

**Lockey, Heather@CNRA**

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**From:** Teri Wissler Adam <wissler@emcplanning.com>  
**Sent:** Thursday, March 15, 2018 12:27 PM  
**To:** CEQA Guidelines@CNRA  
**Subject:** Proposed Changes to the CEQA Guidelines  
**Attachments:** Comments on proposed changes to CEQA guidelines\_PDF.pdf

Please see the attached comments. Thank you for your consideration.

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*Planning for Success.*

March 15, 2018

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

**Re: Title 14 Notice of Proposed Rulemaking  
Amendment and Additions to the State CEQA Guidelines  
Comments**

Dear Mr. Calfee

Thank you for the opportunity to comments on the proposed amendments and additions to the State CEQA Guidelines. EMC Planning Group has been assisting public agencies with CEQA compliance for nearly 40 years.

Please see our attached recommended modifications and comments/questions. Our comments are in the following format:

1. OPR Proposed Changes;
2. Our Recommended Modification to the Proposed Change in ~~**Bold Strikethrough**~~ or **Bold Double Underline**; and
3. Our Reasoning for the Modifications

Thank you for considering our comments.

Sincerely,

Teri Wissler Adam  
Senior Principal

EMC PLANNING GROUP INC.  
A LAND USE PLANNING & DESIGN FIRM

## 1. OPR PROPOSED CHANGES

15061. (3) The activity is covered by the general rule common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

### Recommended Modification to Proposed Changes

15061. (3) The ~~activity project~~ is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the ~~activity project~~ in question may have a significant effect on the environment, the ~~activity project~~ is not subject to CEQA. **This exemption is known as the common sense exemption.**

### Reasoning

Changing “activity” to “project” makes subsection 3 consistent with the other subsections. Replacing “general rule” with “common sense exemption” is not good sentence structure and could imply that the common sense exemption is identified elsewhere in the Guidelines.

## 2. OPR PROPOSED CHANGES

15062 (6) The identity of the person undertaking an activity which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies, or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use from one or more public agencies.

### Recommended Modification

15062 (6) The identity of the person undertaking ~~an activity a project~~ which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies, or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use from one or more public agencies.

### Reasoning

Changing “activity” to “project” makes subsection 6 consistent with the other subsections.

## 3. OPR PROPOSED CHANGES

New Section 15064.3 Determining the Significance of Transportation Impacts

(a) Purpose.

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.

(b) Criteria for Analyzing Transportation Impacts.

(1) Land Use Projects. Vehicle miles traveled exceeding an applicable threshold of significance may indicate a significant impact. Generally, projects within one-half mile of either an existing major transit

stop or a stop along an existing high quality transit corridor should be presumed to cause a less than significant transportation impact. Projects that decrease vehicle miles traveled in the project area compared to existing conditions should be considered to have a less than significant transportation impact.

(2) Transportation Projects. Transportation projects that reduce, or have no impact on, vehicle miles traveled should be presumed to cause a less than significant transportation impact. For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements. To the extent that such impacts have already been adequately addressed at a programmatic level, a lead agency may tier from that analysis as provided in Section 15152.

(3) Qualitative Analysis. If existing models or methods are not available to estimate the vehicle miles traveled for the particular project being considered, 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.

(4) Methodology. A lead agency has 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. A lead agency may use models to estimate a project's vehicle miles traveled, and may revise those estimates to reflect professional judgment based on substantial evidence. Any assumptions used to estimate vehicle miles traveled and any revisions to model outputs should be documented and explained in the environmental document prepared for the project. The standard of adequacy in Section 15151 shall apply to the analysis described in this section.

(c) Applicability. 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.

## **Questions**

1. (b)(1) Consider providing definitions for "land use projects", "project area", "existing conditions", "major transit stop" and "stop along an existing high quality transit corridor."
2. (b)(1) If a land use project *decreases* VMT in the project area compared to existing conditions, what is the "less than significant" transportation impact? Wouldn't the decrease be a "beneficial" impact? In other words, if a project improves the existing environmental setting, there is no adverse impact (less than significant or significant). It is a beneficial impact. If the project causes no change in the existing environmental setting, then there is "no impact." This should also be clarified in the November 2017 Technical Advisory.
3. (b)(2) If a transportation project reduces, or has no impact on, VMT, what is the "less than significant" transportation impact? Wouldn't the decrease be a "beneficial impact?" If there is "no impact", then there is "no impact", not a "less than significant" impact.
4. (b)(2) What is meant by "programmatic level?" There is no basis in the Statutes for a programmatic level analysis. The references in the Statutes and Guidelines to "program" are associated with the project definition, not the level of analysis. See 15168. Detail of analysis is addressed in 15146, Degree of Specificity.

5. (b)(3) Although likely true, the last sentence regarding the qualitative analysis of construction traffic seems misplaced. Maybe have a separate paragraph for *operational* traffic (1<sup>st</sup> two sentences) and another paragraph for the *construction* traffic sentence.
6. (c) Why July 1, 2019? The previous version was January 1, 2020, which represents 2 years from the proposed new rulemaking.

#### 4. OPR PROPOSED CHANGES

15072 (e) For a project of statewide, regional, or areawide significance, the lead agency shall also provide notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in Section 21092.4(a) of the Public Resources Code. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site and freeways, highways and rail transit service within 10 miles of the project site. The lead agency should also consult with public transit agencies with facilities within one-half mile of the proposed project.

#### Question

1. Should or shall; provide notice or consult? Is the intent to require the lead agency *provide notice* to public transit agencies or is it just a suggestion *to consult with* public transit agencies? The added sentence doesn't fit within the requirements of this section, which *requires* lead agencies *to provide notice*.

#### 5. OPR PROPOSED CHANGES

15075(b) (8) The identity of the person undertaking an activity which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use from one or more public agencies.

#### Recommended Modification

15075(b) (8) The identity of the person undertaking ~~an activity a project~~ which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use from one or more public agencies.

#### Reasoning

Changing "activity" to "project" makes subsection 8 consistent with the other subsections.

#### 6. OPR PROPOSED CHANGES

15086(a)(5) For a project of statewide, regional, or areawide significance, the transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project. "Transportation facilities" includes: major local arterials and public transit within five miles of the project site, and freeways, highways and rail transit service within 10 miles of the project site. The lead agency should also consult with public transit agencies with facilities within one-half mile of the proposed project.

#### Question

1. Should or shall; provide notice or consult? Is the intent to require the lead agency *provide notice* to public transit agencies or is it just a suggestion *to consult with* public transit

agencies? The added sentence doesn't fit within the requirements of this section, which *requires lead agencies to provide notice.*

## **7. OPR PROPOSED CHANGES**

15094(b)(10) The identity of the person undertaking an activity which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use from one or more public agencies.

### **Recommended Modification**

15094(b)(10) The identity of the person undertaking ~~an activity~~ a project which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use from one or more public agencies.

### **Reasoning**

Changing "activity" to "project" makes subsection 10 consistent with the other subsections.

## **8. OPR PROPOSED CHANGES**

§ 15125. Environmental Setting

(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project. ~~, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective.~~ This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives. The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts.

(1) Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, that are supported with substantial evidence. In addition, 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.

(2) A lead agency may use either a historic conditions baseline or a projected future conditions baseline as the sole baseline for analysis only if it demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-makers and the public. Use of projected future conditions as the only baseline must be supported by reliable projections based on substantial evidence in the record.

(3) A lead agency may not rely on hypothetical conditions, such as those that might be allowed, but have never actually occurred, under existing permits or plans, as the baseline.

## Recommended Modification

### § 15125. Environmental Setting

(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project. ~~as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective.~~ This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to **provide** an understanding of the significant effects of the proposed project and its alternatives. The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts.

(1) Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, that are supported with substantial evidence. In addition, a lead agency may also use baselines consisting of both existing conditions and **historic conditions** or projected future conditions that are supported by reliable projections based on substantial evidence in the record.

## Reasoning

A word was missing between “to” and “an”. These additional guidelines are about both historic conditions and future condition. An EIR should be able to use both existing and historic conditions, or existing and future conditions.

## 9. OPR PROPOSED CHANGES

### § 15126.2. Consideration and Discussion of Significant Environmental Impacts

(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant ~~environmental~~ effects of the proposed project on the environment. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected. For example, ~~an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there. Similarly,~~

the EIR should evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas), including both short-term and long-term conditions, as identified in authoritative hazard maps, risk assessments or in land use plans, addressing such hazards areas.

### **Recommended Modification**

(a) The Significant Environmental Effects of the Proposed Project. An EIR shall identify and focus on the significant ~~environmental~~-effects of the proposed project on the environment. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced, or as allowed pursuant to Section 15125. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services. The EIR shall also analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected. For example, ~~an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there. Similarly,~~ the EIR should evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas), including both short-term and long-term conditions, as identified in authoritative hazard maps, risk assessments or in land use plans, addressing such hazards areas.

### **Reasoning**

To be consistent with the changes to Section 15125.

## **10. OPR PROPOSED CHANGES**

§ 15182. ~~Residential~~ Projects Pursuant to a Specific Plan

(a) General. Certain residential, commercial and mixed-use projects that are consistent with a specific plan adopted pursuant to Article 8, Chapter 3 of the Government Code are exempt from CEQA, as described in subdivisions (b) and (c) of this section.

(b) Projects Proximate to Transit.

(1) Eligibility. A residential or mixed-use project, or a project with a floor area ratio of at least 0.75 on commercially-zoned property, including any required subdivision or zoning approvals, is exempt if the project satisfies the following criteria:

(A) It is located within one-half mile of an existing or planned rail transit station, ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods;



(B) It is consistent with a specific plan for which an environmental impact report was certified; and

(C) It is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board has accepted the determination that the sustainable communities strategy or the alternative planning strategy would achieve the applicable greenhouse gas emissions reduction targets.

(2) Limitation. Additional environmental review shall not be required for a project described in this subdivision unless one of the events in section 15162 occurs with respect to that project.

(3) Statute of Limitations. A challenge to a project described in this subdivision is subject to the statute of limitations periods described in section 15112.

(c) ~~Exemption~~ Residential Projects Implementing Specific Plans.

(1) Eligibility. Where a public agency has prepared an EIR on a specific plan after January 1, 1980, ~~no EIR or negative declaration need be prepared for~~ a residential project undertaken pursuant to and in conformity to that specific plan is exempt from CEQA if the project meets the requirements of this section.

~~(b) Scope.~~ Residential projects covered by this section include but are not limited to land subdivisions, zoning changes, and residential planned unit developments.

~~(c) (2) Limitation. This section is subject to the limitation that if~~ If after the adoption of the specific plan, an event described in Section 15162 ~~should~~ occurs, ~~this~~ the exemption in this subdivision shall not apply until the city or county which adopted the specific plan completes a subsequent EIR or a supplement to an EIR on the specific plan. The exemption provided by this section shall again be available to residential projects after the lead agency has filed a Notice of Determination on the specific plan as reconsidered by the subsequent EIR or supplement to the EIR.

(3) Statute of Limitations. A court action challenging the approval of a project under this subdivision for failure to prepare a supplemental EIR shall be commenced within 30 days after the lead agency's decision to carry out or approve the project in accordance with the specific plan.

(d) Fees. The lead agency has authority to charge fees to applicants for projects which benefit from this section. The fees shall be calculated in the aggregate to defray but not to exceed the cost of developing and adopting the specific plan including the cost of preparing the EIR.

~~(e) Statute of Limitations. A court action challenging the approval of a project under this section for failure to prepare a supplemental EIR shall be commenced within 30 days after the lead agency's decision to carry out or approve the project in accordance with the specific plan.~~

### **Recommended Modification**

§ 15182. Residential Projects Pursuant to a Specific Plan for Which an EIR was Certified.

(a) General. Certain ~~residential~~, commercial and mixed-use projects that are consistent with a specific plan adopted pursuant to Article 8, Chapter 3 of the Government Code are exempt from **additional review under CEQA**, as described in subdivisions (b) and (c) of this section.

(b) Projects Proximate to Transit.

(1) Eligibility. A ~~residential commercial~~ or mixed-use project, or a project with a floor area ratio of at least 0.75 on commercially-zoned property, including any required subdivision or zoning approvals, is exempt **from additional review under CEQA** if the project satisfies the following criteria:

(A) It is located within one-half mile of an existing or planned rail transit station, ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods;

(B) It is consistent with a specific plan for which an ~~environmental impact report~~ **EIR** was certified; and

(C) It is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board has accepted the determination that the sustainable communities strategy or the alternative planning strategy would achieve the applicable greenhouse gas emissions reduction targets.

(2) Limitation. **All projects subject to these provisions must implement the applicable mitigation measures in the certified specific plan EIR.** Additional environmental review shall not be required for a project described in this subdivision unless one of the events in section 15162 occurs with respect to that project.

(3) Statute of Limitations. A challenge to a project described in this subdivision is subject to the statute of limitations periods described in section 15112.

(c) ~~Exemption~~ Residential Projects Implementing Specific Plans.

(1) Eligibility. Where a public agency has prepared an EIR on a specific plan after January 1, 1980, ~~no EIR or negative declaration need be prepared for a residential project undertaken pursuant to and in conformity to that specific plan~~ is exempt from **additional review under CEQA** if the project meets the requirements of this section.

~~(b) Scope.~~ Residential projects covered by this section include but are not limited to land subdivisions, zoning changes, and residential planned unit developments.

~~(c) (2) Limitation. This section is subject to the limitation that if after the adoption of the specific plan, an event described in Section 15162 should occurs, this the exemption in this subdivision shall not apply until the city or county which adopted the specific plan completes a subsequent EIR or a supplement to an EIR on the specific plan. The exemption provided by this section shall again be available to residential projects after the lead agency has filed a Notice of Determination on the specific plan as reconsidered by the subsequent EIR or supplement to the EIR.~~

(2) Limitation. All projects subject to these provisions must implement the applicable mitigation measures in the certified specific plan EIR. Additional environmental review shall not be required for a project described in this subdivision unless one of the events in section 15162 occurs with respect to that project.

~~(3) Statute of Limitations. A court action challenging the approval of a project under this subdivision for failure to prepare a supplemental EIR shall be commenced within 30 days after the lead agency's decision to carry out or approve the project in accordance with the specific plan.~~

(3) Statute of Limitations. A challenge to a project described in this subdivision is subject to the statute of limitations periods described in section 15112.

(d) Fees. The lead agency has authority to charge fees to applicants for projects which benefit from this section. The fees shall be calculated in the aggregate to defray but not to exceed the cost of developing and adopting the specific plan including the cost of preparing the EIR.

~~(e) Statute of Limitations. A court action challenging the approval of a project under this section for failure to prepare a supplemental EIR shall be commenced within 30 days after the lead agency's decision to carry out or approve the project in accordance with the specific plan.~~

### Reasoning

The recommended changes provide clarity on when these provisions apply to residential projects and when they apply to commercial and mixed-use projects. They also make it clear that the “exemption” is from *additional review under CEQA*, as the projects are still subject to the applicable mitigation measures in the certified specific plan EIR. The recommended changes also provide clarity and consistency associated with the Limitation and Statute of Limitations provisions.

## 11. OPR PROPOSED CHANGES

### § 15357. Discretionary Project

“Discretionary project” means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, ~~or~~ regulations, or other fixed standards. The key question is whether the approval process involved allows the public agency to shape the project in any way that could materially respond to any of the concerns which might be raised in an environmental impact report. A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code Sections 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. Section 21065(c).

### Recommended Modification

“Discretionary project” means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, ~~or~~ regulations, or other fixed standards. The key question is whether the approval process involved allows the public agency to shape the project in any way that could materially respond to any of the concerns which might be raised in an environmental impact report. A timber harvesting plan submitted to the State Forester for approval under the requirements of

the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code Sections 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act. Section 21065(c).

**Reasoning**

This new sentence really isn't about whether a project is discretionary or not. It also implies that all discretionary projects require preparation of an EIR. Most discretionary projects are exempt or qualify for a negative declaration or mitigated negative declaration.