. State Air Resources Bd.* (2018) 20 Cal.App.5th 77, 114-116.)

Proposed New §15064.3(a) *"Purpose"*

Proposed new §15064.3(a) describes as its "purpose" the OPR's unsupported conclusion that "VMT" is the only way to analyze "transportation impacts," stating: "This section describes specific considerations for evaluating a project's transportation impacts. Generally, vehicle miles traveled is the most appropriate measure of transportation impacts. For the purposes of this section, 'vehicle miles traveled' refers to the amount and distance of automobile travel attributable to a project. Other relevant considerations may include the effects of the project on transit and non-motorized travel. Except as provided in subdivision (b)(2) below (regarding roadway capacity), a *project's effect on automobile delay does not constitute a significant environmental impact.*" (Proposed Amendment §15064.3(a) [emphasis added].) That unsupported conclusion has nothing to do with the CEQA's purpose and is not supported by any authority, including PRC §21099. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

PRC section 21099 instead states that the OPR should prepare proposed Guidelines revisions for "determining the significance of transportation impacts of projects *within transit priority areas.*" (PRC §21099(1).) Section 21099 further provides: "In developing the criteria, the office shall recommend potential metrics to measure transportation impacts *that may include, **but are not limited to,** vehicle miles traveled, vehicle miles traveled per capita, automobile trip generation rates, or automobile trips generated.* The office may also establish criteria for models used to analyze transportation impacts to ensure the models are accurate, reliable, and consistent with the intent of this section." Finally, §21099 states: "(2) Upon certification of the guidelines by the Secretary of the Natural Resources Agency pursuant to this section, **automobile delay, as described *solely* by level of service or similar measures of vehicular capacity or traffic congestion**, shall not be considered a significant impact on the environment

pursuant to this division, except in locations specifically identified in the guidelines, if any." (PRC §21099(b) [emphasis added].) The proposed amendment at §15064.3(a) misreads and contradicts PRC §21099 by dictating that automobile delay does not "constitute" a significant impact, regardless of how it is measured.

The proposed new amendment contradicts the authorizing statute by dictating that "VMT" is the only methodology for determining impacts, by completely eliminating automobile delay as a significant impact, and by eliminating level of service or similar measures of vehicular capacity or traffic congestion as usable methodologies for determining impacts in combination with other possible methodologies, as in PRC §21099. Section 21099(b) explicitly states that recommended new "metrics" to measure transportation impacts ***may*** include, but ***are not limited to***" VMT. (emphasis added.)

Contrary to the proposed new amendment, Section 21099(b) explicitly DOES include automobile delay as a significant impact. (PRC §21099(b)(2).) That provision only states that automobile delay *as described solely by level of service or similar measures of vehicular capacity or traffic congestion"* shall not be a significant impact. (PRC §21099(b)(2) [emphasis added].) That does not mean that automobile delay is not a significant impact under CEQA, but only that such delay may not *solely* be measured by level of service or similar measures.

Here, VMT does *not* measure automobile delay at all, does not apply to public transportation projects and other projects that do not result in additional miles traveled, and does not measure the obvious greenhouse gas and other emissions caused by automobile delay. VMT does not comply with CEQA's requirement to begin with existing conditions (baseline) and then measure a project's impacts on those conditions. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2; existing Guidelines §§15065, 15125, 15126.2, 15126.4, 15130, etc.)

Nor does VMT measure cumulative transportation impacts as CEQA requires, since it isolates only individual development projects for generic, abstract data-driven and unproven impacts analysis.

The proposed guideline's conclusion that VMT is the only way to measure transportation impacts conflicts with CEQA's requirements to identify and mitigate significant impacts on the environment. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

Proposed New §15064.3(b)(1) *"Criteria for Analyzing Transportation Impacts" "Land Use Projects"*

Contrary to the law, the new §15064.3(b) contains no "criteria" for analyzing transportation impacts, and instead only dictates what should be "presumed" or "considered" to not have any impacts. Contrary to PRC §21099, §15064.3(b)(1) states that the *only* criterion for "analyzing" transportation impacts of "Land use projects" may be "Vehicle miles traveled exceeding an applicable threshold of significance." The statute states that VMT is only one of several possible ways to determine impacts, and that automobile delay must still be analyzed, which VMT does not do. Further, the proposed new amendment fails to provide criteria for analyzing cumulative impacts of "land use projects," meaning unregulated development that is the root of most transportation impacts.

The proposal is not supported by the authorities cited or any other, and is not necessary to effectuate the purpose of CEQA. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

Proposed New §15064.3(b)(2) *"Transportation Projects"*

The proposed §15064.3(b)(2) again dictates that VMT can be the *only* criterion for analyzing impacts, even though VMT does not measure impacts of transportation projects. This new amendment incredibly states that transportation projects that have no impact on *VMT, i.e.,*

ALL transportation projects, are *presumed to have no impacts on the environment under CEQA.* Thus, even where a project that eliminates traffic lanes and parking will obviously cause significant traffic delay and congestion, under this proposed amendment, it is presumed to have no "transportation" impacts. The proposed amendment contradicts the purpose and requirements of CEQA to identify and mitigate significant impacts on the environment.

Proposed §15064.3(b)(2), on "roadway capacity projects," gives "agencies" broad discretion to determine "the appropriate measure of transportation impacts." Why and how would any "agency" determine anything other than the presumption of *no* impacts with the circular finding *no* impacts dictated by this provision?

The proposal again improperly *omits* all methods (other than VMT) for determining impacts of transportation impacts, ignores the requirement to include automobile delay and degraded roadway capacity in the analysis, and fails to address cumulative impacts. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

Proposed New §15064.3(b)(3) "*Qualitative Analysis*"

The proposed §15064.3(b)(3) again provides *NO* way to analyze "transportation impacts" other than VMT, which does not measure transportation impacts at all, since it does not require a baseline (existing conditions), and does not measure a project's impacts on those existing conditions, violating CEQA's basic procedural requirements. (Guidelines §15125.) Nor does VMT measure or acknowledge the existence of cumulative or indirect impacts. (*e.g.*, Guidelines §§15064(h)(1), 15065(a)(3), 15130, 15300.2(b), 15355.)

Here, the proposed new §15064.3(b)(3) states that where "existing models or methods are not available to estimate" the VMT of a project, "a lead agency may analyze the project's vehicle miles traveled qualitatively. Such a qualitative analysis would evaluate factors such as the availability of transit, proximity to other destinations, etc. For many projects, a qualitative analysis of construction traffic may be appropriate." The proposed amendment proposes *no* standards and *no* substantial evidence for "qualitatively" measuring impacts.

The proposal again improperly omits all methods (other than VMT) for determining transportation impacts, and ignores the requirement to include automobile delay and degraded roadway capacity in the analysis, and fails to address cumulative impacts. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

Proposed New §15064(b)(4) "*Methodology*"

Contrary to PRC §21099, which states that VMT is only one of several methodologies for measuring significant impacts of a project on transportation, the proposed amendment §15064(b)(4) states that VMT is the only possible way to measure transportation impacts. As noted, VMT does not measure delay or traffic congestion due to a project or cumulative impacts. The proposed amendment states that a "lead agency" has broad discretion to "choose the most appropriate methodology to evaluate a project's vehicle miles traveled, including whether to express the change in absolute terms, per capita, per household or in any other measure," and that a "lead agency" need not support its measurement with substantial evidence, but may instead "use models to estimate" VMT and later "*may revise* those estimates to reflect professional judgment based on substantial evidence."

The proposed amendment contradicts CEQA's requirements and is not supported by any authority.

Proposed New §15064(c) "*Applicability*"

Proposed §15064(c) adds a new provision that directly conflicts with §15007(b), and generally with the prospective applicability of any regulatory provision under the law. The

proposed new §15064(c) states: "The provisions of this section shall apply prospectively as described in section 15007. *A lead agency may elect to be governed by the provisions of this section immediately.* Beginning on July 1, 2019, the provisions of this section shall apply statewide." (emphasis added.) By allowing a lead agency to "elect to be governed" by the proposed amendment "immediately," the proposed amendment negates both its own prospective application provision and the prospective application provision *already* in §15007(b), which states: "*Amendments to the guidelines apply prospectively only.*" (Guidelines §15007(b) [emphasis added]; see also, *e.g.*, *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 299-300, fn.6 [LOS standards remain in effect].)

No authority allows a lead agency to exempt itself from the prospective applicability of amendments to CEQA Guidelines that have *not yet been adopted or certified.*

5. Proposed Amendment to §15064.4 *"Determining the Significance of Impacts from Greenhouse Gas Emissions"*

The proposed amendment to §15064.4 is not included in the Initial Statement of Reasons. Lacking such a statement, it should not be included with the present package of Guidelines amendments and should be deferred for separate consideration and public input only after an initial statement of reasons for its adoption is published and publicly noticed. (*e.g.*, Gov. Code §11346.2.)

6. Proposed Amendment to §15064.7 "*Thresholds of Significance*"

The proposed Guidelines amendments would radically expand the lead agency's power to determine the significance of a project's impacts by using arbitrary, agency-created "thresholds of significance" with no standards for determining the validity of such "thresholds." The authorities cited do not support the proposed amendment, which conflicts with CEQA's basic policies, purpose and requirements to identify and mitigate a proposed project's significant impacts before approving the project, both to inform the public and decisionmakers and to allow the public participation in the CEQA process. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

The proposed amendment to §15064.7(b) conflicts with and effectively eliminates existing provisions requiring thresholds of significance to be supported by substantial evidence. Instead the proposed amendment would allow lead agencies to "use thresholds on a case-by-case basis as provided in Section 15064(b)(2)," meaning transportation projects would be *presumed* to "cause a less than significant transportation impact," and that presumption would become a "threshold of significance." (*Id.*)

The proposed amendments add a section 15064.7(d) that also conflicts with CEQA, allowing any public agency to adopt *or* use (*without* adopting) "an environmental standard" as a threshold of significance that may be found in any "ordinance, resolution, rule, regulation, order, plan, or other environmental requirement" without supporting that document's rhetoric or conclusory text with substantial evidence.

The proposed amendment(s) plainly conflict with CEQA and have no supporting authority. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

7. Proposed Amendment to §15087 *"Public Review of Draft EIR"*

The proposed amendment to §15087(c)(5) would change CEQA's requirement to disclose the address of the location where copies are publicly available of an EIR "and all documents

referenced in the EIR." Instead, the proposed amendment states that disclosure must only be of "documents *incorporated by reference* in the EIR." (Proposed amendment to §15087(c)(5), emphasis added.) Thus, the proposed amendment *eliminates* the requirement to make publicly available for public review at a specified address "*all documents* referenced in the EIR" as presently required by §15087(c)(5) (emphasis added).

The proposed amendment to §15087 contradicts CEQA's fundamental legislative purpose to disclose information to the public so that the public can meaningfully participate in environmental review of a project. The proposed amendment is also contrary to PRC §21167.6(e), which requires comprehensive information to be available and included in the administrative record of the agency's proceedings on approving any project.

The proposed amendment to §15087 must be rejected, since it is contrary to CEQA, is unnecessary to implement its mandate, and is designed to prevent the public disclosure that CEQA requires.

8. Proposed Amendment to § 15088 *"Evaluation of and Response to Comments"*

Contrary to CEQA, the proposed amendment to §15088(a) limits the agency's obligation to respond to public comment on a draft EIR, unless the lead agency determines that the comment raises "*significant* environmental issues." The existing regulation requires the lead agency to evaluate *all comments* on "environmental issues" on a draft EIR; but the proposed amendment eliminates the public's right to receive agency responses on *all* comments received on a draft EIR. That, again, is contrary to the public disclosure mandate of CEQA, and CEQA's imperative to provide the public the opportunity for meaningful input on the environmental review of a project. It is also contrary to the existing Guidelines, requiring "good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice." (Existing Guidelines §15088(c).) Instead, the amendment invites such conclusory, unsupported statements, or worse, no response at all, based on an agency's subjective notion of whether a comment raises "significant" issues.

The proposed amendment is contrary to CEQA and is unnecessary. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

9. Proposed Amendment to § 15124 *"Project Description"*

The proposed amendment to § 15124 changes that section from requiring a "clearly written statement of project objectives" that "should include the underlying purpose of the project" to add proselytizing on behalf of a project. Instead of an objective description as required by the existing Guidelines, the proposed amendment adds that the Project Description "*may discuss the project benefits.*" The purpose of an EIR's Project Description is to inform the public and decisionmakers of the project's impacts on the existing conditions of the environment, not to avoid mitigating those impacts by promoting claimed "benefits" of a project and anticipating the need for a statement of overriding considerations.

The proposed amendment is contrary to CEQA's requirement of objective identification of a project's impacts to the public and decisionmakers, and it does not in any way contribute to implementing CEQA's requirements, but only creates another loophole to avoid them. Nothing in the statute or authorities supports this proposed amendment. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

10. Proposed Amendment to §15125 "*Environmental Setting*"

The proposed amendment to §15125 completely eviscerates CEQA's requirement to identify and mitigate a project's impacts by describing the physical environmental conditions in the vicinity of the project as they exist at the time the notice of preparation of an EIR is published or when preparation of the EIR begins. (Existing Guidelines §15125.) When combined with an accurate, stable and finite Project Description, this provision enables objective analysis of the project's impacts on the existing environment, an essential beginning to CEQA's analytical path that must precede project approval.

Instead of this clear, logical method of describing existing conditions, the amendment allows a lead agency to "define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational," and states "a lead agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record." (Proposed Amendments to §15125(a).)

The failure to accurately state existing conditions results in an inaccurate baseline for analyzing impacts in violation of CEQA. (*e.g., Poet, LLC. v. State Air Resources Bd. ["Poet II"]* (2017) 10 Cal.App.5th 764,797 [agency's failure to justify use of correct baseline is an abuse of discretion and invalidates the impacts analysis].) The required baseline for analyzing impacts must establish, with substantial evidence, the existing conditions. The baseline of existing conditions is then compared with an accurate Project description to determine whether the Project will have significant impacts. (*Id.*)

The proposed amendment is not authorized by any statutory provision, including PRC §21099 and is contrary to CEQA's purpose and procedures for implementation. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

11. Proposed Amendment to §15126.2 "*Consideration and Discussion of Significant Environmental Impacts*"

The proposed amendment to §15126.2(b) allows the analysis of energy consumption impacts to be "included in related analyses of air quality, greenhouse gas emissions or utilities in the discretion of the lead agency." The impacts of a project's energy consumption requires independent analysis and mitigation, even if it is also included in analyses of air quality, greenhouse gas emissions or utilities.

12. Proposed Amendment to §15126.4 *"Consideration and Discussion of Mitigation Measures proposed to Minimize Significant Effects"*

The proposed amendment to §15126.4(a)(1)(B) contradicts CEQA's central purpose to mitigate the significant impacts of a project identified in an EIR by allowing an agency to defer mitigating those impacts. The proposed amendment allows an agency to *defer "specific details of a mitigation measure. . .* when it is impractical or infeasible to include those details in the project's environmental review." (emphasis added.) The proposed amendment allows an agency to simply list "the potential actions to be considered, analyzed and potentially incorporated in the mitigation measures," without saying *when* the public and decisionmakers will consider those "potential actions" and without requiring that those "potential actions" be enforceable and effective as required by CEQA before a project can be approved. (*e.g.*, PRC §§21002, 21002.1(b), 21081.)

The result, if adopted, means that ***no*** actual mitigation would be required for each significant impact identified in an EIR as required by CEQA's substantive mandate. (See, *e.g.*, *City of San Diego v. Board of Trustees of the California State University* (2015) 61 Cal.4th 945, 960 ["Mitigation is the rule"] and 962-963 [CEQA's mitigation requirement is a fundamental mandate]; *Mountain Lion Foundation v. Fish and Game Comm.* (1997) 16 Cal.4th 105, 104; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92 [mitigation may not be deferred].)

Further, the proposed amendment at §15126.4(a)(1)(B) allows that "compliance with a regulatory permit process may be identified as a future action" justifying deferring mitigation details "if compliance is mandatory and would result in implementation of measures that would be reasonably expected...to reduce the significant impact to the specified performance standards." That gobbledygook apparently allows an agency to defer identifying mitigation measures in an EIR or even avoid mitigating a project's impacts identified in an EIR by simply complying with "specified performance standards" of a "regulatory permit process" that may be irrelevant to environmental review of the project and may never have itself received environmental review.

Mitigating the impacts of a project is central to CEQA's purpose, and deferring mitigation as proposed in the amended §15126.4 (a)(1)(B) conflicts with CEQA's substantive mandate, is contrary to the law's fundamental purpose, and is unnecessary. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

13. Proposed Amendment to §15152 *"Tiering"*

The proposed amendment adding §15152(h) gives discretion to a lead agency to choose from "multiple methods" to "streamline the environmental review process," and excuses such methods from the requirements of §15152 "where other methods have more specific provisions." (Proposed new amendment §15152(h).) The proposed amendment lists as "other methods" what in the existing §15152(h) are "*types of EIRs* that may be used in a tiering situation." (Guidelines §15152(h) [emphasis added].)

Thus, where the existing §15152(h) indicates an initial EIR is required for tiering, the proposed amendment would apparently *not* require an initial EIR for the "methods" described at, *e.g.*, subsection (h)(5) "Multiple family residential development/residential and commercial or retail mixed-use development §15179.5," (6) "Redevelopment project Section 15180," (7) "Projects consistent with community plan, general plan, or zoning (section 15183)." The proposed amendment adds "Infill projects" to its list of "methods" to "streamline the environmental review process." (Section 15183.3) However, instead of an EIR for those projects, the amended §15152(h) apparently allows the project itself to be a "method" to "streamline the environmental review process" with *no* EIR. A project is not a method of tiering.

The proposed Guideline does not clarify §15152, and appears to eliminate the existing provision of a required EIR for several types of projects, and therefore conflicts with existing statutory requirements.

14. Proposed Amendment to §15155 *"Water Supply Analysis; City or County Consultation with Water Agencies"*

The proposed amendment changes the title and expands §15155, which presently is only about "City or County Consultation with Water Agencies."

The proposed amendment adds a new subsection "(f)" that conflicts with the California Supreme Court's holding in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova ["Vineyard"]* (2007) 40 Cal. 4th 412. In *Vineyard*, the Court made clear that environmental review cannot be deferred for long-term water supply. (*Id.* at pp. 439-443.) The proposed §15155(f) takes text of the *Vineyard* decision out of context to allow *uncertainty* in an EIR about the availability and adequacy of water supplies.

Vineyard holds that an initial EIR on a project must inform the public and decisionmakers, at minimum, with a quantitative analysis supported by explaining the long-term availability and likely sources of water, including competing demands, and an analysis of mitigation of impacts of supplying water in the long term (and the short term) before a project is approved. (*Vineyard, supra,* at pp. 439-443.)

Contrary to *Vineyard* and to CEQA, the proposed amendment §15155(f)(1) instead requires only "[s]ufficient information regarding the project's proposed water demand and proposed water supplies to permit the lead agency to evaluate the pros and cons of supplying the amount of water that the project will need." The analysis, however, is not about the pros and cons of supplying the needed amount of water, but about informing the public and decisionmakers of the actual availability of an adequate long-term water supply to meet the demand of a project, and the environmental impacts of meeting that demand, including impacts on other demands.

The proposed amendment at §15155(f)(3) implies that CEQA would be satisfied by an EIR that analyzed "circumstances affecting the likelihood of the water's availability" and "the degree of uncertainty involved." The amendment ignores the obvious factor in that analysis of unregulated growth due to overdevelopment, claiming only that "relevant factors may include but are not limited to drought, salt-water intrusion, regulatory or contractual curtailments, and other reasonably foreseeable demands on the water supply."

The proposed amendment at §15155(f)(4) misstates the *Vineyard* holding and excuses the lead agency from determining whether a water supply is available for a project. Alternatives to a project must already be included in an EIR. However, that does not make an EIR adequate that fails to determine the long-term availability of water to meet the demands of a project and mitigating the impacts of supplying that water.

The proposed amendments improperly weaken CEQA's EIR requirements to identify to the public and decisionmakers the long-term water sources for projects, including large development projects, before a project is approved, and the proposed mitigation of the impacts of supplying that water. Further, this proposed amendment is unnecessary to effectuate CEQA's purposes.

15. Proposed Amendment to §15168 *"Program EIR"*

The proposed amendments to §15168 seeks to eliminate existing provisions requiring subsequent environmental review after a program EIR. The proposed amendment eliminates the following (bold) language in §15168(c)(2): "If the agency finds that pursuant to Section 15162, no **new effects could occur or no new mitigation measures would be required**, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required." (emphasis added.)

The proposed amendment changes that criteria for determining whether a new environmental document would be required to: "Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of

allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and description of covered infrastructure, as presented in the project description or elsewhere in the program EIR." (Proposed §15168(c)(2).)

The proposed amendment thus changes the criteria for requiring subsequent environmental review from the *impacts and mitigation of subsequent parts of a project* to planning jargon that is irrelevant to whether the subsequent parts of the project will have significant impacts or require mitigation.

Claiming they are minor word changes, other proposed amendments improperly change the meaning of §15168. For example, the existing terms "Subsequent actions" "subsequent project," or "parts" of the project or program are changed to "later activities." (Proposed amendment to, *e.g.*, §15168(c)(3), (c)(5), (d).) Determining whether impacts of later site specific actions require subsequent environmental review is changed from whether they were "covered in" the program EIR to whether they were "within the scope of" the program EIR. (Proposed amendment to §15168(c)(4).)

The proposed amendment therefore contradicts CEQA's mandate and purpose to identify and mitigate impacts on the environment. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.) It is not "necessary" to "clarify" case law or to effectuate CEQA's statutory purpose, which it contradicts.

16. Proposed Amendment to §15182 *"~~Residential~~ Projects Pursuant to a Specific Plan"*

The Initial Statement of Reasons claims that this amendment to §15182 comes from a document created by Governor Brown in 1978 that was adopted in a "much more limited" form as Gov. Code §65457, exempting from CEQA certain residential development projects that conformed with a specific plan. The Initial Statement of Reasons claims that Gov. Code §65487 does not apply where a subsequent project under PRC §21166 occurs "unless and until a supplemental environmental impact report for the specific plan is prepared and certified" under CEQA. (Gov. Code §65487(a).) However, a political agenda is not a valid reason to amend regulations to eliminate environmental review required by CEQA.

The Initial Statement of Reasons (p. 53) also claims that legislation only applies to residential projects and does not conform with new "exemptions" for other types of projects in PRC §21154.4. However, that new provision (legislated under SB743), also requires that any new "exemptions" under §21155.4 can only be invoked (along with other requirements) where the "project is undertaken to implement and is consistent with a specific plan *for which an environmental impact report has been certified*," and that subsequent review must be conducted "if any of the events specified in Section 21166 have occurred." Further, PRC §21155.4 does not require any Guidelines amendments and none are necessary. In any event, PRC §21155.4 does not authorize the proposed amendments to Guidelines §15182.

The proposed amendment improperly changes the title of §15182, eliminating its restriction to "**Residential** Projects Pursuant to a Specific Plan." The proposed amendment substantively expands §15182 to also apply to "mixed use projects" and "commercial" projects. (Proposed amendment §115182(a).) The proposed amendment does not specify whether the required prior EIR for a specific plan that exempts such a project was only for a residential project.

The proposed amendment to §15182 is unauthorized by any underlying legislation, is an attempt to substitute rulemaking for legislation, is contrary to CEQA, and is unnecessary to effectuate CEQA's purposes, which are to identify and mitigate the impacts of proposed projects.

17. Proposed Amendment to §15222 "*Preparation of Joint Documents*"

The proposed amendment allowing a lead agency to "enter into a Memorandum of Understanding with the federal agency to ensure that both federal and state requirements are met" is not authorized by CEQA or NEPA. Separate environmental documents are required to satisfy the different statutory and case law requirements of CEQA and NEPA.

18. Proposed *New* § 15234. *"Remand."*

The proposed new § 15234 conflicts with statutory requirements at Public Resources Code section 21168.9 "Requirement of court order for noncompliance" and with established case law on mandamus and writ procedure, and infringes on the basic right to a remedy.

PRC §21168.9(a) requires:

> "If a court finds, as a result of a trial, hearing, or remand *from an appellate court*, that any determination, finding, or decision of a public agency has been made without compliance with this division, the court shall *enter **an order*** that includes one or more of the following:
> (1) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.
> (2) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision, that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision into compliance with this division.
> (3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division."

(emphasis added.) That statutory provision is clear, narrow, and does not allow regulation to expand its terms.

The proposed new Guidelines §15234 confuses the roles of a court of appeal and a trial court, and gives the trial court the power to issue a writ without first issuing an order or judgment directing the writ, which is contrary to the California Supreme Court's landmark decision in *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal. 3d 171, 181-182, which explicitly requires a court, including a trial court, to issue an order directing a writ before issuing that writ. Without that procedural provision, a petitioner who has achieved success in a court of appeal is without a remedy to appeal the court's action on remand. (*Id.*) Therefore, a court may not issue a peremptory writ of mandate without issuing an order or judgment directing such a writ. (*Id.*)

The proposed new § 15234 would also give an agency the power to proceed with a project or parts of it that a court finds "severable," or "will not prejudice the agency's compliance with CEQA as described in the court's peremptory writ of mandate" and "complied with CEQA." That is not consistent with PRC section 21168.9 or with CEQA. Section 21168.9(b) only limits the *order* referred to in Section 21168.9(a) to "the specific project activity or activities found to be in noncompliance only if a court finds that (1) the portion or specific project activity or

activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division." (emphasis added.) Shifting the determination of whether an agency can proceed with the project from the court to the agency is contrary to §21168.9.

Contrary to the proposed new language, PRC section 21168.9(b) does *not* allow a project to proceed under such findings, but only limits the *order* referred to in Section 21168.9(a) to addressing "the specific project activity or activities found to be in noncompliance" only if a court finds that all three requirements of subsection (b) are met. Further, and again contrary to the proposed new language, noncompliance with specific sections must already have been found *before* such limitations can be imposed. Such limitations cannot be imposed without all of the explicit findings in PRC section 21168.9(b)(1), (2), and (3).

None of the cited authorities or statutory provisions support the drastic changes proposed in the new section 15234, which eliminates the fundamental right of appeal after remand. The proposed amendment contradicts case law, constitutional provisions affecting the fundamental right of review, mandamus procedure, the right to a remedy under CEQA, is contrary to CEQA, and is unnecessary to effectuate the purposes of CEQA. (*e.g.*, PRC §§ 21000 *et seq.*, 21002, 21002.1, 21168.9; Gov. Code §11342.2.)

19. Proposed Amendment to §15301 *"Existing Facilities"*

The proposed amendment to §15301 illegally expands the categorical exemption to include *non*-existing "facilities" as "existing facilities." First, the amendment removes (bold text below) the existing substantive language that defines the "existing facilities" categorical exemption as "the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, **involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination**...the key consideration is whether the project involves negligible or no expansion of **an existing** use." (Guidelines §15301 [emphasis added].) The proposed amendment deletes that language, gutting the substance of the existing facilities exemption, and replaces the former clause with language that negates the terms of the exemption to make "existing" include "existing or former."

The proposed amendment contradicts case law that prohibits the existing facilities categorical exemption where a project proposes a change of use. (*e.g.*, *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 967; *Save Our Carmel River v. Monterey Peninsula Water Mgmt. Dist.* (2006) 141 Cal.App.4th 677, 697.)

The proposed amendment then adds language that allows a proposed project to be an "existing facility," contradicting the meaning of the categorical exemption to include *future* proposed projects as "existing facilities." For example, the proposed amendment adds the contradictory language at §15301(c) (proposed addition in bold in following): "Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety, **and other alterations, such as the *addition* of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities, and bicycle lanes, pedestrian crossings, and street trees, and other similar improvements that do not create additional automobile lanes."**

The proposed amendments contradict and violate CEQA by expanding the language of the existing facilities exemption. Well-established case law holds that exemptions are construed narrowly and may not be expanded beyond their terms or CEQA's statutory purpose. (*e.g.*,

County of Amador v. El Dorado County Water Agency (1999) 76 Cal.App.4th 931, 966; *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1192.)

The proposed amendments are also contrary to and undermine CEQA's requirements to establish existing conditions (§15125) and identify and mitigate a proposed project's impacts on those existing conditions. (See, *e.g.*, *County of Amador v. El Dorado County Water* Agency, supra, 76 Cal.App.4th at pp. 953-954; *Poet, LLC v. State Air Resources Board ["Poet II"]* (2017) 12 Cal.App.5th 52, 79-81.) The failure to accurately state existing conditions results in an inaccurate baseline for analyzing impacts in violation of CEQA. (*e.g., Poet, LLC. v. State Air Resources Bd. ["Poet II"]* (2017) 10 Cal.App.5th 764,797 [agency's failure to justify use of correct baseline is an abuse of discretion and invalidates the impacts analysis].) The required baseline for analyzing impacts must establish, with substantial evidence, the existing conditions. The baseline of existing conditions is then compared with an accurate Project description to determine whether the Project will have significant impacts. (*Id.*)

Further, the proposed amendments are contrary to recent case law that holds that CEQA does not allow a proposed project to be included in "existing conditions." (*e.g.*, *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2016) 2 Cal.App.5th 1067, 1073; *Parker-Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 783.)

The *addition* of "bicycle facilities," particularly where such "facilities" *remove* existing traffic lanes and street parking, is not an *"existing"* facility, but is a project affecting existing facilities. The existing facility is the existing street configuration and its *existing use*. Existing "bicycle facilities" are ones that already exist at the time of the lead agency's determination, not projects that are proposed for future implementation. The redefining of such projects and "other projects" as "improvements" is false and misleading. Such projects do not fit in the existing facilities categorical exemption, both because they are not existing, but are proposed, and because they may have significant impacts on actually existing conditions.

The expansion of the exemption to include "other similar improvements that do not create additional automobile lanes" is contrary to the narrow construction of categorical exemptions in established case law, and it improperly creates a new exception to its broadening of §15301 so that creating any new "facilities" would be categorically exempt under "existing" facilities, except creating "additional automobile lanes." Neither the expansion of the terms of §15301 nor creating an exception to that expansion is authorized under established case law.

The Initial Statement of Reasons falsely claims that the amendments to §15301 "adds no new substantive requirements." In fact the proposed amendments clearly broaden the existing facilities categorical exemption to include examples of physical changes to existing facilities, and therefore require economic impact analysis, including analyzing energy use and waste from increased traffic congestion from reducing traffic capacity of streets where traffic lanes and parking are eliminated to construct "bicycle facilities" and other projects.

The proposed amendment contradicts and violates CEQA's requirements and purpose to identify and mitigate the impacts of proposed projects, is not supported by any authority, and is contrary to and unnecessary to effectuate CEQA's statutory purpose. (Gov. Code §§11340 *et seq.*, 11342.2.)

20. Proposed Amendment to §15357 *"Discretionary Project"*

The proposed amendment creates an exception to the definition of a "discretionary project" and vastly expands the definition of "ministerial" projects for which no environmental

review is required. The existing language contrasts a discretionary project requiring agency approval and CEQA review to "situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations." The amendment adds the undefined term, *"or other fixed standards."* Thus, the proposed amendment would enable agency approval with *no* CEQA review of any project where the agency claims conformity with "other fixed standards."

Claiming that this significant reduction of the requirement of CEQA review of proposed discretionary projects is a "clarification" is false and disingenuous, since the proposed amendment does not clarify the definition of "discretionary project," but instead hugely expands the definition of projects that are not subject to CEQA review.

The proposed amendment is contrary to CEQA's mandate and purpose to identify and mitigate a project's impacts before it is approved, and is unnecessary to effectuate CEQA's purpose. PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

21. Proposed Amendment to Appendix G *"Environmental Checklist Form"*

The proposed Amendment to Appendix G contradicts CEQA and case law, including, for example, the following (bold type indicates proposed amendment deletions).

Proposed III. (b) [AIR QUALITY]: Eliminates language that require identification of impacts that **"[v]iolate an air quality standard or contribute substantially to an existing or projected air quality violation."**

Proposed III. (b) [AIR QUALITY]: Changes language that requires the agency to identify cumulative impacts from increases in pollutants already in non-attainment, as shown bold in following: "Result in cumulatively considerable net increase of any criteria pollutant **for which the project region is in non-attainment** under an applicable federal or state ambient air quality standard **(including releasing emissions which exceed quantitative thresholds for ozone precursors)."**

Proposed III.(e) [AIR QUALITY]: Omits (bold): "**Create objectionable** odors affecting a substantial number of people."

Proposed VII (a) [GEOLOGY AND SOILS]: Eliminates checklist language protecting humans and changes it to a causation question: "**Exposes people or structures to** potential substantial adverse effects, including the risk of loss, injury, or death" from *e.g.,* earthquakes, landslides, and erosion.

Proposed IX(g) [HAZARDS ADND HAZARDOUS MATERIALS]: Eliminates checklist language on wildfire impacts where **"wildfires are adjacent to urbanized areas or where residences are intermixed with wildlands."**

Proposed X(b) [HYDROLOGY AND WATER QUALITY]: Eliminates checklist language on factual criteria for determining whether a project would decrease or deplete groundwater supplies.

Proposed X(d-i) [HYDROLOGY AND WATER QUALITY]: Eliminates checklist language on determining impacts of stream alteration, degrading water quality, placing housing in 100-year flood areas, exposing people or structures to loss from flooding, including from failure of dams or levees, and inundation from tsunamis or mudflow.

Proposed XI(b) [LAND USE AND PLANNING]: Eliminates checklist language establishing impacts of a project's conflicts with a general plan, specific plan, local coastal program, or zoning ordinance.

Proposed XI(c) [LAND USE AND PLANNING]: Eliminates checklist language establishing impacts of a project's conflicts with a habitat conservation plan or natural community conservation plan.

Proposed XIII(a) and (b) [NOISE]: Eliminates checklist language establishing impact from "exposure of persons" to noise levels in excess of standards and "excessive vibration or groundbourne noise levels," and replaces those human impacts with "generation" of such noise levels.

Proposed XIII(c - f) [NOISE]: Eliminates several checklist items on impacts of noise.

Proposed XIV(a) [POPULATION AND HOUSING]: Allows projects unlimited leeway to induce population growth in an area so long as it is "planned," by adding the word "unplanned" to the checklist criteria for impacts of population growth.

Proposed XIV(b) and (c): [POPULATION AND HOUSING]: Eliminates checklist for impacts from a project's displacement of substantial numbers of people, and replaces that checklist item with impacts of displacing "substantial numbers of existing people or housing."

Proposed XVII. [TRAFFIC]: Changes the title of the checklist item to "TRANSPORTATION"

Proposed XVII (a) [TRAFFIC]: Eliminates language determining impacts from conflicts with an applicable plan, ordinance or policy **establishing measures of effectiveness for the performance of** the circulation system," including "intersections, streets, highways, and freeways, pedestrian and bicycle paths, and mass transit." Instead of the criteria of "establishing measures of effectiveness for the performance of the circulation system," the proposed amendment to the checklist only includes conflict with an applicable plan, ordinance or policy that "addresses the circulation system, including transit, roadways, bicycle lanes, and pedestrian paths," thus removing impacts on "intersections, streets, highways, and freeways."

Proposed XVII(b) [TRAFFIC]: Eliminates language determining impacts from "**conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures.**" Instead, only ask "For a land use project, would the project conflict or be inconsistent with" the *amended* Guidelines §15064.3(b)(1).

Proposed XVII(c) [TRAFFIC]: Eliminates language determining impacts where projects "**result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks.**" Instead of that provision, the proposed amendment changes the checklist XVII(c) to exempt all transportation projects from CEQA: "For a transportation project, would the project conflict with or be inconsistent with" the *amended* Guidelines §15064(b)(2)?

Proposed XVII(d) [TRAFFIC]: Qualifies determining an impact from "hazards due to a design feature..." by changing the language to "geometric hazards due to a design feature."

Proposed XIX(a) [UTILITIES AND SERVICE SYSTEMS]: Deletes question of whether project would "**exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board.**"

Proposed XIX(b) [UTILITIES AND SERVICE SYSTEMS]: Changes the question at XIX(d) and eliminates language in checklist of whether water supplies to serve a proposed project are "**from existing entitlements and resources, or are new or expanded entitlements needed?**"

Proposed XIX(d): [UTILITIES AND SERVICE SYSTEMS]: Changes question at XIX(f) that asks if a project is "**covered by landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?**"

Proposed XIX(e): [UTILITIES AND SERVICE SYSTEMS]: Changes language in XIX(g).

Proposed XXI(a): [MANDATORY FINDINGS OF SIGNIFICANCE]: Changes language to add a new requirement (additions bold, underlined) that a project must "have the potential to **substantially** degrade the quality of the environment," and must "**substantially** reduce the number or restrict the range of a rare plant or animal."

These proposed amendments to Appendix G undermine and are inconsistent CEQA's requirements and purpose to identify and mitigate a project's impacts and are unnecessary to effectuate CEQA's purpose.

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for Coalition for Adequate Review