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From: dave@earsi.com
Sent: Tuesday, February 20, 2018 3:36 PM
To: CEQA Guidelines@CNRA
Subject: Comments on proposed amendments to the State CEQA Guidelines
Attachments: NRA Comment Ltr CEQA.pdf

Mr. Calfee,

Attached are EARSIs comments on the amendments and additions to the State CEQA Guidelines.

Feel free to contact me directly with any questions.

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February 20, 2018



Christopher Calfee
Deputy Secretary and General Counsel
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Subject: Amendments and Additions to the State CEQA Guidelines

Dear Mr. Calfee:

Thank you for the opportunity to submit comments on the proposed amendments and additions to the state CEQA Guidelines.

When considering whether to adopt and/or modify the California Environmental Quality Act (CEQA) Guidelines, please consider how the CEQA Guidelines currently function, how any changes will affect its functionality and the effects CEQA has and will continue to have on the environment and the state's economy.

The comments herein express concerns about the legislature's strategy for transition from a fossil fuel driven infrastructure and economy to a smart, sustainable clean energy driven infrastructure and economy and the role the Natural Resource Agency (Agency), Office of Planning and Research (OPR) and CEQA play in this transition. A decade ago with the collapse of the oil market, the world began a transition to a third industrial revolution. This revolution is based on a shared digital platform where each of us has or will have instantaneous global communications, a horizontal platform of widely distributed, shared, non-exclusive and interconnected data. This platform is already allowing the world's population to understand the relationship between GHG emissions and climate change and is allowing the world's population to begin to work as one to rescue the global biosphere from the effects of fossil fuels which powered the second industrial revolution and remain the dominant energy source today. As it stands, the legislature is attempting to force local governments and the public into programs which continue the failing fossil fuel industrial revolution technologies, its industrial platforms and economic models. In so doing, the legislature is facing resistance and choosing to dismantle CEQA and its Guidelines through circumvention and exemption which is creating inconsistencies, frustrations, and resistance, resulting in increased risk of CEQA related litigation. The Agency and OPR play key, pivotal roles in developing a clear path, a strategy forward through this transition to a clean energy industrial revolution and economy based on the merger of the existing communications internet, the emerging digital energy internet and the soon to emerge automated autonomous road, rail, water and air transportation internet (aka: transportation logistics internet). Until a strategy is put forth demonstrating significant increases in aggregate efficiencies, dramatic increases in productivity, dramatic reductions in the ecological footprint, and dramatically reduced marginal costs, it will not matter what legislation, incentives or jobs are created if businesses are still plugged into a second industrial revolution infrastructure. Existing economic models cannot get above the aggregate efficiency ceiling. A sustainable economic incentive does not exist. Once this strategy is put forth and understood, it will enable our legislators to support local governments and the public in implementing customized digital shared local strategies to manage, power and move economic life on the combined digital internet platform.

In addition, the comments express concerns about the legislature's past and proposed future and its actions changing the Guidelines from an evaluation tool to a proactive tool assisting the state in meeting its policies by exempting classes of activities from CEQA and limit its scope of analysis. Proposed updates to the Guidelines appear to further dismantle CEQA creating numerous problems for local governments and lead agencies increasing the risk for additional litigation.

The purpose of CEQA is to disclose to the public the significant environmental effects of a proposed discretionary project, through the preparation of an Initial Study, Negative Declaration, or Environmental Impact Report (EIR). However, the first line of defense for those opposed to a project or the characterization of its environmental effects is to challenge the adequacy of the CEQA document prepared for the project often leading to litigation, delay, expense and the risk of a finding of inadequacy. OPRs proposed Final CEQA Guidelines Update is helpful in that it discusses key court decisions and provides meaningful guidance to lead agencies to assist them when preparing and certifying CEQA documents.

The state legislature has taken actions to exempt classes of activities from CEQA and to streamline other projects through CEQA. The state is considering further amendments to the CEQA Guidelines to further limit its scope of analysis and further streamline projects which implement its policies. These actions have limited the scope of CEQA creating numerous problems and increasing the risk for additional litigation, leaving an interesting set of challenges for local governments and lead agencies. OPRs proposed Final Guidelines Update do not address the effects of regulatory changes on the Guidelines. Guidance and clarification is requested.

Consider one common project example: a new county or city general plan, general plan amendment or update. The adoption, amendment or update of local general plans or elements thereof are discretionary actions subject to CEQA.

General Plan

Government Code §65300.5 states “[T]he Legislature intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency.” All elements within a general plan have equal status; a plan cannot contain a provision stating that, in the event of a conflict between elements, one element will govern over the other. Land use and circulation elements are adequately “correlated” if: (1) they are “closely, systematically, and reciprocally related”; (2) the circulation element “describe[s], discuss[es] and set[s] forth ‘standards’ and ‘proposals’ respecting any change in demands on the various roadways or transportation facilities of a county [or city] as a result of changes in uses of land contemplated by the plan”; and (3) the circulation element provides “‘proposals’ for how the transportation needs of the increased population will be met.” (Concerned Citizens of Calaveras County, *supra*, 166 Cal.App.3d at pp. 99-100.)

By statute, specific plans, zoning actions, development agreements, and tentative maps all must be consistent with the general plan.

CEQA

The California Environmental Quality Act (the “Act”) defines the “ENVIRONMENT” (§21050.5) as “the physical condition which exists within the area which will be affected by a proposed project, including land, air, water mineral, flora, fauna, noise, or objects of historic or aesthetic significance.” First “the foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”¹ The Act’s intent, as well as policy for an EIR is to identify the significant environmental effects on the environment of a project.

The Act (§21002.1) establishes a policy for use of an EIR which states “The purpose of an environmental impact report is to identify the significant environmental effects on the environment of a project”.

CEQA Guidelines define a “Project” as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the

¹ *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.*, *supra*, 47 Cal. 3d at p. 390

environment, and that is any of the following: (1) ...enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100–65700” (14 Cal. Code of Reg. 15378[a]).

California Environmental Quality Act



■ CEQA defines the Environment as a the Whole of the Environment

Importantly, the CEQA document must address the “Project” and assume the project will be built. In the case of a new general plan, amendment or update all information in the public record is considered by the CEQA document for the general plan.

In the case of a new county or city general plan, general plan amendment or update, the CEQA document is intended to disclose to decision makers, responsible agencies, and organizations, and the general public, the potential impacts of implementing the general plan.

How does a lead agency establish accurate baseline of environmental conditions and evaluate impacts for projects whose description includes future conditions, given legislative actions exempting certain activities from CEQA?

Environmental Baseline

The baseline condition in a CEQA document must identify current conditions which include changes in circumstances that have, are or will impact the environment. The courts have determined that the lead agency may look back to historic conditions to establish a baseline where existing conditions fluctuate provided it can document such historic conditions with substantial evidence and should choose the baseline that most meaningfully informs decision-makers and the public of the project’s possible impacts.

In establishing the baseline existing condition, the lead agency must consider regulatory changes and CEQA exemptions that could affect the project or its environment when describing the baseline that most meaningfully informs decision-makers and the public of the project’s possible impacts.

Changes in Circumstances

A change in circumstance can take a number of forms. The comments herein, focus on two categories of changes in circumstances, each can result in direct physical change in the environment or reasonably foreseeable indirect physical change in the environment. These two categories of changes in circumstances are: Regulatory Changes and CEQA Changes.

Regulatory changes in circumstances that effect the environment include State Bills adopted in 2016 and 2017² exempting Accessory Dwelling Units (ADUs), promoting affordable housing and urban in-fill. The comments herein will focus on accessory dwelling unit, affordable housing and in-fill law.

² Assembly Bill No. 2299, Senate Bill No. 1069, Assembly Bill No. 2406, Assembly Bill No. 494, Senate Bill No. 229, Senate Bill 2, Senate Bill 3, Senate Bill 35, Assembly Bill 73, Senate Bill 540, Assembly Bill 1505, Assembly Bill 1521, Assembly Bill 571, Assembly Bill 1397, Senate Bill 166, Assembly Bill 879, Senate Bill 167, Assembly Bill 678, Assembly Bill 1515, Assembly Bill 72

Accessory Dwelling Unit law (AB 2299 and related bills) allows one residential ADU to be constructed per residential lot having an existing single family dwelling. These bills permit non-discretionary ministerial, approval of individual ADUs under an existing ordinance. These bills also provide circumstances under which a local agency can reduce or eliminate parking requirements for accessory dwelling units located within its jurisdiction. AB 2299 exempts accessory dwelling units from CEQA.

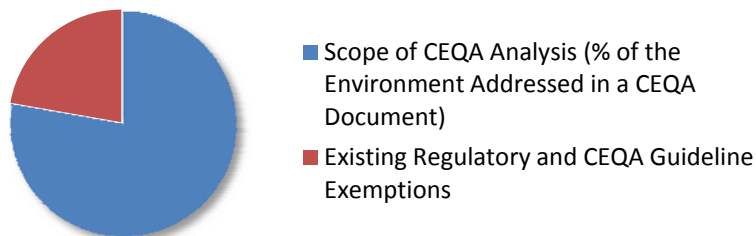
Affordable Housing law is subject to state density bonus law³, which grants a density bonus and incentives or concessions for qualified affordable housing projects⁴.

Urban In-fill comprised of ADUs and affordable housing density bonus units can occur in built-out urbanized areas.

Legislation intended to increase residential density in built-out urbanized areas through construction of ADUs and affordable housing density bonus units represent a regulatory change in circumstances not considered by existing general plans, specific plans, zoning actions, development agreements, and tentative maps or their CEQA documents prior to the effective date of these State Bills⁵.

CEQA changes in circumstances include OPRs proposed Final CEQA Guidelines Update limiting the scope of the environment through deletion of Traffic analysis, proposed exemption of qualified Existing Facilities and Transit Oriented Development projects.

Existing CEQA Guidelines



Activities not subject to CEQA, exempted from CEQA or provided special treatment have resulted in direct and indirect physical changes in the environment resulting in significant adverse impacts on the environment⁶.

Activities exempted from CEQA by the legislature include the construction of ADUs. ADU legislation is intended to help meet the state's current 1 to 1.5 million housing unit shortfall. The California Department of Housing and Community Development (HCD) reported between 2010 and 2014 the majority of California households (about 65 percent) reside in single-family homes totaling approximately 9 million statewide.⁷ HCD estimates there are 8 million existing residential lots with single-family

³ Government Code § 65915 – 65918

⁴ Reduction in site development standards or modifications of zoning/architectural design requirements that result in identifiable and actual cost reductions to provide for affordable housing

⁵ CEQA Guidelines §15162

⁶ Draft Supplemental Environmental Impact Report Sunset and Gordon Mixed-Use Project, City of LA, State Clearinghouse # 2006111135. A qualified in-fill project pursuant to SB 743 “Aesthetic impacts are exempted and discussed for information purposes only” (Page IV.A.2-13)

<https://planning.lacity.org/eir/SunsetAndGordon/Deir/assets/IV.A.2%20Aesthetics%20Shade%20and%20Shadow.pdf>

⁷ California Department of Housing and Community Development, California's Housing Future: Challenges And Opportunities, January 2017 Draft, pg 15

dwelling within the state which could construct ADUs permitted by AB 2299 (the potential for **23,200,000** new residents (assuming 2.9 persons/dwelling unit) and an additional **76,560,000 average daily vehicular trips** (assuming 9.57 ADT/DU)). Add to the statewide total, the potential for all future single-family subdivisions to construct ADUs pursuant to AB 2299.

To put into local perspective, the city of Los Angeles estimates it has 380,000 existing residential lots with single family homes which could construct ADUs permitted by AB 2299 (the potential for **1,102,000 new residents and 3,636,600 ADT**). Add to the city total, the potential for all future single-family subdivisions to construct ADUs pursuant to AB 2299.

CEQA Section 21166 limits the circumstances under which a lead agency must undertake additional review to instances where there are substantial changes in the project, substantial changes to the circumstances under which a project is undertaken, or new information becomes available. See also CEQA Guidelines Section 15162. CEQA analysis is required by the lead agency to determine if an approved project (in this example an existing general plan) “retains any relevance” and continues to have “informational value.” in light of changes to the project (AB 2299 and the potential for development of ADUs and their secondary impacts: traffic, air quality, GHG, biological, public services, public utilities, water quality, etc) and whether “major revisions” to the previous environmental document are required.⁸

General plan updates are required to address these changes in circumstances, revise general plan policies and restore horizontal and vertical consistency between the general plan, specific plans, zoning actions, development agreements and tentative maps when appropriate.

Construction of an individual ADU does not represent a potentially significant change to a planning document or a potentially significant adverse impact to the environment. However, widespread implementation of AB 2299 will represent a cumulatively considerable change to a planning document, such as a county or city general plan. A fair argument can be made that implementation of AB 2299 not only pre-commits counties and cities to accommodate ADUs, but is disruptive⁹, resulting in new or substantially more severe impacts than evaluated in a county’s or city’s general plan and its certified CEQA document (traffic, air quality, GHG, biological, public services, public utilities, water quality, etc.) triggering the need for a general plan update and CEQA supplementation¹⁰. In addition to a “fair argument” it is probable that given the large number of potential ADUs that can be constructed within any urbanized area, substantial changes will be required to an existing general plan or future planning document for it to retain any relevance and have accurate informational value.

CEQA Guidelines require when “new information of substantial importance, which was not and could not have been know with the exercise of reasonable diligence at the time the previous EIR was certified”; “will have one or more significant effects not discussed in the previous EIR”; and/or “significant effects previously examined will be substantially more severe that shown in the previous EIR”¹¹, after the project (general plan) is approved, a subsequent EIR or negative declaration be prepared by the public agency which grants the next discretionary approval for the project.

⁸ Friends of the College of San Mateo Gardens v. San Mateo Community College District, No. S214061 (Cal. September 19, 2016)

⁹ AB 2299 is disruptive. Statewide, AB 2299 permits up to 8 million new ADU dwellings (HCD estimate 2017), 23,200,000 new residents with no CEQA analysis, subject only to ministerial approvals with no requirement for new jobs, verification of a jobs housing balance, or analysis of impacts to existing infrastructure.

¹⁰ Friends of the College of San Mateo Gardens v. San Mateo Community College District, No. S214061 (Cal. September 19, 2016)

¹¹ CEQA Guidelines § 15162(a)(3)(A) & (B)

The impacts from implementation of AB 2299 are of substantial importance and have not been considered by county and city general plans or their CEQA documents certified prior to the effective date of this legislation (January 1, 2017).

Are legislative changes in circumstances which are exempted from CEQA and have not gone through an equivalent CEQA process, which could result in a potentially significant adverse impact to the environment, exempt from CEQA?

OPRs proposed Final CEQA Guidelines Update

If the OPR proposed Final CEQA Guidelines Update is approved as written:

A. Traffic delay will no longer be an area of evaluation in the CEQA process

- “a project’s effect on automobile delay does not constitute a significant environmental impact”¹². Traffic and its impacts will no longer be part of the “Environment” defined by the Act.
- Projects will continue to be evaluated to determine consistency with local and regional plans.

OPR states “In fact, many general plans and zoning codes contain LOS requirements. The proposed Guidelines would not affect those uses of LOS. LOS may also still be used to measure roadway, including highway, capacity projects. And while traffic studies may be required for planning approvals, those studies will no longer be part of the CEQA process.”¹³ (Note: this blanket statement is incorrect. The only way planning studies can be exempt from CEQA is if the “agency, board or commission has not approved, adopted or funded” or have “a legally binding effects on later activities.” (CEQA Guidelines §15262)). Traffic studies will be funded by the lead agency and have binding effects on a new general plan, amendment or update and subsequent projects which rely on findings of general plan and zoning consistency.

- Federal law requires that the regional transportation planning process include a congestion management process “that provides for safe and effective integrated management and operation... of new and existing transportation facilities...and through the use of travel demand reduction and operational management strategies.”

According to OPR, it is likely a traffic analysis will be required for projects that have the potential to impact local and regional traffic models to determine consistency. Just not part of the CEQA process.

- The Act requires a lead agency to evaluate any substantial evidence supporting a fair argument that a project’s impacts on the environment are significant. Traffic analysis has been and continues to be a reasonable standard for environmental protection based on decades of CEQA case law and other applicable federal, state and local transportation-related laws, plans and policies.
- Projects subject to CEQA generating potentially significant increases in traffic delay (and its secondary impacts including air quality, GHG and biological impacts) will not disclose to lead agencies or to the public potential traffic impacts, alternatives, available mitigate measures, identification of significant unavoidable adverse impacts or require findings in support of a statement of overriding considerations through the CEQA process.

¹² OPR proposed Final CEQA Guidelines Update §15064.3(a), pg.79

¹³ OPR Frequently Asked Questions Regarding the Proposed Updates to the CEQA Guidelines, pg 2, November 2017

- Contrary to OPRs statements in their response to Frequently Asked Questions about the Final CEQA Guidelines Update, regional and local plans including county and city funded general plans (which all rely on Traffic (LOS) studies) are subject to CEQA.
- This proposed change to the Guidelines appear to conflict with the Act, increasing CEQA litigation risks.

B. Analysis of a project’s “Transportation” impact will be the only form of vehicular analysis subject to CEQA

- Transportation impact analysis will be limited to the measurement of a project’s Vehicle Miles Traveled (VMT). VMT is a metric of the total miles travel by vehicles in a defined area over a defined period of time. A project in an area served by transit would have a less than significant Transportation impact if it reduced its projects VMT below a significance threshold established by the lead agency. The proposed Final CEQA Guidelines Update would allow for the possibility of a complete exemption from project-level environmental review for projects below vehicle miles travelled (“VMT”) thresholds that could result in significant adverse impacts on the environment. Below is one common project example, a proposed subdivision of 100 single family dwellings:

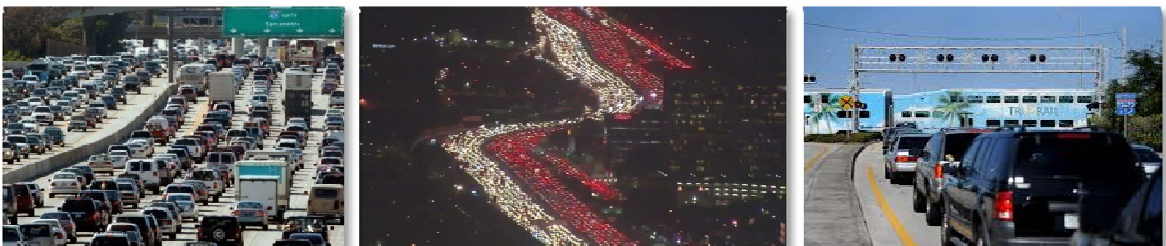
Assumptions

- **Project:** proposed subdivision of 100 single family dwellings (SFDs)
- **VMT standard:** 10 miles/SFD/day
- **Total Project VMT:** 1,000 VMT/day
- **Lead Agency VMT Significance Threshold:** (assumed) 20% reduction in VMT
- **Less than significant VMT:** ≤ 8 miles/SFD/day

In the above example, the project would have a less than significant Transportation impact if it generated ≤ 800 VMT per day. There would be no discussion of the effect of the project’s generation 800 VMT/day on impacted roadways as part of the CEQA analysis and no analysis of traffic (LOS) or its potential significant adverse secondary environmental effects.

OPR Proposed Final CEQA Guidelines Update

The following examples of Traffic delay will no longer be analyzed by CEQA
OPR is proposing that Traffic analysis is no longer a part of the “Environment”



OPR proposes to remove Traffic analysis from CEQA and replace it with Transportation analysis
Traffic delay (LOS) has nothing to do with Transportation Vehicle Miles Traveled

Without Traffic analysis, the adverse potential environmental impacts from a project’s need for new or modified roadways and traffic controls will no longer be disclosed to the decision makers or the public through the CEQA process. Analysis of “complete streets” will be exempted from CEQA¹⁴ based on an

¹⁴ “(c) 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, street trees, and other

assumption in OPRs proposed Final CEQA Guidelines Update¹⁵. Complete streets have potentially hazardous left turn movements at high LOS intersections.

A fair argument can be made that deleting Traffic analysis from CEQA may result in project approvals resulting in significant adverse Traffic, Health and Safety impacts on the environment. There would be no discussion of traffic related impacts in the alternatives analysis, imposition of mitigation measures to minimize traffic impacts, identification of significant unavoidable adverse impacts or findings in support of a statement of overriding considerations as part of the CEQA process. In addition to a “fair argument” it is a certainty that given the documented history of significant Traffic impacts within all urbanized areas, substantial changes will be required to an existing general plan or future planning document for it to retain any relevance and have accurate informational value. Because no alternative means to replace LOS analysis is proposed by OPRs proposed Final CEQA Guidelines Update it is unforeseeable how plan is even possible to create a meaningful new, amended or updated general plan based solely on Transportation analysis!

In accordance with state legislation and OPR’s proposed Final CEQA Guidelines Update, a new county or city general plan, general plan amendment or update would incorporate policies that would promote county/city-wide reductions in total VMT within areas served by transit. The EIR analyzing the general plan could conclude the general plan would not result in any adverse environmental impact from any conflicts with state legislation and result in a less than significant Transportation impact. Individual project applications that followed approval of the general plan would likely include specific measures to reduce total VMT below the county or city adopted significance threshold (example: reduction in VMT based on proximity to a major transit stop, close proximity to employment and shopping) allowing the lead agency to find the project consistent with the transportation policies of the general plan and justify a CEQA finding that the project would result in a less than significant Transportation impact.

While neither the general plan nor individual project examples would conflict with the proposed Final CEQA Guidelines Update, and lead agencies would have no evidence that any features of the project or its location would tend to negate the presumption. A fair argument can be made that either of the examples may result in significant adverse Traffic impacts on the environment. Note that the feasibility of long-term enforcement of any such project VMT reducing design feature or mitigation measure is questionable and burdensome on the lead agency. For example:

Consider the prior 100 du residential project example containing project design features or mitigation measures qualifying the project as a less than significant VMT project. One or more of the project’s tenants could elect to not use public transit in favor of driving a car for any number of reasons (always wanted a car, nice day just wants to drive, bad weather and doesn’t want to be out in the rain, no longer likes public transit or a person(s) on it. The tenant may get new job, or a new job assignment in an area not served by public transit; the tenant’s employer may cease doing business causing the tenant to seek employment elsewhere in an area not adequately serviced by transit). These and many more circumstances could increase the projects VMT above the significance threshold. It is highly unlikely this condition could or would be enforced in perpetuity by the lead agency.

The proposed CEQA Guidelines Update exempts a range of projects meeting the definition of transit oriented development and contains language instructing the lead agency to “assume” public transit will be used by occupants of projects constructed proximate to public transit. AB 2299 contains language permitting a reduction in residential parking for ADUs within ½ mile of a public transit stop. OPR contends that

similar improvements that do not create additional automobile lanes).” Source: OPR Proposed Final CEQA Guidelines, Article 19. Categorical Exemptions, Section 15301(c), pg 29

¹⁵ “The purpose of this change is to clarify that improvements within a public right of way that enable use by multiple modes (i.e., bicycles, pedestrians, transit, etc.) would *normally* (emphasis added) not cause significant environmental impacts.” Source: OPR Proposed Final CEQA Guidelines, Explanation of Proposed Amendments. pg 28

“Evidence shows that projects located in areas with access to transit tend to have lower vehicle miles traveled.”¹⁶ While OPRs assumptions may work, OPRs evidence is not based on a statewide investigation. It is based on limited study, does not constitute substantial evidence and is not reasonably foreseeable for application throughout the state given the varying levels of public’s reluctance to use mass transit, non-existent ADU traffic data and ITE generation rates for in-fill developments.

A fair argument can be made that the actual use of public transit is not known for occupants within a future transit priority area, employment center project or projects constructed within ½ mile of a public transit stop (see limitations cited by the California Air Resources Board¹⁷) and is therefore, speculative to apply this conclusion statewide. The effectiveness of VMT reduction should be determined by the lead agency based on substantial evidence in the record, not assumptions. Determining long-term consumer demand for VMT reducing transit will require extended analysis by the lead agency to support a determination supported by fact. Approval of a project (general plan) assuming a reduction in VMT or reduction in parking requirements for ADUs has the potential to result in potentially significant parking shortages if the transit service is not used by the project/ADU tenants in perpetuity as projected. Even approvals based on fact will be subject to future changes in circumstances (examples: technological changes, new legislation, changes in a general plan that would result in new significant impacts, an increase in previously identified significant impacts, or changes in circumstances occur since adoption of the general plan that would lead to new or more severe significant impacts). Given the potential for future changes in circumstances, it is highly unlikely a finding of less than significant will be enforced in perpetuity on a project by the lead agency.

Given the state’s projected population growth¹⁸, the state’s projected need for increased housing and the state’s policy for in-fill, county and city general plans will likely project an increase in traffic volumes which could potentially result in increased traffic delay/decreased LOS on roadways generating increased secondary impacts caused by increased traffic.

If OPR’s proposed Final CEQA Guidelines Update is adopted as written, Traffic will no longer be a topic of CEQA analysis. The lead agency and the public will be unaware of the potential changes or significance of adverse Traffic impacts through the CEQA process. Legislative Bills exempting activities from CEQA and proposed changes to the CEQA Guidelines reducing the scope of the environment from the whole of the environment to something less than the whole of the environment are inconsistent with the Act’s definition of the “Environment” and the Guidelines¹⁹.

Guidelines §15003(f) (“CEQA was intended ... to afford the fullest possible protection to the environment....”).

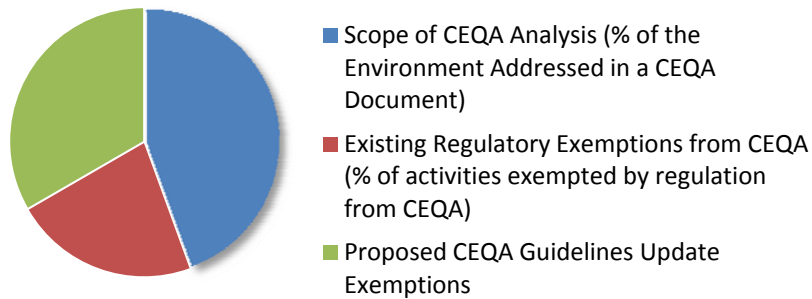
¹⁶ OPR Thematic Response to Comments, 11-2017, pg. 5

¹⁷ Methods to Assess Co-Benefits of California Climate Investments, Vehicle Miles Traveled California Air Resources Board, August 30, 2017
https://www.arb.ca.gov/cc/capandtrade/auctionproceeds/carb_vehicle_miles_traveled.pdf

¹⁸ California’s 39 million people live in 13 million households across 58 counties and 482 cities. Sixty one percent of the population lives within the southern one-third of the state. The largest population concentration is in Southern California. Household Growth - Through 2025, the highest percentage of household growth is expected to occur in the Bay Area, Southern California, and Central Valley communities. Between 2014 and 2015, approximately 25 percent of population growth came from migration from other states and countries; and 75 percent of population growth was attributable to births within California. HCD estimates household growth will increase by 1.83 million through 2025 with approximately 45% or 823,500 new households in the southern one-third of the state. Source: HCD California’s Housing Future draft report, January 2017. <http://www.hcd.ca.gov/policy-research/plans-reports/docs/California's-Housing-Future-Full-Public-Draft.pdf> The projected household growth equates to an estimated population increase of 2,388,150 by 2025 in the southern one-third of the state. The HCD draft study and its sources do not take into account the impact on population and households of SB 754, or California’s Sanctuary State legislation passed in October 2017.

¹⁹ Note: internal inconsistency with proposed OPR Final CEQA Guidelines Update - Guidelines Article 19 Categorical Exemptions §15332(d) In-Fill Development Projects requires consideration of “traffic” impacts.

Proposed CEQA Guidelines Update Scope



By eliminating Traffic analysis from CEQA, the state will knowingly and intentionally limit a form of analysis historically used by lead agencies and the public to analyze the environmental effect of Traffic, without providing an alternative method of analysis for this environmental impact.

Among the potentially significant impacts, Traffic delay can impede emergency response times. A number of transportation arteries in and around urbanized areas currently experience severe traffic delay/adverse LOS during peak hour periods. Many transportation arteries experience extended peak hour delays. Elimination of analytical Traffic data has the potential to result in significant harm to the environment and public health and safety including the continued degradation and failure of vehicular transportation systems in urbanized areas. Continued degradation and/or failure of vehicular transportation systems in urbanized areas will impact personal liberty, and an individual's quality of life, not to mention the economic consequences to the state.

It appears OPR's proposed Final CEQA Guidelines Update intentionally makes traffic congestion levels worse with the hope of persuading California drivers to stop or substantially curtail driving automobiles and switch to mass transit. OPR justifies the change from Traffic LOS analysis to Transportation VMT analysis on SB 743 stating the change is mandated by the bill, when in fact it is not. The legislature, Agency and OPR should look to the future, lay out a strategy which retains Traffic analysis and incentivizes sustainably powered zero emission autonomous vehicles and logistics transport. Autonomous vehicles and logistics transport will change the way we commute. Shared vehicles and the commercial use of drones will reduce the number of vehicles on the road and have a significant effect not only on the state's economy, but the world's economy.

Legislative changes combined with the proposed CEQA Guidelines Update result in inconsistencies and internal conflicts between the intent of the Act and the proposed Guidelines which limit public and lead agency awareness and input through the CEQA process for future planning studies raising the risk for litigation.

When considering final language for the CEQA Guidelines Update the Agency should incorporate language which does not limit but rather encourages public and lead agency awareness and input. The agency should update the Guidelines to resolve conflicts between recent legislation, the Act and its Guidelines, thereby reducing rather than increasing the risk of CEQA litigation.

How does the deletion of Traffic analysis from the Guidelines relieve a lead agency of the obligation to consider substantial evidence indicating that the project's environmental effects may still be significant?

Traffic delay has been a foundational element of traffic engineering for decades and a key component of environmental analysis since the enactment of CEQA. When a lead agency consults with responsible, trustee, or public agency that has jurisdiction over a project²⁰, and is provided potentially significant adverse traffic impact information the lead agency is obligated by the Act to discuss this information in the CEQA document. Existing legislation already exempts certain information which can result in significant adverse physical impacts from CEQA, from the "environment". This was the case for aesthetic resources in the Supplemental Sunset and Gordon Mixed-Use Project, Environmental Impact Report Draft in the city of Los Angeles (see Footnote 6). OPR's proposed Final CEQA Guidelines Update is in direct conflict with federal and state congestion management laws and regulations, which results in the need for continued traditional traffic congestion studies. If approved, OPR's proposed Final CEQA Guidelines Update will substantially increase CEQA litigation risks as these federal and state congestion management laws and regulations are on a collision course with CEQA.

We live in an information age and are transitioning to a clean smart technological internet where instantaneous global data sharing and analysis will be fundamental to our economy, to our ability to solve problems. Rather than updated CEQA Guidelines in a manner which limits data, restricts analysis and public input to achieve state goals through the current outdated vertically integrated system, the legislature, Agency and OPR should consider laying out a clear strategy based on the potential for direct engagement (which occurs at a much lower cost) which takes advantage of the potential of this smart technological revolution. Identify how the state, local governments and the public will benefit from the transition from a fossil fuel energy system to a clean renewable energy system. Once the public understands the strategy and how the economic model will allow the state, local governments and the public to prosper, each will embrace this revolution being proud responsible stewards of the environment and do their part to minimize the generation of GHG emissions and the effects of climate change. They simply need to understand the path and how they can each profit by following it. The Agency and OPR should embrace data collection, analysis and public input in an open, transparent and collaborative platform allowing a better understanding of the problems faced now and in the future, promoting ingenuity and innovation and sharing what we learn with all of humanity.

When preparing future planning documents subject to CEQA, how does a lead agency quantify the potential change in the environmental baseline or potential impacts from changes in circumstances from regulatory changes and CEQA exemptions without speculation?

One example: Given the recent adoption of legislation cited herein, when preparing a new general plan, general plan amendment or update, how does a county or city predict the number of future ADUs or density bonus units to be built within the general plan's horizon year?

What does it mean to a lead agency if its certified general plan CEQA document is no longer adequate due to changes in circumstances which could result from one or more significant impacts not considered in its certified CEQA document or if a change in circumstances will result in a significant increase in severity of a previously identified significant adverse impact?

Reliance solely on historic growth data, biological data or other data assembled prior to a change in circumstance may not meaningfully reflect the changes in circumstances or the physical environmental effects caused by the change in circumstances. Changes in circumstances that could result in potentially significant physical impacts to the environment must be assessed and may require new or updated CEQA documents. Analysis of changes in circumstances could take an extended period of time to obtain factual support for

²⁰ Public Resources Code, §21092.4 ("Consultation shall be . . . for the purpose of the lead agency obtaining information concerning the project's effect. . . within the jurisdiction of transportation planning agency...")

conclusions and could result in temporary or partial development moratoriums. One example being the effectiveness of AB 2299 in meeting housing needs and its primary and secondary long-term physical impacts from increased population growth within urbanized areas.

There is no established methodology to determine how many ADUs will be built over a given period of time in a given jurisdiction. ADUs are not limited to the elderly who do not drive or care takers. AB 2299 will result in physical impacts to existing infrastructure, public services and a community's jobs housing balance, biological preserves and endangered species within urbanized areas.²¹ These impacts cannot be accurately accessed with existing data. As an alternative to a temporary or partial development moratorium, worst-case assessments could be used in planning documents (general plans) and analyzed in CEQA documents. Reliance on worst-case assumptions could result in a wide range of significant un-realistic adverse physical impacts limiting a lead agencies ability to approve new projects until the potential adverse impacts have been mitigated. The answer lies somewhere between the pre-legislative existing condition and the worst-case condition. Determining a reliable forecast without speculation will be challenging and be subject to an increased risk of CEQA litigation.

Availability of domestic water supplies is another major issue. California counties and cities have, or can obtain finite quantities of domestic water supply. Unless adequate water supplies to accommodate future growth can be assured, development cannot occur. While development of an individual ADU cannot occur without adequate water supplies and does not represent a potentially significant impact, the potential development of approximately 8 million ADUs permitted by AB 2299 statewide has the potential to meets or exceeds existing committed or reserved supplies disrupting state Water Resources Control Board planning. The allocation of water is made through the appropriate water right program administered by the State Water Board's Division of Water Rights. The aggregate face value of all the water rights in the state is likely greater than the average amount of water actually available. This does not mean that more water is used than is available. The complexity of water right data requires analysis be conducted based on water right holder seniority and by diversion in watersheds to get a complete picture of water supply and use.

When a lead agency prepares future planning documents such as a county or city general plan, amendment or update, it must account for the legislation's priority for ADU development (priority was established by the legislature's removal of discretionary decision making authority, and the limited ability allocated to local jurisdictions to regulate development of ADUs by ordinance). The priority for ADU development places constraints on local jurisdictions that face the potential for domestic water requirements to exceed existing water commitments resulting in temporary or partial development moratoriums or adoption of mandatory water conservation measures to allow continued growth. Development moratoriums could be in effect until additional domestic water supplies are assured or mitigation measures adopted which provide adequate water supplies (examples: water rationing, conservation, new source(s) of domestic water are obtained, changes in land use, adjudication of water rights among land uses/property owners and water districts). ADU water rights have potential seniority over, other project water rights not having received a formal commitment of

²¹ In general, an increase in the state's population, particularly in urbanized in-fill areas will increase the existing problem of homeless individuals living in areas including riverbeds and biological sanctuaries (According to HCD on a single night in 2016, more than 118,000 people experienced homelessness in California - 22 percent of the entire nation's homeless population. Most of California's homeless population resides in major metropolitan areas. (source: HCD, see Footnote 7)). Sadly, among the impacts resulting from this situation are adverse impacts to federal and state listed endangered species.

The potential statewide development of approximately **8 million ADUs (23,200,000 new residents)** permitted by AB 2299 has the potential to adversely impact federal and state listed endangered species and their habitats throughout the state, particularly in biological mitigation areas and preserves in urbanized in-fill areas in the southern portion of the state where the majority of population growth is projected. AB 2299 permits significant population increases without corresponding increases in open space. On a per capita basis the availability of accessible public open space in close proximity to urbanized areas has the potential to significantly decrease. This has the potential to adversely impact federal and state listed endangered species and their habitat throughout the state.

appropriate water right from the appropriate water purveyor. In passing this legislation the state has pre-committed availability of domestic water resources to ADUs and potentially invalidated prior CEQA documents prepared for general plans and future planning projects.

CEQA documents serve “as the environmental alarm bell” whose purpose is to warn of environmental consequences before a project has taken on overwhelming bureaucratic and financial momentum.”

How does a lead agency prepare a legally defensible CEQA document given the inconsistencies between the Act and legislative bills exempting activities from CEQA and OPR’s proposed Final CEQA Guidelines Update?

CEQA was intended to treat all projects equally to be an evaluation tool, not to have a separate set of standards for different types of projects. Activities exempted from CEQA were intended to have no reasonable possibility of resulting potentially significant adverse environmental effects. The CEQA Guidelines have evolved into a political tool where activities are exempted from CEQA and certain types of projects are evaluated using different environmental standards. One clear example being the different environmental considerations or lack thereof, given to in-fill projects (see: Guideline Appendix A, G, M & N).

California laws, past and proposed changes to the Guidelines have made preparation of legally adequate CEQA documents increasingly complicated and difficult to defend when challenged, increasing the risk of litigation, delays and court findings of inadequacy.

These changes include:

- The State legislature has selectively excluded activities from CEQA.
- The CEQA Guidelines statutorily and categorically exempt selected projects.
- The CEQA Guidelines screen potential environmental effects for “in-fill” projects differently than all other all other types of projects (Appendix N)²².
- If the state legislature approves OPRs proposed Final CEQA Guidelines Update, certain forms of environmental analysis (example: Traffic) will be excluded allowing in-fill projects to be streamlined through the CEQA process.
- The Guidelines will increase the scope of compliance requirements with transportation plans.
- By limiting what constitutes the whole of the “Environment” to only a portion of the “Environment” through legislative exemptions and manipulating CEQA Guidelines to assist in implementing state goals and policies, the state is allowing activities to circumvent CEQA and for projects to be streamlined through CEQA that result in potentially significant adverse impacts without disclosing all potentially significant adverse impacts. These steps are preventing local and regional decision-makers and the public from obtaining the data needed to obtain a complete and accurate picture of the environmental baseline and the data necessary to analyze a project’s potential near-term and long-term significant adverse physical impacts on the environment.
- The Proposed CEQA Guidelines Update reduced scope of environmental analysis will be used to streamline projects satisfying the state’s goals of promoting in-fill development, meeting the state’s housing shortage, increasing the availability of affordable housing, reducing VMT, expanding public mass transit and providing sanctuary to illegal immigrants all of which individually have the potential to allow significant adverse physical impacts to occur not fully disclosed through the CEQA process.

²² Note Appendix A: CEQA Process Flowchart should be updated to incorporate the use of Appendix G or N. This is but another graphic example of CEQAs growing complexity.

These actions have the potential to restrict personal liberty and quality of life (examples: a significantly degraded or congested roadway system will impact licensed individual's ability to freely travel by car on public roadways. An increase in vehicular noise and/or air quality emissions above a level of significance caused by a reduction in Traffic LOS has the potential to impair a person's health and well being).

By taking these steps, the state has prevented lead agencies and the public from obtaining an accurate picture of the environmental baseline and potentially significant adverse impacts when lead agencies prepare future planning studies which include new general plans, general plan amendments or updates. This invites conflict, not cooperation.

By excluding and exempting certain types of projects from CEQA (example: Assembly Bill No. 2299 and related bills), the state has knowingly and intentionally taken away regional and local decision making authority and public input at the local and regional levels. This invites conflict, not cooperation.

Staying with the example of AB 2299, in the last 14 months since the effective date of this legislation approximately 100 local governments have enacted ordinances to insure protection of the health and safety of the public from the potential effects of AB 2299. The overwhelming majority of these ordinances have significantly reduced the potential number of ADUs that can be constructed within these jurisdictions, limiting the potential effectiveness of the state to meet its policy objective (satisfy the state housing and affordable housing need through in-fill). What steps is the state legislature proposing in response? The state legislature is proposing SB 827²³ Throw planning out the window! And then there is the outstanding threat by the state to local governments, if you don't comply we will cut-off all state funding! But then again, this state has the same relationship with the federal government so we shouldn't be surprised. This is conflict, not cooperation. It is wrong! If state, local governments we were a team, how do you think they would do in the Olympics? Would we fire the coach?

These actions have increased the difficulties local governments face when attempting to prepare legally defensible CEQA documents, increasing the potential for lengthy and costly CEQA litigation, increasing the risk of court findings of inadequacy and extended development delays and or moratoriums.

Conclusions

The State of California has taken steps to exempt classes of activities/projects from CEQA and to streamline others through CEQA. The state is considering further amendments to the CEQA Guidelines to further limit its scope of analysis to assist in implementing its policies. These actions have limited the scope of CEQA creating numerous problems and increasing the risk of increased litigation, leaving an interesting set of challenges for local and regional governments and lead agencies.

By limiting what constitutes the whole of the "Environment" to only a portion of the "Environment" through legislative exemptions and manipulating CEQA Guidelines to further implementation of the state's goals and policies (example: to meet future population growth and housing needs through urban in-fill, expansion of mass transit systems and if approved, deleting traffic analysis from CEQA), the state is failing to protect the environment and is preventing local and regional decision-makers and the public from obtaining the data needed to obtain a complete and accurate picture of the environmental baseline and the data necessary to analyze a project's potential near-term and long-term impacts, impose mitigation measures and analyze alternatives to reduce potentially significant adverse impacts.

²³ Proposed SB 827 Planning and zoning: transit-rich housing bonus, text:
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB827

These actions have the potential to restrict personal liberty, health, safety and quality of life (examples: the deletion of Traffic LOS analysis from CEQA has the potential to result in a significantly degraded or failed roadway system. A significantly degraded or failed roadway system will impact licensed individual's ability to freely travel by car on public roadways. A degraded or failed roadway system has the potential to significantly increase vehicular noise and/or air quality emissions above a level of significance. A significant increase in roadway noise and air quality emissions has the potential to impair a person's health and well being). Not to mention its effects on the state's economy.

State legislation excluding consideration and evaluation of broad sectors of the environment to promote in-fill development, taking away public input and local and regional decision making authority for activities that generate significant adverse effects on the environment is contrary to the intent of the Act and significantly limits its practical usefulness.

Activities/projects exempted from CEQA have resulted in potentially significant adverse impacts on the environment without disclosure through the CEQA process to the lead agency or the public. In so doing, the state has created inconsistencies between legislative bills, the Act and its Guidelines, adding to the potential for CEQA litigation.

OPR's proposed Final CEQA Guidelines Update fails to afford the fullest possible protection to the environment by allowing a lead agency to not require mitigation that would reduce an effect below the level of significance. This interpretation violates the foremost principle of CEQA, that the Act be interpreted to afford the fullest possible protection to the environment.

Stated bluntly, the California legislature believes the best way to achieve the states existing and projected housing needs and environmental objectives, is to concentrate future population growth in urbanized areas and transform urban transportation from individual vehicles to mass transit, bicycle, foot traffic, etc. The state legislature is aware of the delays caused by CEQA, the costs associated with litigation, the positions taken by the courts and the opposition to these policies voiced by the public and local governments. In response, the state legislature has passed legislation exempting development of ADUs and affordable housing density bonus units from CEQA, intentionally bypassing the public and local governments. And the state is not done yet! The State legislature has intentionally passed legislation circumventing CEQA pre-committing local governments to accommodate projected housing shortfalls and population growth. A move that if subject to CEQA would be strictly prohibited as affirmed by the state Supreme Court in the *Save Tara* decision on pre-commitment.

The state legislature is considering adoption of OPRs Final CEQA Guidelines Update, which if approved, will significantly reduce the scope of the "Environment" by eliminating Traffic (LOS) analysis and replacement it with Transportation analysis (VMT). Transportation significance thresholds will be established by the local jurisdiction resulting in inconsistent applications, which will encourage gaming between jurisdictions. It is an undisputed fact that urban in-fill projects will result in traffic generation and impacts. Only by eliminating disclosure of Traffic impacts from CEQA will urban in-fill projects qualify for CEQA streamlining. Only by eliminating disclosure of Traffic impacts from CEQA will mass transit projects be politically feasible (for example: if Traffic impacts are disclosed for at-grade mass transit (rail) projects, the intersection traffic delay in urbanized areas will be a significant deterrent, a deal killer. The cost of above or below ground rail is prohibitive). Streamlining urban in-fill projects will result in the deterioration of urban vehicular circulation systems and accelerate the need for development of alternative transportation modes (mass transit). The state legislature's actions are regulatory changes requiring local governments to update their future planning documents to incorporate these changes in circumstances. In fact, most CEQA documents if not all CEQA documents for general plans do not address these regulatory changes in circumstances increasing the risks to existing city's and county's of legal challenges. The state legislature's policies come at the expense of the environment, the health and safety of its residents, and individual civil liberties. All of which translates to a significant adverse impact to the state's economy.

When preparing general plans and future planning projects, local governments and planning agencies will have to account for the potential physical effects of activities exempted and streamlined through CEQA. CEQA documents evaluate and explain the environmental effects of general plans and future planning projects to the public and decision makers allowing local governments and state agencies to best plan for their future. Exempted activities and/or streamlined CEQA projects resulting in significant adverse impacts on the environment will be allowed by statute. There will be no disclosure or only partial disclosure through CEQA of an exempted activities or streamlined projects significant adverse physical environmental effect, evaluation of alternatives, imposition of mitigation measures, identification of significant unavoidable adverse impacts or requirement for findings supporting of a statement of overriding considerations. The public and decisions makers will be held in the dark and have to live with the adverse physical environmental consequences. Contrary to the position by OPR in its final CEQA Guidelines Update, if planning studies (traffic studies) for a county or city initiated new general plan, amendment or update are publicly funded they are part of the public record/CEQA record. General plans and other projects involving traffic analysis are projects subject to CEQA. OPR's proposed Final CEQA Guidelines Update would not only allow development projects that result in significant traffic congestion, it would encourage them, streamline them through its policy of urban in-fill, while at the same time hindering and putting limits on transportation agencies and local governments seeking to relieve congestion if their solution requires new roads or added roadway capacity.

By taking these actions the state legislature has provided ample grounds for legal actions by parties wishing to protect the environment, the health and safety of its residents, individual civil liberties, and prevent unwanted population growth. Increased litigation over CEQA documents increases the risk CEQA documents will be found inadequate by a court of law. Local governments and agencies face imposition of temporary or partial development moratoriums and costly CEQA litigation, leaving them with an interesting set of challenges.

One thing is certain the regulatory mess caused by the state legislature will likely be litigated for years to come. There is no apparent end to this disintegrating relationship. It is a reflection of a transition period, the end of the second industrial revolution and beginning of the third. Efforts are being made by the state to force local governments and the public into programs which continue the failing fossil fuel technologies, industrial platforms and economic models which are no longer economically competitive. The market will ultimately decide what is built. The market is influenced by factors including regulatory burdens, incentives and new technologies. New technologies are having an increasing effect on jobs. Job growth and/or decline will be a major factor in California's future and the state's economy.

The proposed CEQA Guidelines Update need to be revised to address the problems identified herein.

The State Legislature can take the following steps

The state legislature can continue to pass legislation exempting activities from CEQA and streamlining other activities which further its policies and make CEQA compliance more onerous for projects inconsistent with its policies. The state legislature can continue to put pressure on local governments in disagreement with its policies to comply. It can continue to introduce new legislation and will likely face increased opposition and litigation; or

The state legislature can work with the Natural Resources Agency, OPR and others to re-evaluate its policies of accommodating unlimited population growth concentrated in urbanized in-fill areas, being a sanctuary state, creating housing in close proximity to employment, and creating a secondary mass transportation network. The legislature can work with local governments to identify strategies which will result in significant increases in aggregate efficiencies, dramatic increases in productivity and dramatic reductions in the ecological footprint and dramatically reduced marginal costs. These economic incentives can be achieved through the merger of the existing communications internet, emerging digital energy internet and automation transportation logistics internet creating jobs during this transition period. In the future a significant percentage of the workforce may not have to drive to work. If they do, they may utilize shared renewable

energy electric powered vehicles. Shared vehicles have the potential to greatly reduce the number of vehicles on the roads. Each building can be retrofitted for energy efficiency and become a clean renewable power generator connected to the digital energy internet. The existing vertical power generation structure (central power generating facilities) must be changed to a lateral distributed power grid, not only for national security but for reliability.

The blanket policy of streamlining in-fill projects in urbanized areas (vertical construction) and mandating CEQA conclude that all residential in-fill projects within a transit priority area will not result in potentially significant adverse aesthetic impacts needs to be re-evaluated²⁴. The shadow effects of buildings have the potential to impact the generation of clean renewable energy on surrounding parcels and buildings. Policies requiring energy conservation and improved efficiency of fossil fuel based energy are required steps in the transition, but these policies need to take the next step to the conservation and improved efficiency of clean renewable energy. The transition to the new digital infrastructure can be paid for by energy savings, reducing the role of government. The government just needs to lay out the strategy and insure the playing field is fair by insuring the dark internet is kept in check. This technological digital revolution is so powerful in its potential productivity it could reduce marginal costs for some goods and services to near zero. The sun always shines and the wind always blows, once the capital cost of these clean renewable energy power stations/nodes are repaid, the marginal cost for energy is near zero, so you won't be defaulting on the loans. The capital cost for renewable energy systems is dropping exponentially and will continue to do so. Once the private sector realizes the economic incentives they will move rapidly to convert our old outdated infrastructure to new digital renewable clean energy infrastructure. Politically, we need to go from geopolitics to biosphere consciousness, making it clear to the world, we live in an indivisible biosphere community and only by sharing what we learn can the world combat the runaway exponential curve affecting the earth's water cycle. The effects of global warming are dramatically changing the earth's water cycle. Global warming is being fueled by the continued use of energy derived from fossil fuels.

The principles of the third industrial revolution are being adopted by the European Union, China and other societies who realize the economic competitive advantages of near net zero marginal cost and the ability of this platform provides to minimize society's ecological footprint and repair the environmental damage caused by fossil fuels which powered the second industrial revolution. If California wants to compete in the global market, it must transition. Given the projected effects of climate change we don't have much time. We owe this to future generation and all creatures on earth.

The Natural Resources Agency can take any of the following steps:

Approve OPRs Proposed CEQA Guidelines Update and take no further steps: Face increased public outrage, no-growth initiatives, local government opposition, increased CEQA litigation and the potential for local governments to impose temporary or partial development moratoriums while they address changes in circumstances. California's environment, economy, personal health and safety and individual civil liberties will likely continue to decline. Some businesses will relocate to other states having lower taxes and less burdensome regulations. Increased opposition to state policies and CEQA litigation will likely impede the state's ability to meet its goals. Staying on the current path is taking us to an economic crisis and environmental abyss.

Abolish CEQA: Face the likelihood of local governments enacting ordinances and regulations to protect the environment. Statewide, California's environment, economy, health and safety and individual civil liberties will continue to decline. There would be limited to no uniformity of environmental standards within the state. Gaming among local governments will occur. Increased litigation will likely impede the state's ability to meet its goals.

²⁴ SB 743

Abolish CEQA and craft a new law to replace CEQA which protects the environment: CEQA documents have evolved into complex legal documents prepared to defend against litigation. Their complexity and skill needed to prepare legally defensible documents is on an exponential curve. Why? It is because of resistance to development which results in CEQA litigation. Influencing factors include and expanding population, urban density, in-fill policies, finite resources and the public's perception of a declining quality of life in urbanized areas. Resistance to development and litigation are on an exponential curve upward. Courts, error on the side of the environment. Not all states face resistance to development. Gaming occurs among states for businesses and population. Since the enactment of CEQA, Californians have learned a lot. We have learned that CEQA document cannot be limited to only a few hundred pages. EIRs have become monsters. The legislature should consider starting over, crafting a new law to replace CEQA incorporating what have learned. Determine if CEQA is reactive or proactive. The Act was intended to be reactive, to simply analyze a project. But the Guidelines have evolved into a proactive document to assist the legislature in achieving its policies. Consider crafting a new law which incorporating a clear environmental strategy to take use through the 2-3 decades it will take to transition to the third industrial revolution. This would involve a reevaluation of policies, a new culture. If this were to be done and explained to local governments and the public, it would greatly reduce the potential for environmental litigation and the continued decline of California's environment, economy, health and safety and individual civil liberties. A decrease in CEQA litigation will likely improve the state's ability to meet its goals. **This course of action is recommended;** and/or

Fix CEQA: The language used in many EIRs is no longer comprehensible to the average lay person. An EIR including its appendices can be thousands of pages reducing the likelihood it will ever be fully read by the decision makers or the public. CEQA documents have evolved into complex legal documents prepared to defend against litigation. In many cases a EIRs summary is all that ever read. The summary can exceed a hundred pages. The Agency can comprehensively overhaul CEQA returning CEQA documents to their intended purpose. Shorting CEQA documents and making them easily understandable to the lay person and decision makers. The Agency can work with the state legislature to remedy the inconsistencies between legislation and the intent of the Act, the Act's broad all encompassing definition of the "Environment" and the Act's policy for use of an EIR. It would be helpful for the Agency to provide court approved examples of how discussions of certain key topics be addressed in CEQA documents.

By taking these steps the Agency and legislature will greatly reduce the potential for environmental litigation and the continued decline of California's environment. If the legislature takes these steps it has the potential to improve the economy, the health and safety of its residents and an individual's civil liberties. A decrease in CEQA litigation will likely improve the state's ability to meet its goals.

This course of action is recommended and while fixing CEQA, it is recommended the Natural Resources Agency, OPR working with others develop a clear path, a strategy forward to guide the state through this transition to a clean energy industrial revolution and economy based on the merger of the existing communications internet, emerging digital energy internet and the automation transportation logistics internet, a strategy driven by economic incentives and clear environmental objectives. This strategy should be the backbone of CEQA clearly explained and reflected throughout.

Given the increasing quantity of global GHG emissions being generated and the existing and projected impact of climate change on the world's biosphere, we must address the problem now. Staying on the current path is taking us to an economic crisis, and environmental abyss. We need a shift to a new infrastructure paradigm that can allow us to move quickly off carbon, in 3 decades. Zero marginal cost is the ultimate metric for reducing our ecological footprint and by sharing what we produce and recycling we dramatically reduce what goes to the landfill. By doing so, California will be one of the leaders setting examples for others around the world to follow.

One Last Thought for the State Legislature to Consider

If the state's current policies are successful, in the coming decades the state will have provided housing for millions of additional residents, the majority of which will be located in high density urbanized areas in the southern portion of the state. The state will have met the need for affordable housing. However, at the same time there are no requirements to create an equal number of jobs to match population growth. The jobs housing balance will be out of balance, particularly in in-fill areas in the southern portion of the state where the majority of the housing is projected to be built. A lack of jobs will increase social unrest and a resulting in a host of problems it carries with it. The state will have a vastly improved mass transit network along with its current vehicular roadway system. The capital cost of a vastly improved mass transit system will be significant and paid for by generations for decades to follow. It will affect the state's economy and the cost of doing business in the state. The cost of maintaining the existing roadway system combined with a vastly improved mass transit system will be overwhelming on state and local governments and the public, particularly if there is a jobs housing imbalance.

During the next few decades, technological changes and automation will have been introduced at an accelerating pace. We will be able to collect and manage vast amounts of data. We will have cleaner forms of energy. Converting diesel power generation to natural gas and expanding solar and wind energy. New forms of autonomous transportation logistics will be introduced, increasing efficiency and productivity on land, sea and in the air. The introduction of autonomous and autonomous shared vehicles on our roadways and the commercial use of autonomous drones in our skies will have contributed to reduced traffic delays and increased the efficiency on our roadways. An increase in the number of electric powered vehicles will occur. The percentage of gasoline and diesel powered vehicles will continue to decline. New forms of user fees or taxation will be required to maintain our roadways. With the introduction of shared autonomous vehicles there will be fewer licensed drivers and with more electric vehicles there will be a reduction in gas tax revenues. The location and manner in which business are operated will change. Workers will be able to directly communicate with one another at a very low cost on a global internet bypassing the current vertically integrated organization and middleman. Many existing industries will have to re-think their business models.

The application of new technologies and automation will greatly expand, affecting all market sectors. These changes will come at a cost, the net elimination of jobs. Increases in minimum wage will continue to be in competition with automation for jobs. The cost of automation will continue to drop while the pressure to increase wages will continue to increase, particularly during periods of inflation. A higher concentration of job loss will impact unskilled and lower income workers. State policies including accommodating unlimited population growth concentrated in urban in-fill areas, the provision of affordable housing, mass transit and placement of dwellings in close proximity to employment appear to conflict with the effects of automation being experienced today. The state and its local governments will be faced with higher populations and higher unemployment, particularly in urban in-fill areas near areas that were once employment hubs. Higher unemployment will mean state and local governments will be forced to subsidize workers whose jobs have been replaced by automation and have not been retrained. This cost will be particularly burdensome on the middle class.

You say wait you're getting ahead of yourself, no one can predict the future. That's a valid point! However, the state legislature has done just this by pre-committing local and regional government planning processes in a manner that circumvents CEQA with no long-term economic incentive or strategy to guide the state through this transition to a renewable clean energy powered economy. CEQA serves "as the environmental alarm bell" whose purpose is to warn of environmental consequences before a project has taken on overwhelming bureaucratic and financial momentum."

*Don't shoot the messenger! CEQA is not the guilty party. It does not need to be dismantled.
In fact, CEQA is doing its job. It's sounding the alarm!*

Ask yourselves; given our course, what effect will job loss caused by new technologies and automation have on the quality of life, the health and safety of the state's residents and the economies of counties and cities throughout the state. The markets will be a significant determinant of future conditions. If you accept that significant job loss caused by the introduction of new technologies and automation is a future reality, are the state's policies for population growth and urban in-fill best decided at the state level or are they decisions best decided by local governments on a case by case basis?

Perhaps a better strategy is to create incentives based on an economic model demonstrating significant increases in aggregate efficiencies, dramatic increases in productivity and dramatic reductions in the ecological footprint and dramatically reduced marginal costs. Incentives based on what is best for the planet and all its inhabitants. This will require a cultural change, a shift in the way we think, away from carbon based energy, where every existing building is retrofitted and all new buildings are renewable energy power nodes connected to a lateral shared power grid. Where all electric vehicles are powered by renewable clean energy sources, not fossil fuel generated electricity. Where agriculture products are raised without fossil fuel based fertilizers and located in closer proximity to end users. Where the percentage of conventionally farmed meat in our diet is reduced, reducing the generation of methane into the atmosphere and reducing the environmental impacts associated with raising livestock on the natural ecosystems. All California needs is to understand the strategy and economic incentives. California and the world will embrace the opportunities to reduce GHG emission and save the planet from the effects of climate change.

CEQA needs to be returned to its original purpose "as the environmental alarm bell" whose purpose is to warn of environmental consequences before a project has taken on overwhelming bureaucratic and financial momentum" and not systematically dismantled to achieve outdated state policies and objectives which continue to fuel the fossil fuel infrastructure at the expense of the environment.

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