EXHIBIT A

CALIFORNIA NATURAL RESOURCES AGENCY

FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

AMENDMENTS TO THE STATE CEQA GUIDELINES

OAL NOTICE FILE NO. Z-2018-0116-12

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Note: the following are responses to comments that were received in the manner provided in the Notice of Proposed Rulemaking. The Agency did not respond to comments that were duplicates, retracted, or otherwise not provided in the manner described in the Notice. To the extent any of those other documents require a response, please see Master Responses 1-20, and the Responses to Comments contained in this Final Statement of Reasons. The Agency attempted where possible to maintain the formatting and emphasis contained in the originally submitted letters; however, due to the variety and length of submissions, exact matches were not always possible. Please also excuse occasional typos.

Comment 1 - Association of Monterey Bay Area Governments

Comment 1.1

The Association of Monterey Bay Area Governments (AMBAG) is pleased to submit the following comments in response to the Office of Planning and Research's Proposed Updates to the CEQA Guidelines of November 2017

Response 1.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 1.2

AMBAG is the federally designated Metropolitan Planning Organization (MPO) and Council of Governments (COG) for the Monterey Bay area region. Among its many duties AMBAG manages the region's transportation demand model and prepares the regional Sustainable Communities Strategy for reducing greenhouse gas emissions throughout the region in compliance with California Senate Bill 375. The AMBAG region includes three counties and 18 cities. The following comments are for your consideration:

Response 1.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 1.3

In proposed updates to §15182, AMBAG requests that OPR clarify how project proponents become compliant with (b)(1)(A). Specifically, if a project includes funding for planning or implementing a high quality transit hub next to a proposed development, does this make them compliant with (b)(1)(A)? Or must high quality transit be planned or implemented before a project begins in order to be compliant with (b)(1)(A)? Clarification of this point will benefit project proponents, lead agencies and transit agencies in the application of this update.

Response 1.3

The Agency is not making any change in response to this comment. Both the statute (Pub. Resources Code, Section 21155.4) and the proposed CEQA Guideline state the exemptions to the Act. The eligibility criteria proposed in CEQA Guidelines Section 15182, subd. (b)(1)(A) are drawn directly from the statute. (See Pub. Resources Code, Section 21155.4(a).) The Agency also refers the commenter to Section 21099, subd. (a)(7) of the Public Resources Code defining "Transit priority area." It is not necessary for the Agency to develop a specific mandate on the application of the exemptions.

Comment 1.4

In proposed update to §15182(b)(1)(C), AMBAG requests that OPR clarify whether the lead agency needs a letter from their MPO attesting to project consistency with the regional Sustainable Communities Strategy (SCS) or whether the lead agency be able to evaluate consistency with the regional SCS independently. AMBAG recommends that OPR allow lead agencies to determine consistency with the regional SCS independently to avoid undue burden on MPOs.

Response 1.4

The Agency is not making any change in response to this comment. The proposed Guideline implements Section 65457 of the Government Code exempting such projects from CEQA. It is not necessary for the Agency to develop a specific procedure to accomplish consistency. Rather, the means by which this procedure should be accomplished is appropriately left to the discretion of the lead agencies.

Comment 2 - San Francisco Bay Area Rapid Transit District

Comment 2.1

Thank you for the opportunity to provide comments. Please let us know if you have any questions regarding our comments.

We do have additional input we would like to share regarding the Technical Advisory and will send them along soon.

Response 2.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph. In response to comments regarding the Technical Advisory, please see Master Response 11.

Comment 2.2

On behalf of the San Francisco Bay Area Rapid Transit District (BART), we welcome this opportunity to provide comments to the California Natural Resources Agency (CNRA) on the proposed amendments and additions to the CEQA Guidelines. Our comments focus on clarifying certain proposed changes.

Response 2.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 2.3

With 46 transit stations, BART currently provides electric rail transit service to San Francisco, Alameda, Contra Costa, and San Mateo counties and expects to open four new stations in the next few years,

including two in Santa Clara County. BART plays an important role in enhancing the region's air quality, land use, economy, and transportation network. On average, BART carries 420,000 riders on weekdays arid we expect to see ridership grow to 659,000 by 2035. One rider using BART each weekday (roundtrip) saves 1.4 gallons of gas, resulting in a reduction of CO2e emissions by 27 pounds; this translates in BART riders displacing about 360,000 metric tons of CO2e per year. At the same time, while transit growth reduces highway congestion and improves regional air quality, such growth also places greater demands on BART' s existing core station facilities, some of which are near-capacity for crowding during peak hours.

Response 2.3

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 2.4

BART's overall strategic vision is to “support(s) a sustainable and prosperous Bay Area by connecting communities with seamless mobility." BART's Sustainability Action Plan commits to reducing by 24% GHG emissions per passenger associated with access to stations by shifting passengers to greener modes of transportation and developing transit-oriented development (TOD) adjacent to stations.

Response 2.4

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response as it describes BART’s strategic vision rather than a specific comment to the Guidelines amendments.

Comment 2.5

For these reasons, BART strongly supports many of the proposed amendments and additions to the CEQA Guidelines that recognize public transit systems as an important and environmentally beneficial public resource, and public transit agencies as experts with whom consultation is critical. Specifically, BART is supportive of the proposals to:

1. Utilize automobile vehicle miles traveled (VMT) as the recommended measure for evaluating transportation impacts;

2. Presume that development projects within one-half mile of a major transit stop have less than significant transportation impact;

3. Presume that transportation projects that reduce VMT have less than significant transportation impacts; and

4. Implement the revised Guidelines statewide.

Response 2.5

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the support given to the four specific additions to the CEQA Guidelines regarding vehicle miles traveled.

Comment 2.6

Revise§ 15064.3(a) to include examples of effects on transit

Section 15064.3(a) currently states "Other relevant considerations may include the effects of the project on transit and non-motorized travel."

BART suggests that Section 15064.3 is revised to read "Other relevant considerations may include the effects of the project on transit (e.g., impeding access, diminishing performance, decreasing safety and security) and non-motorized travel." This language would provide clear examples for lead agencies of the various potential effects projects can have on transit.

Response 2.6

The commenter requests the addition of examples of what is meant by potential effects projects can have on transit. The Agency declines to add examples to this Guideline section for several reasons. First, whether impacts to transit will occur, and whether such impacts will be significant, will largely depend on the circumstances of the individual project. Listing examples might mislead agencies by suggesting that the presence of one of the examples would necessarily indicate a significant impact. Second, the Agency is updating Sections 15072 and 15086 to encourage lead agencies to consult with transit agencies on projects located near transit facilities. That consultation would likely result in better information than a list of examples in the Guidelines. Third, addition of examples in the Guideline is not necessary because OPR's Technical Advisory discusses the issue in greater detail.

Comment 2.7

2) Revise§ 15064.3(b)(l) for consistency with other provisions

The last sentence of§ 15064.3(b)(l) states: "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." BART suggests "considered" be changed to "presumed" so that this sentence is consistent with the preceding sentence and with the first sentence of§ 15064.3(b)(2). Using inconsistent language in these sentences may create confusion as to whether OPR intended them to have different meanings, which appears not to be the case.

Response 2.7

The Agency has made changes in response to the comment. The second sentence has been changed as follows: "Projects that decrease vehicle miles traveled in the project area compared to existing conditions should be ~~considered~~ presumed to have a less than significant transportation impact."

Comment 2.8

3) Revise§ 15064.3(b)(l) to include adopted future major transit stops

BART suggests that the language in§ 15064.3(b)(l) stating that generally, projects within one-half mile of either an "existing major transit stop" be revised to include "existing or adopted future major transit stop". BART believes that transit stops which are not yet existing but which have been adopted by the relevant transit agency should be considered for this purpose. Any stop that has been adopted by a transit agency is reasonably foreseeable under CEQA and thus development near those stops should be able to rely on this presumption as well.

Response 2.8

The Agency is not making any change in response to this comment. The Legislature has specified instances where planned transit facilities should be the basis of an exemption or other special procedure. (See, e.g., Pub. Resources Code, Sections 21155 et seq.) Section 15064.3, however, describes the general rule for evaluating transportation impacts of projects. As a general rule, lead agencies should presume that projects located near existing transit stations will have a less than significant effect. The basis for that presumption is significant research indicating that projects located close to existing transit will enable lower vehicle use because of the availability of transit. If transit is only planned, it does not yet offer project users an alternative to driving, and so the same presumption would not apply.

Notably, transit is often planned in areas with sufficient density to support transit investments, and density is another factor shown to reduce vehicle use. Therefore, there may be other characteristics of the project location that would suggest a less than significant transportation impact.

Also, as provided in the changes in Section 15125, a lead agency may include both existing and future baselines in its analysis. This would allow a lead agency to describe the expected future effect of the planned transit facility once it becomes operational, provided that it also analyzes vehicle miles traveled under existing conditions.

Comment 2.9

4) Add cross-reference to relevant definitions to § 15064.3(b)(l)

BART suggests that a cross-reference for the definitions of "major transit stop" and "high quality transit corridor" from SB743 be added in§ 15064.3(b)(l) in order to provide clarity and consistency between SB743 and the Guidelines.

Response 2.9

V1: The Agency is not making changes in response to the comment. The terms “major transit stop” and “high quality transit corridor” are defined in the Public Resources Code in Section 21064.3 and 21155(b), respectively.

V2: The Agency has added cross references to Public Resources Code in Section 21064.3 and 21155(b) that define “major transit stop” and “high quality transit corridor”, respectively.

Comment 2.10

5) Revise§ 15064.3(b)(3) to explain analysis of construction traffic VMT Section 15064.3(b)(3) adds a new reference to a qualitative analysis of VMT for construction traffic, stating that "[f]or many projects, a

qualitative analysis of construction traffic may be appropriate." It is unclear what this type of analysis for construction traffic would consist of and whether it is reasonable or feasible for a lead agency to analyze and mitigate VMT specifically associated with construction traffic, even qualitatively, separate from project siting considerations already taken into account in the analysis of operational VMT impacts. BART requests that either more guidance is provided on how this analysis would be conducted or remove this reference from the proposed Guidelines. In its current form, the language provides little guidance on what would be expected for a VMT analysis of construction traffic, opening up the possibility for litigation over the implementation of this requirement.

Response 2.10

The Agency is not making any change in response to this comment. Subdivision (b)(3) recognizes that lead agencies may not be able to quantitatively estimate vehicle miles traveled for every project type. In those circumstances, that subdivision encourages lead agencies to evaluate factors such as the availability of transit, proximity to other destinations, and other factors that may affect the amount of driving required by the project. Qualitative analysis is not new in CEQA. For example, the definition of "threshold of significance" reference to qualitative analysis. (See Section 15064.7(a).) Allowing a qualitative analysis is consistent with CEQA's general deference to lead agencies on the choice of methodology. Finally, note that this subdivision does not require a lead agency to perform a qualitative analysis for construction; it merely notes that a lead agency may perform such an analysis.

Comment 2.11

BART strongly supports the addition of the following in Section 15072(e) "[t]he lead agency should also consult with public transit agencies with facilities within one-half mile of the proposed project." However, BART suggests clarifying changes to limit the scope of such consultation.

Response 2.11

The Agency is not making any change in response to this comment. The Agency thanks BART for its support of the addition of Section 15072, subd. (e). However, this comment does not require a response because it is an introductory paragraph.

Comment 2.12

The first change would clarify that this additional consultation applies specifically to projects that are not of statewide, regional, or areawide significance. The existing Guidelines already require transit agency consultation for projects that are of statewide, regional, or areawide significance.

Response 2.12

The Agency is not making any change in response to this comment. The comment correctly notes that consultation is required for projects of statewide, regional, or areawide significance. The Agency's addition clearly states that lead agencies "should also" consult when a project is located within one half mile of transit. The words "should also" encourage lead agencies to consult, even if not strictly required, when a project of any type is located near transit facilities.

Comment 2.13

The second change would limit the consultation provision to projects near a smaller subcategory of transit facilities, transit stops or stations. As stated in Guidelines section 15072(e), "transportation facilities" could include transit maintenance yards or operations centers. In addition, the definition of transportation facilities includes rail transit service within 10 miles of the project site, which is inconsistent with the proposed added language referring to facilities within one-half mile of the proposed project. However, consultation is critical for projects near major transit stops (including transit stations), whose capacity may be adversely affected by increased development and population growth near that stop. CEQA Pub. Res. Code Section 21064.3 already provides a clear definition of major transit stop, and we propose using that definition here.

Response 2.13

The Agency is not making any change in response to this comment. The proposed language Is not inconsistent with other language contained within the current section. Rather the proposed consultation requirement is in addition to the notice requirements for projects within the jurisdiction of transportation planning agencies which have transportation facilities within their jurisdiction. This suggestion is sufficient to signal to lead agencies that consultation is a good idea, and so further precision in the type of facility is not necessary.

Comment 2.14

The third change BART requests is that "should" be changed to "shall". Absent the imperative, lead agencies would remain free to not consult with transit agencies. Appendix G, Section XVII, already identifies conflict with a plan, ordinance or policy addressing the circulation system, including transit, roadways, bicycle lanes and pedestrian paths as a significant environmental impact under CEQA. Courts have consistently supported such requirements as consistent with existing statute. (See City of San Diego v. Bd of Trustees of Cal. State Univ. (2011) Cal.App. 4th 1134, appeal pending on other grounds, invalidating the EIR certification for failure to adequately consider impacts on the local transit system.) Consultation with transit agencies is necessary to identify such inconsistencies and ensure avoidance or mitigation of significant impacts.

BART suggests the following revisions to Section 15072(e):

"For projects that are not of statewide, regional, or areawide significance[t]he lead agency shall should also consult with public transit agencies with major transit stops, as defined in Section 21064.3 of the Public Resources Code, facilities within one-half mile of proposed projects."

Response 2.14

The Agency is not making any change in response to this comment. It is the intent to encourage lead agencies to consult with public transit agencies meeting the certain criteria within 15072, subd. (e). The Guidelines use the word “shall” for procedures that are mandatory. Because Public Resources Code Section 21092.4(a) only requires such consultation for projects of statewide, regional, or areawide significance, the Guidelines can only use the word “should” for other types of projects.

Comment 2.15

7) Revise§ 15082(c)(2) regarding consultation with Transit Agencies

BART suggests adding a subsection 15082(c)(2)(E) to include consultation with public transit agencies to the scoping provision, Section 15082(c), to ensure that public transit agencies are apprised of proposed projects from the outset and have the opportunity to participate in the scoping process. This is consistent with CEQA, Pub. Res. Code Section 21083 .9(b) (4), which requires notice of scoping meetings to public agencies with transportation facilities consulted pursuant to Pub. Res. Code Section 21092.4. As noted above, noticing is critical for projects near major transit stops that may be affected by nearby projects. BART suggests the following additional subsection (E):

Section 15082(c):

"(1) For projects of statewide, regional, or areawide significance pursuant to Section 15206, the lead agency shall conduct at least one scoping meeting. A scoping meeting held pursuant to the National Environmental Policy Act, 42 USC 4321 et seq. (NEPA) in the city or county within which the project is located satisfies this requirement if the lead agency meets the notice requirements of subsection (c)(2) below.

(2) The lead agency shall provide notice of the scoping meeting to all of the following:

(A) any county or city that borders on a county or city within which the project is located, unless otherwise designated annually by agreement between the lead agency and the county or city;

(B) any responsible agency;

(C) any public agency that has jurisdiction by law with respect to the project;

(D) any organization or individual who has filed a written request for the notice;

(E) any public transit agency with a major transit stop, as defined in Section 21064.3 of the Public Resources Code, within one-half mile of the proposed project."

Response 2.15

The Agency is not making any change in response to this comment. The Agency proposes to address the consultation issue in the context of a draft environmental impact report. Therefore, this request is outside the scope of the CEQA rulemaking. Note, however, that nothing precludes transit agencies from contacting local jurisdictions and requesting to be included in scoping.

Comment 2.16

8) Revise§ 15086(a)(5) regarding consultation with Transit Agencies

BART requests that the last sentence be revised to be consistent with the BART's suggested Section 15072(e) language: "For projects that are not of statewide, regional, or areawide significance[t]he lead

agency shall should also consult with public transit agencies with major transit stops, as defined in Section 21064.3 of the Public Resources Code, facilities within one-half mile of proposed projects."

Response 2.16

The Agency is not making any change in response to this comment. Please see responses to comment 2.14.

Comment 2.17

9) Revise§ 15125(a)(2) regarding use of historic conditions

The proposed Guidelines Section 15125(a)(2) which allows a lead agency to use either a historic conditions baseline or a projected future conditions baseline as the sole baseline for analysis if the agency demonstrates with substantial evidence that use of existing conditions would be misleading or without informative value to decision-makers and the public, conflicts with the holding in the November 2017 *AIR v. Kern County case*. In *AIR v. Kern County* the Court found that the evidentiary standard requiring substantial evidence that the use of existing conditions would be misleading or without informative value only applies to use of a projected future conditions baseline, not a historic conditions baseline. BART suggests CNRA revise Section 15125(a)(2) to reflect current law, by removing "either a historic condition baseline" and instead limiting the heightened evidentiary standard in the section to only apply to the use of projected future conditions baseline as decided in *AIR v. Kern County.*

"(2) A lead agency may use either a historic conditions baseline or a projected future conditions baseline as the sole baseline for analysis only it if 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."

Response 2.17

The Agency has made changes in response to the comment. In regard to the comments regarding baseline, please see Master Response 14.

Section 15125(a)(2) has been changed as follows:

"(2) A lead agency may use ~~either a historic conditions baseline or a~~ projected future condition (beyond the date of project operations) ~~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."

Comment 2.18

10) Revise § 15126.4(a)(l)(B), regarding Mitigation Measures proposed to minimize significant effects

BART supports the additions to the section that allow deferral of specific details of mitigation measures when impractical or infeasible to include those details during the project's environmental review. However, requiring an agency to meet all three requirements: "(1) commits itself to the mitigation, (2)

adopts specific performance standards the mitigation will achieve, and (3) lists the potential actions to be considered, analyzed, and potentially incorporated in the mitigation measure ... ", before it can defer the specific details of mitigation measures is in conflict with case law. *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899 and *Defend the Bay v. City of Irvine* (2004) 119 Cal. App.4th 1261 hold that either requirement (2) (performance standards) or requirement (3) (list of potential actions) is enough to allow an agency to defer the specific details of mitigation measures.

The CNRA's January 26, 2018 Initial Statement of Reasons regarding the proposed CEQA Guidelines amendments cites to these two cases on page 42 to indicate that: "these changes clarify that when deferring the specifics of mitigation, the lead agency should either provide a list of possible mitigation measures or adopt specific performance standards."

BART suggests that the additions to Section 15126.4(a)(l)(B) be revised to allow the agency to meet the first requirement and either the second or third requirements as follows:

"The specific details of a mitigation measure, however, may be deferred when it is impractical or infeasible to include those details during the project's environmental review and the agency (1) commits itself to the mitigation; and (2) adopts specific performance standards the mitigation will achieve, or (3) lists the potential actions to be considered, analyzed, and potentially incorporated in the mitigation measure."

Response 2.18

The Agency has made changes in response to the comment. In regard to comments regarding performance standards, please see Master Response 15.

Section 15126.4, subd. (a)(1)(B) has been changed as follows:

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures ~~should~~ shall not be deferred until some future time. ~~However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.~~ The specific details of a mitigation measure, however, may be ~~deferred~~ developed after project approval when it is impractical or infeasible to include those details during the project's environmental review, ~~and~~ provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) ~~lists~~ identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will ~~to~~ be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as ~~a future action in the proper deferral of~~ mitigation ~~details~~ if compliance ~~is mandatory and~~ would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.

Comment 2.19

11) Revise § 15182 regarding Transit-Oriented Development

In an effort to reduce the environmental review requirements for transit-oriented development (TOD), proposed changes to Section 15182 exempts several types of development near existing or planned

major transit stops from further CEQA review. However, BART points out that just because a development is near transit does not necessarily make it transit-oriented. In particular, developments with significant amounts of parking are not transit-oriented. BART suggests the addition of a subsection 15182(b)(1)(D):

15182(b)(l)(D): "If the project has parking greater than the minimum required by the local jurisdiction or lead agency, or one space per residential unit or two spaces per 1,000 square feet for other projects, whichever is greater, then the project will no longer benefit from this exemption."

Response 2.19

The Agency is not making any change in response to this comment. The proposed Guideline implements a statutory exemption. The Guideline cannot create limitations on the exemption beyond what is articulated in the statute.

Comment 2.20

12) Revise§ 15301 Existing Facilities Exemption

BART's comments on the amendments to the CEQA Guidelines Section 15301, Existing Facilities Exemption are as follows:

The Guidelines revisions have added examples of projects qualifying for the existing facilities categorical exemption, which BART fully supports and applauds. BART suggests the following additional clarifications. In the existing Guidelines section 15301(a), "interior or exterior alterations" are already included as eligible for an exemption, but examples of exterior alterations are not provided. Similar to "interior alterations," examples of qualifying exterior alterations should be provided.

Such a clarification would provide greater certainty for BART and other transit agencies that small, minor alteration projects to modernize aging transit stops may be undertaken without extensive CEQA review. Such improvements include installing LED, energy-efficient lighting in our stations and parking lots, reconfiguring vehicle circulation patterns to permit more non-motorized travel (bicycle paths, safety bollards that convert vehicle ingress/egress areas into protected pedestrian paths), energy-efficient travel (EV-vehicle charging stations) in our parking lots, and the installation of security cameras systemwide to ensure the personal safety and security of our passengers. Clarifying that such projects are indeed categorically exempt from CEQA review will enable BART to keep pace with the times and quickly deliver small modernization improvements incrementally, as technology evolves. BART suggests the following revisions:

1530l(a): "Interior and exterior alterations involving such things as interior partitions, plumbing, escalators, elevators, and electrical conveyances; and exterior alterations including such things as window replacement, landscaping, lighting, signage, and pedestrian amenities."

Response 2.20

The Agency is not making any change in response to this comment. Commenter's request is outside of the scope of this rulemaking and is not necessary. As stated in section 15301, the current list is not intended to be all-inclusive of the types of projects which might fall within the Class 1 exemption. As further stated the key consideration is whether the project involves negligible or no expansion of use.

Comment 2.21

1530l(c): "Existing highways and streets, sidewalks, gutters, existing parking facilities, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety, and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, pedestrian crossings and amenities, street trees, safety improvements such as bollards, planters, sensors, cameras and gates, and other similar improvements that do not create additional automobile lanes)."

Response 2.21

The Agency is not making any change in response to this comment. Please see Response 2.20.

Comment 2.22

13) Revise Appendix G: Section XL Land Use and Planning

The current language in Appendix G, Item XI(b) asks if the project would: "Conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?"

The revised language asks if the project would: "Cause a significant environmental impact due to a conflict with any land use plan, policy or regulation adopted for the purpose of avoiding or mitigating an environmental effect?" According to the Initial Statement of Reasons, the change is intended to simplify and refocus the question on environmental impacts of plan conflicts, rather than conflicts, which have no impacts, and to avoid redundancy with CEQA Guidelines Section 15125(d), which provides: "The EIR shall discuss any inconsistencies between the proposed project and applicable general plans .... " However, the revision to Appendix G, Item XI(b) deletes the word "applicable." BART and other rail transit agencies with elected or appointed boards are exempt from local general plans and zoning regulations by state law; see Gov. Code Sections 53090 and 53091.

To clarify that the Appendix G question does not apply to inconsistency with plans, policies and regulations from which an agency is exempt by state law, and to remain consistent with Section 15125(d), the word "applicable" should be restored in the proposed revision to the Appendix G, Item XI(b).

Response 2.22

The Agency is not making any change in response to this comment. Appendix G is a suggested form. Moreover, the proposal would not require an agency to follow a plan that it is not required by law to implement. However, if a project's inconsistency with a plan could lead to a significant adverse environmental impact, that environmental impact (not the plan inconsistency) would need to be analyzed. Therefore, removal of the word "applicable" is necessary to avoid confusion regarding when analysis is required.

Comment 2.23

14) Revise Appendix G: Section XVII, Transportation

Appendix G, section XVII(a) currently asks whether a project would "[c]onflict with a plan, ordinance, or policy addressing the circulation system, including transit, roadways, bicycle lanes and pedestrian paths?"

BART suggests a revision to this question to ask whether a project would "[d]iminish the safety, security, or performance of the circulation system including transit, roadways, bicycle lanes and pedestrian paths, including adopted future improvements to the circulation system?"

As identified in the previous comment, BART does not have, and we suspect that many transit agencies do not have, formally adopted plans or policies that might be relevant to this checklist item. Thus, asking whether a project would conflict with any such plans or policies would not turn up any potential impacts on BART's operations. In addition, whether a project conflicts with a plan, ordinance, or policy is a land use issue and thus the question as currently phrased in Appendix G creates a threshold more appropriate for that impact area, not for transportation impacts when such plans and policies may not exist.

BART also suggests a revision to the question to include impacts to adopted future improvements to the circulation system. This would make it clear that consideration should be given not only to existing transit, roadways, bicycle lanes, and pedestrians paths, but also to adopted improvements that are far enough along in their development to be considered reasonably foreseeable under CEQA.

Response 2.23

The Agency is not making any change in response to this comment. Appendix G is a suggested form only, and so is written to be useful to a broad set of lead agencies. Agencies may customize the form to address impacts that are common in their jurisdiction. Also, specialized agencies may consult with local governments to ensure that their particular issues are addressed in the environmental review process.

Comment 2.24

Thank you for your consideration and we look forward to working with CNRA to implement these suggested clarifying revisions in the CEQA Guidelines. BART also has recommendations to the Technical Advisory and will send them directly to staff as requested.

Response 2.24

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing to the letter.

Comment 3 - California State Lands Commission

Comment 3.1

Thank you for the opportunity to comment on the California Natural Resources Agency's Proposed Updates to the State CEQA Guidelines (Proposed Updates) (Guidelines).
California State Lands Commission (CSLC) staff appreciates your agency's efforts to engage the public and stakeholders to improve the efficiency, clarity, and relevance of the Guidelines, and in this spirit of collaboration we make the following comments on the Proposed Updates. Due to the CSLC's broad

jurisdiction over state lands, including sovereign tide and submerged lands, the CSLC frequently acts as a CEQA lead agency, as well as a responsible agency and a trustee agency. For example, in the Senate Environmental Quality Committee 2017 CEQA Survey Report, CSLC is listed as the fourth among state agencies for number of total CEQA projects, fourth for CEQA projects requiring an EIR, and third in number of CEQA lawsuits. The comments are listed in the order set forth in the Proposed Regulatory Text (numerical by section number, followed by comments on Guidelines Appendix G).

Response 3.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 3.2

Technical note: where our letter suggests revisions to the Proposed Regulatory Text, the Natural Resources Agency's proposed revisions are generally treated as accepted and are shown in plain type. *CSLC staff's suggested additions are shown in* **bold underlined** *type and deletions are shown in bold* ~~**strikethrough**~~.

Response 3.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 3.3

The Natural Resources Agency proposes adding new subdivision (d) to this section to incorporate CEQA case law and promote the use of environmental standards as thresholds of significance (ISOR, p. 18). The subdivision would define "Environmental standard" as:

> . . . a rule of general application that is adopted by a public agency through a public review process and that is all of the following:
>
> (1) a quantitative, qualitative or performance requirement found in an ordinance, resolution, rule, regulation, order, plan or other environmental requirement;
>
> (2) adopted for the purpose of environmental protection;
>
> (3) addresses the environmental effect caused by the project; and,
>
> (4) applies to the project under review.

Response 3.3

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an explanatory paragraph.

Comment 3.4

CSLC staff has observed that ordinances, resolutions, etc. can be ephemeral, and that if the requirement changes or the document containing it is no longer easily accessible between the time it is cited in an environmental document and the time of responsible agency review, it can be difficult for a responsible agency to determine what the requirement was exactly. This is particularly true if the lead agency refers to the requirement by a citation to an ordinance or resolution number rather than by including the relevant text in the lead agency's environmental document. Therefore, CSLC staff suggests adding an additional subdivision to require that the relevant text of the requirement and the adopted document from which it is drawn be made available:

> **(e) the relevant operative text relied upon from an ordinance, resolution, rule, regulation, order, plan or other environmental requirement must be included in the environmental document (rather than merely supplying a citation). Where the environmental standard is drawn from a longer document, the full ordinance, resolution, rule, regulation, order, plan or other environmental requirement from which the standard was drawn must be included either in the environmental document, or in an appendix to the environmental document.**

Response 3.4

The Agency is not making any change in response to this comment. The proposed addition is not necessary. Section 15064.7 addresses thresholds of significance. Subdivision (d) would define "environmental regulation" for the purpose of assisting lead agencies in determining when an environmental regulation might be appropriately used as a threshold of significance. The proposed addition does not address the character of a regulation; rather, it involves how a regulation is used in the environmental analysis. Other portions of the Guidelines already address the commenter's concern regarding transparency. For example, proposed subdivision (d) states: "In adopting or using an environmental standard as a threshold of significance, a public agency shall explain how the particular requirements of that environmental standard avoid reduce project impacts, including cumulative impacts, to a level that is less than significant, and why the environmental standard is relevant to the analysis of the project under consideration." Further, existing Section 15064(f) states: "The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency." Therefore, both responsible agencies and the public generally should have sufficient information to understand a lead agency's conclusion regarding the effect of compliance with an environmental regulation on the significance of a project's impacts.

Comment 3.5

CSLC staff supports the Natural Resources Agency's effort to clarify that conservation easements can provide mitigation for environmental impacts and to inform the public and decisionmakers of the holding in *Masonite Corporation v. County of Mendocino* (2013) 218 Cal.App.4th 230, 238 that conservation easements "may appropriately mitigate the direct loss of farmland." The Natural Resources Agency proposes to revise subdivision (e) of section 15370 to state that the definition of "mitigation" includes:

(e) Compensating for the impact by replacing or providing substitute resources or environments**, including through permanent protection of such resources in the form of conservation easements**.

However, permanent or perpetual conservation easements are not allowable on the sovereign Public Trust lands that CSLC manages on behalf of the people of California (tidelands and submerged lands). These sovereign lands are subject to the common law Public Trust Doctrine and State constitutional and statutory provisions that forbid their alienation. Additionally, under the Public Trust Doctrine, the CSLC must not place restrictions on sovereign land, such as perpetual conservation easements or permanent deed restrictions, that tie the hands of future legislatures. In a very real sense, the sovereign character of sovereign lands is its own sort of perpetual protective restriction, given that sovereign lands must always be managed consistent with Public Trust protections.

At the same time, CSLC staff recognizes that the issue of perpetuity of conservation easements on non-sovereign lands is a matter of great importance in the land trust and environmental community to ensure the enforceability of mitigation and the long- term protection of habitat, open space, and other conservation values. Therefore, we recommend the following options for revising the proposed language in a manner that recognizes the legal context and conservation needs for both sovereign and non-sovereign lands:

(e) Compensating for the impact by replacing or providing substitute resources or environments, including**, but not limited to,** through permanent protection of such resources in the form of conservation easements.

Or, alternately,

(e) Compensating for the impact by replacing or providing substitute resources or environments**,** including through ~~**permanent**~~ protection of such resources in the form of **permanent** conservation easements **or other use restrictions**.

Response 3.5

The Agency is not making any change in response to this comment. The revisions proposed in the comment are not necessary. The Agency's proposed addition to the definition of mitigation is a non-exclusive example. The proposed addition does not alter a lead agency's duty to find, based on substantial evidence, that a particular mitigation measure reduces or eliminates the impact of a project. (Pub. Resources Code § 21081.) If a lead agency is unable to create a permanent conservation easement, but can find, based on substantial evidence, that other use restrictions will replace or provide substitute habitats, nothing in the Agency's proposal would prevent a lead agency from doing so.

Comment 3.6

Appendix G: Updating the Environmental Checklist

IV. Biological Resources

Nonindigenous/Invasive Species:

The CSLC is charged with preventing or minimizing the introduction of non- indigenous species to California waters by regulating marine vessel ballast water and biofouling. To assure that

lead agencies and project applicants are aware of these requirements, CSLC staff suggests a specific reference to nonindigenous/ invasive species prevention in Appendix G, question IV (d) (Proposed Regulatory Text, p. 59). This suggested edit would also raise awareness of potential impacts related to the introduction or increase of nonindigenous/invasive species generally:

> d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, OF-impede the use of native wildlife nursery sites, **or introduce or increase nonindigenous or invasive species?**

Response 3.6

The Agency is not making any change in response to this comment. This comment is outside the scope of the proposed rulemaking. Also note, Appendix G contains a sample checklist. Lead agencies may modify as appropriate to address environmental issues commonly encountered in their particular jurisdiction.

Comment 3.7

Several air quality management or air pollution control districts are beginning to establish thresholds for greenhouse gas emissions; therefore, similar to Ill. Air Quality, CSLC staff recommends adding the following under Greenhouse Gas Emissions:

> VIII. GREENHOUSE GAS EMISSIONS. **Where available, the significance criteria established by applicable air quality management or air pollution control district may be relied upon to make the following determinations.** Would the project: ...

Response 3.7

The Agency is not making any change in response to this comment. This comment is outside the scope of the proposed rulemaking. Also note, Appendix G contains a sample checklist. Lead agencies may modify as appropriate to address environmental issues commonly encountered in their particular jurisdiction. Further, Section 15064.4(b)(2) already directs lead agencies to consider whether the emissions of a project exceed a threshold of significance for greenhouse gas emissions.

Comment 4 - California State University, Office of the Chancellor

Comment 4.1

The California State University (CSU) appreciates the opportunity to provide comments on the proposed amendments and revisions to the CEQA Guidelines. Based upon information within the documents provided in support of the proposed rulemaking dated January 26, 2018 and authored by the California Natural Resources Agency, the CSU hereby provides the following comments and recommendations.

Response 4.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 4.2

Section 15064.3, Subpart (b)(1)-Criteria for Analyzing Transportation Impacts. This Subpart addresses the criteria for analyzing transportation impacts and includes the following sentence: "Projects that decrease vehicle miles traveled in the project area compared to existing conditions may be considered to have a less than significant transportation impact." In order to decrease VMT in the project area as compared to existing conditions, a new project would not only need to add zero VMT, it would also need to remove existing VMT from the roads in order to actually decrease VMT in the project area compared to existing conditions. This is a policy goal, which is beyond the primary purpose of CEQA to provide meaningful public disclosure of the potential significant effects on the environment. Furthermore, this provision would result in the identification of significant impacts associated with a multitude of projects, despite the fact that such projects would not result in increased VMT. For these reasons, it is recommended that the above referenced sentence be deleted.

Response 4.2

The comment recommends deleting the direction in Section 15064.3(b)(1) that a project that reduces vehicle miles traveled in the project area should be presumed to have a less than significant impact. The Agency will not make changes in response to the comment. First, it is often the case that adding new uses to an existing urban fabric will reduce the amount of driving in the area. A common example is adding a new grocery store to a neighborhood. The store does not add new vehicle miles traveled; rather, it reduces the distance that nearby residents need to drive to get groceries. Second, this provision in the Guidelines does not burden any project; rather, it provides a pathway for agencies to demonstrate that impacts are not significant.

Comment 4.3

Section 15064.3, Subpart (b)(1)-Criteria for Analyzing Transportation Impacts. This subpart addresses the criteria for analyzing transportation impacts and relates to proposed projects to be located in proximity to transit facilities. It is recommended that the second sentence be revised to include "planned" stops and corridors (in addition to "existing" major transit stops and high quality transit corridors) in order to encourage development where transit not only exists, but also is planned. Additionally, it is recommended that the modifier "generally" be deleted from the presumption of a less than significant impact as it is duplicative of the very nature of a "presumption" and, therefore, unnecessary as it does not facilitate clarity.

Response 4.3

The comment recommends revising the presumption of a less than significant impact for projects that locate within one-half mile of planned, in addition to existing, transit stops. The Agency is not making any change in response to this comment.

The Legislature has specified instances where planned transit facilities should be the basis of an exemption or other special procedure. (See, e.g., Pub. Resources Code, Sections 21155 et seq.) Section

15064.3, however, describes the general rule for evaluating transportation impacts of projects. As a general rule, lead agencies should presume that projects located near existing transit stations will have a less than significant effect. The basis for that presumption is significant research indicating that projects located close to existing transit will enable lower vehicle use because of the availability of transit. (Please see Master Response 4 regarding the presumption of less than significant impacts for projects located near transit.) If transit is only planned, it does not yet offer project users an alternative to driving, and so the same presumption would not apply.

Notably, transit is often planned in areas with sufficient density to support transit investments, and density is another factor shown to reduce vehicle use. Therefore, there may be other characteristics of the project location that would suggest a less than significant transportation impact.

Also, as provided in the changes in Section 15125, a lead agency may include both existing and future baselines in its analysis. This would allow a lead agency to describe the expected future effect of the planned transit facility once it becomes operational, provided that it also analyzes vehicle miles traveled under existing conditions.

Finally, the Agency declines to accept the comment's recommendation to delete the word "generally" from this section. The word helps signal that lead agencies must still consider any project in its context.

Comment 4.4

Section 15064.3, Subpart (b)(3)-Qualitative Analysis. This subpart addresses the analysis of construction traffic and states that "For many projects, a qualitative analysis of construction traffic may be appropriate." This statement implies that a quantitative analysis of construction traffic is appropriate for all other projects. Preliminarily, this is the only reference to the analysis of construction-related VMT in the proposed guideline or the Technical Advisory on Evaluating Transportation Impacts in CEQA (November 2017). As such, no further guidance on the subject is provided. Moreover, the requirement to include any VMT analysis of construction traffic beyond that analysis already required in connection with air quality and greenhouse gas emissions does not · further SB 743, which required the Resources Agency to develop a different way to measure transportation impacts that would to lead to fewer GHG emissions, more transportation alternatives, facilitate infill development, and result in a new method of transportation analysis that is simpler and less costly to perform.1 As noted, construction traffic GHG emissions are already considered in separate analyses, and, unlike the vehicle trips generated by land use projects, analysis of VMT associated with construction traffic would not lead to more transportation alternatives, would not facilitate infill development, and would not be simpler and less costly to perform. For these reasons, CSU recommends that the sentence be deleted. Alternatively, it is recommended that it be revised as follows: "For §ll ma-Ry projects, a qualitative analysis of construction traffic shall may be appropriate."

Response 4.4

The comment suggests deleting the provision in Section 15064.3(b)(3) regarding evaluating construction impacts. The Agency is not making any change in response to this comment Subdivision (b)(3) recognizes that lead agencies may not be able to quantitatively estimate vehicle miles traveled for every project type. In those circumstances, that subdivision encourages lead agencies to evaluate factors such as the availability of transit, proximity to other destinations, and other factors that may affect the amount of driving required by the project. Qualitative analysis is not new in CEQA. For example, the definition of "threshold of significance" reference to qualitative analysis. (See Section 15064.7(a).) Allowing a

qualitative analysis is consistent with CEQA's general deference to lead agencies on the choice of methodology. Finally, note that this subdivision does not require a lead agency to perform a qualitative analysis for construction; it merely notes that a lead agency may perform such an analysis.

Comment 4.5

Section 15064.3, Subpart (c)-Applicability. This Subpart indicates that the use of vehicle miles traveled for evaluating a project's transportation impacts will be applied statewide on July 1, 2019. In contrast, written correspondence from the Office of Planning and Research (such as the November 2017 Proposed Updates to the CEQA Guidelines) convey that the new methodology will be applied on January 1, 2020. The later date for the implementation of this new methodology is critical since public agencies will need substantial time for its implementation. It is thus recommended that the date be revised in the proposed amendments to the Guidelines to January 1, 2020·, as recommended by OPR, or later.

Response 4.5

The comment seeks additional time to implement the new provisions. The Agency has made a change partially in response to the comment. The date on which the provisions would apply statewide begins on July 1, 2020, which will ensure that agencies have ample time to update their own procedures to comply.

Comment 4.6

Section 15064.7, Subpart (d)-Thresholds of Significance. This subpart addresses the use of environmental standards as thresholds of significance. The proposed revision applies the same standards that agencies must meet when they adopt thresholds to the subsequent use of those thresholds. However, there is no reason to require agencies to re-do their process and evaluation each time a threshold is used; that is contrary to the purpose of thresholds. Therefore, it is recommended that the references in section 15064.7 to making these standards apply when an agency is "using" a threshold be deleted. Specifically, it is recommended the deletion of the phrase "or using" in the third sentence of subsection (d).

Response 4.6

The Agency is not making any change in response to this comment. The intent is not to require lead agencies to re-do their process and evaluation each time a threshold is used. Rather, the intent is to clarify that agencies may use thresholds on a case-by-case basis. The Agency points commenter to the language within Section 15064(b)(1), which is not being amended in this proposed rulemaking, which states: "An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area." This language provides for a case-by-case threshold.

Comment 4.7

Section 15126.4, Subpart (a)(1)(8)-Deferral of Mitigation Details. This subpart provides the circumstances under which a lead agency may defer formulation of the specific details of a mitigation measure. The proposed text would permit such deferral when the agency commits itself to the mitigation, adopts specific performance standards, and lists the potential actions to be considered, analyzed and potentially incorporated in the mitigation measure. However, this three-part test conflicts

with the Notice of Proposed Rulemaking-Amendments and Additions to the State CEQA Guidelines, which states that the Resources Agency "proposes to clarify that when deferring the specifics of mitigation, the lead agency should *either* provide a list of possible mitigation measures, or adopt specific performance standards." (Notice of Proposed Rulemaking- Amendments and Additions to the State CEQA Guidelines, p. 16, *emphasis* added.) Therefore, it is recommended that the second sentence of Subpart (a)(1)(8) be revised as follows: "The specific details of a mitigation measure, however, may be deferred when it is impractical or infeasible to include those details during the project's environmental review and the agency (1) commits itself to the mitigation, and either (2) adopts specific performance standards the mitigation will achieve, or ~~and (3)~~ lists the potential actions to be considered, analyzed, and potentially incorporated in the mitigation measures."

Response 4.7

The Agency has made changes in response to other comments. The second sentence has been deleted and the third sentence has been revised as follows:

"The specific details of a mitigation measure, however, may be ~~deferred~~ developed after project approval when it is impractical or infeasible to include those details during the project's environmental review, ~~and~~ provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) ~~lists~~ identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will ~~to~~ be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as ~~a future action in the proper deferral of~~ mitigation ~~details~~if compliance ~~is mandatory and~~would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards."

Please see Master Response 15.

Comment 4.8

Section 15234, Subpart (a)-Remand. This Subpart addresses the scope of a writ of mandate following a determination by a court that an environmental analysis prepared pursuant to CEQA is inadequate. Subpart (a)(1) authorizes the court to direct the agency to "void the project approval, in whole or in part." Consistent with Public Resources Code section 21168.9, the court may also direct the agency to de-certify the CEQA document in whole or in part. Therefore, it is recommended that a new subpart (2) be added, which states: "(2) de-certify the CEQA analysis, in whole or in part;" and that existing subparts (2) and (3) be re-numbered (3) and (4) accordingly.

Response 4.8

The comment suggests adding that a court may order an agency to partially de-certify a CEQA analysis. The Agency is not making any change in response to this comment. The addition is not necessary. First, certification of a CEQA analysis is part of a project approval, and so it would be included in subdivision (a)(1). Also, subdivision (a)(3), which states that a court may order any other action to comply with CEQA, is flexible enough for the court to de-certify the CEQA analysis. Notably, partial decertification was recently upheld in *Center for Biological Diversity v. Department of Fish & Wildlife* (2017) 17 Cal.App.5th 1245.

Comment 4.9

Section 15234, Subpart (c)-Remand. This Subpart addresses those project activities that may proceed during a remand period "because the environment will be given a greater level of protection if the project is allowed to remain operative than if it were inoperative during that period." While the new text seeks to incorporate the unique circumstances of *Poet, LLC v. State Air Resources Board* (2013), the subdivision could be read to limit the court's discretion to permit activities to proceed to only those activities where the environment will be given a greater level of protection if the project remains operative. If given such a reading, this revision would far exceed the scope of Public Resources Code section 21168.9. Therefore, it is recommended that subsection (c) be revised to read: "An agency may also proceed with a project, or individual project activities, during the remand period where the court has exercised its equitable discretion to leave project approvals in place or in practical effect during the period ~~because the environment will be given a greater level of protection if the project is allowed to remain operative than if it were inoperative during that period."~~

Response 4.9

The Agency has made changes in response to the comment. Subdivision (c) has been revised as follows:

"An agency may also proceed with a project, or individual project activities, during the remand period where the court has exercised its equitable discretion to permit project activities to proceed during that period ~~because the environment will be given a greater level of protection if the project is allowed to remain operative than if it were inoperative during that period~~."

Comment 4.10

Environmental Checklist Form (Appendix G) of the CEQA Guidelines, Section XVII (a), Transportation, and Section XI (b), Land Use and Planning. An Initial Study is a preliminary analysis used to determine if the project may have a significant effect upon the environment. The Environmental Checklist Form is used to assist in this effort. One of the questions included in the existing Environmental Checklist in the Transportation/Traffic Section is: "Would the project conflict with an. applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system... " The proposed amendment to the CEQA Guidelines on page 69 would change Appendix G to delete the modifier "applicable" from the above question. However, to remove "applicable" from the sentence would require analysis of a// plans, ordinances, or policies without regard for legal or geographic limitation rather than only those relevant to the lead agency. This revision conflicts with Guidelines section 15125, subpart (d), which provides that "the EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans (emphasis added)." Moreover, under certain circumstances, local planning laws do not apply .to state agencies, although deletion of the word "applicable" would arguably require that a state project conduct an analysis relative to local planning documents that have no authority over the state. Accordingly, CSU recommends that the word applicable not be deleted from the referenced Appendix G text. Since the Resources Agency proposes the same revision for the Land Use and Planning section at page 66, CSU equally recommends that the word applicable not be deleted from that text as well.

Response 4.10

The comment objects to the Agency's proposal to delete the modifier "applicable" from Appendix G questions asking about compliance with plan. The Agency is not making any change in response to this comment. The proposal would not require an agency to follow a plan that it is not required by law to

implement. However, if a project's inconsistency with a plan could lead to a significant adverse environmental impact, that environmental impact (not the plan inconsistency) would need to be analyzed. Therefore, removal of the word "applicable" is necessary to avoid confusion regarding when analysis is required. Please also see Master Response 19.

Comment 4.11

Environmental Checklist Form (Appendix G) of the CEQA Guidelines, Section IX, Hazards/Hazardous Materials. One of the questions included in the existing Environmental Checklist in the Hazards/Hazardous Materials Section is: "Would the project expose people or structures to a significant risk of loss, injury or death involving wildland fires... " The proposed amendment to the CEQA Guidelines on. page 64 would change Appendix G to the following: "Would the project expose people or structures, *either directly or indirectly*, to a significant risk of loss, injury or death involving wildland fires... " It is recommended that the work "indirectly" be deleted from the referenced Appendix G text since the vagueness of the term will make it difficult to address within CEQA documentation for specific projects.

Response 4.11

The comment requests that the Agency remove the words "or indirectly" in a question in Appendix G regarding hazards. The Agency is not making any change in response to this comment. The proposed change of adding "either directly or indirectly" is to clarify the requirement to analyze hazards that a project risks exacerbating pursuant to the California Supreme Court decision *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369. Also, the word "indirectly" is not vague in the CEQA context. For example, CEQA Guidelines Section 15358 defines effects to include "indirect or secondary effects".

Comment 4.12

CSU appreciates the opportunity to provide these comments on the proposed amendments and revisions to the CEQA Guidelines. We believe that each comment and requested revision is well reasoned, and that implementation of the requested revisions would improve the document and its usefulness.

Response 4.12

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 5 - City and County of San Francisco

Comment 5.1

Please see attached letter for collective feedback from several City and County of San Francisco agencies. Thank you for this opportunity to provide input on transportation revisions to the CEQA Guidelines. Please contact me for any follow up regarding the contents within the letter.

Response 5.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 5.2

We write on behalf of several San Francisco agencies to comment on the proposed regulatory text for transportation amendments and additions to the California Environmental Quality Act (CEQA) Guidelines. We wish to thank the staff of the California Natural Resources Agency, the Governor's Office of Planning and Research (OPR), and other agencies for leading and participating in the development of the SB 743 implementation guidelines. We commend this comprehensive effort to develop proposed updates to the transportation analysis guidance, which has involved extensive research, outreach, and participation in hundreds of public meetings. Developing guidance that seeks to balance the wishes and needs of a large and diverse set of stakeholders is a profound challenge.

Response 5.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 5.3

San Francisco is a strong supporter of Senate Bill 743 provisions that require the CEQA Guidelines amendments and additions to transportation (public resources code sections 21099 seq.). We worked closely with OPR on prior versions of proposed CEQA Guidelines update to implement SB 743 provisions. In February 2016, we submitted a letter to OPR in which we expressed our agreement with the overall guidance provided in their January 2016 proposal. Additionally, in a letter to OPR in July 2016, our late Mayor Lee, along with the mayors of three other major California urban centers, voiced their support for OPR's January 2016 proposal. Around the time of those two letters, San Francisco took a leadership position when we became the first county in California to remove automobile delay and adopt Vehicle Miles Traveled (VMT) as a measurement of transportation impacts in CEQA. We recognized that the prior paradigm of automobile delay was not allowing for the development and maintenance of a high-quality environment now and in the future, a legislative intent of CEQA; and it conflicted with numerous state, regional, and local plans, ordinances, and policies. Two years later, we
are seeing the benefits of this change as numerous transportation projects and infill developments that previously would have gone through time-consuming, costly vehicular level of service analysis with no beneficial environmental outcomes, are on the ground, approved, or under construction.

Response 5.3

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. The Agency notes in particular the statement that within two years of making similar changes to transportation analysis within the County, "numerous transportation projects and infill developments that previously would have gone through time-consuming, costly vehicular level of service analysis with no beneficial environmental outcomes, are on the ground, approved, or under construction." The Agency notes further that this evidence, based on the experience of the very type of agency that will implement these CEQA Guidelines changes, contradicts the fear, speculation, and

unsubstantiated opinion found in some of the other comments submitted on this proposal. This comment does not require a further response, however, because it is an introductory paragraph.

Comment 5.4

San Francisco is still a supporter of elements of the California Natural Resources Agency's proposed regulatory text for transportation. San Francisco also appreciates the outreach conducted by OPR between their January 2016 proposal and November 2017 proposal.

Response 5.4

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 5.5

However, we believe that the November 2017 proposal which informed the resources agency regulatory text regarding transportation projects and safety is inconsistent with the legislative text, and undermines SB 743. In this letter, San Francisco offers its comments concerning those items first, followed by additional clarifying comments. San Francisco is happy to work with you and OPR further regarding our comments and recommended amendments to meet the legislative intent of CEQA and SB 743.

Response 5.5

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 5.6

Transportation projects that induce VMT should be required to analyze VMT
The draft purpose section states that "vehicle miles traveled is the most appropriate measure of transportation impacts." The draft section goes on to state: "For roadway capacity projects, agencies have the discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements." We believe that the second statement is inconsistent with SB 743 and CEQA; that both statements are internally inconsistent; and that these inconsistencies can create considerable legal uncertainty.

Response 5.6

The Agency is not making any change in response to this comment. Moreover, as described in more detail in Responses 5.8-5.9, below, providing discretion to lead agencies in the choice of methodology for roadway projects is consistent with CEQA.

Comment 5.7

The California legislature found and declared in SB 743 that new transportation methodologies under CEQA, "are needed for evaluating transportation impacts that are better able to promote the state's goals of reducing greenhouse gas emissions and traffic- related air pollution, promoting the

development of a multimodal transportation system, and providing clean, efficient access to destinations" (Chapter 386, section 1(a)(2)). These goals were reiterated under Section 21099(b)(1), which states that the criteria for determining the significant of transportation impacts "shall promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses."

Response 5.7

The Agency is not making any change in response to this comment which restates portions of SB 743 and Section 21099, subd. (b)(1) of the Public Resources Code.

Comment 5.8

Recognizing the move away from older transportation methodologies, Section 21099(b)(2) states that automobile delay shall no longer be considered a significant impact on the environment pursuant to CEQA, except in locations specifically identified in the guidelines, if any. Roadway capacity projects are a type of project, not a location of a project. Roadway capacity projects located in one area of a region (e.g., outside a transit priority area) affect VMT in other areas of a region (e.g., inside a transit priority area), and vice versa. As documented in OPR's thematic responses and the resources agency initial statement of reasons regarding a geographic application exception, OPR and the resources agency recommend not including a location exception because of numerous concerns regarding lack of environmental protection, confusion, and litigation risk.4 Therefore, including an exception for transportation projects to this requirement would not only conflict with SB 743, but also OPR and the resources agency's own rationale for geographic applicability.

Response 5.8

The Agency is not making any change in response to this comment. As the comment notes, SB 743 provided discretion to OPR and the Agency to determine the metric by which transportation impacts should be evaluated, and to determine in which locations such metrics should apply. (Pub. Resources Code § 21099(b)(2), (c)(1).) Given that the legislation required a shift in the status quo, it was appropriate to give the Agency discretion, exercised after intensive public and stakeholder input, in scope of the change. The Agency appreciates the comment's concern, but also notes that roadways are in specific, identifiable locations. They are mapped. Their precise locations are included in planning and engineering documents. In further response to the commenter's comment about roadway capacity projects, please see Master Response 5.

Comment 5.9

As documented with substantial evidence on OPR's website, roadway expansion projects are a primary source of emissions as they induce vehicle travel and sprawl development and more VMT results in higher crash exposure. Examples of this relationship quoted from OPR's January 2016 proposal:

- "As explained in detail in the Preliminary Evaluation of Alternatives, and in the Preliminary Discussion Draft, [the] vehicle miles traveled [metric] directly relates to emissions of air pollutants, including greenhouse gases, energy usage, and demand on infrastructure, as well as indirectly to many other impacts including public health, water usage, water quality and land consumption. Some comment[er]s expressed desire to maintain the status quo, and disagreement with the policy of analyzing vehicle miles traveled. However, none of the comments offered any evidence that vehicle miles traveled is not a measure of environmental

impact. Moreover, none of the comments produced any credible evidence that level of service is a better measure of environmental impact, or would better promote the statutory goals set forth in CEQA." (page I:3)

- "A large number of peer reviewed studies have demonstrated a causal link between highway capacity increases and VMT increases. Of these approximately twenty provide quantitative estimate of the magnitude of the induced VMT phenomenon; of those, nearly all find substantial induced VMT." (page III.28)
- "The fundamental relationship between VMT and safety is summarized by Yeo et al (2014): 'Multiple traffic safety studies showed that higher VMT was positively associated with the occurrence of traffic crashes or fatalities (e.g., Ewing et al, 2002, 2003; NHTSA 2011). The causal relationship between the mileage of total vehicle trips and crash occurrences can be explained by probability. With higher VMT, it is more likely that more crashes will occur (Jang et. al. 2012).'" (page III.40)

As stated by these materials and not disputed with evidence by the latest proposal, VMT is an appropriate metric to understand the impacts of increasing roadway capacity. By leaving it up to agency discretion5 to use VMT for transportation projects, the State CEQA Guidelines may be giving a false sense of legal protection in deeming it unnecessary to evaluate VMT impacts, because a demonstrated relationship exists between roadway capacity enhancements and growth in VMT. In addition, it creates confusion and potential legal uncertainty to presume one type of transportation project (e.g., transit) would have less than significant impact using a vehicle mile traveled metric, while another type of transportation project (e.g., highway capacity) that substantially increases VMT may not have significant impacts because of the use of a different metric. Furthermore, it ignores the aforementioned secondary effects (emissions, safety, etc.) that a highway capacity project could have on adjacent jurisdictions and the region and creates a different assessment with different outcomes throughout the state, despite the interconnectedness of the transportation systems. Therefore, lead agencies must also measure transportation projects under VMT analysis, despite their location, to ensure their impacts to state, regional, and local goals are addressed in a way that advances the achievement of a lower VMT future.

CEQA does not prevent a lead agency that wants to adopt a transportation project with significant VMT impacts (e.g., highway widening projects mentioned within regional bond measures) from doing so. Instead, CEQA requires the lead agency to fully identify and disclose those impacts; identify mitigation measures and alternatives that reduce the harmful environmental effects associated with substantial increases in VMT; and, finally adopt a statement of overriding considerations if the lead agency rejects those measures or alternatives that reduce VMT. But, if the guidelines allow lead agencies discretion to adopt other thresholds for roadway capacity projects, and ignore any VMT impacts these projects will cause, these impacts will remain unstudied, undisclosed, and unmitigated, in direct contradiction of the purposes of CEQA, generally, and SB 743, in particular.

Therefore, we recommend the resources agency include similar language to the January 20, 2016 language drafted by OPR in Section 15064.3 regarding induced vehicle travel. The resources agency should also consider reinstituting the January 20, 2016 language drafted by OPR in Appendix G. Agencies can continue to analyze vehicular level of service in addition to VMT at their discretion, outside assessments for CEQA.

Response 5.9

Please see response to comment 5.8. Also note, the comment focuses on emissions associated with roadways. Whether a roadway's transportation impacts are measured using vehicle miles traveled or

level of service, the lead agency must analyze greenhouse gas and other pollution associated with the project. (See, Pub. Resources Code § 21099(b)(3) ("This subdivision does not relieve a public agency of the requirement to analyze a project's potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation"); see also proposed Section 15064.3(b)(2) ("For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact *consistent with CEQA and other applicable requirements*") (emphasis added).) To fully assess those impacts, induced travel resulting from roadway capacity expansion must also be analyzed. (*See*, *e.g*., California Department of Transportation, Guidance for Preparers of Growth-related, Indirect Impact Analyses (2006).)

The Agency agrees that vehicle miles traveled is an appropriate measure of transportation impacts of roadway capacity projects, and expects that many agencies will use that metric to study such projects. However, for the reasons stated above, the Agency also finds that it is appropriate to leave to that assessment the lead agency's discretion. Therefore, the Agency declines to adopt the comment's recommendation to revert to a prior version of the Guidelines proposal.

Comment 5.10

Exclusion of safety from CEQA Guidelines
In California, over 3,000 people die annually in traffic collisions. Traffic collisions are the number one cause of death for people between the ages of 15 and 34 years. The Caltrans 2015-2020 Strategic Management Plan states that the "safety of our workers and users of California's transportation system is our number one priority." These statistics and this statement outline why we agree with OPR that agencies should address transportation safety comprehensively. That's why San Francisco has adopted a Vision Zero goal to eliminate traffic deaths and reduce severe injuries on our streets. CEQA requires an analysis of physical environmental effects, and thus, lead agencies should analyze the potential for a project to cause physical harm to persons on the transportation system. Additionally, more VMT is associated with more crash occurrences. While we agree with OPR that many different factors are involved in attaining safety outcomes, the environmental analysis should acknowledge those factors and make a determination, without speculating, whether a project impacts safety. San Francisco has analyzed transportation safety impacts in CEQA for years and defines "potentially hazardous conditions" as engineering aspects (e.g., speed, turning movements, complex designs, substantial distance between street crossing, sight lines) that may cause collisions and result in serious or fatal physical injury that could reasonably affect many people. Therefore, we recommend the resources agency include similar language as the January 20, 2016 language drafted by OPR in Section 15064.3 and Appendix G XVI.(a) regarding safety, and add a new section to clarify its importance.

Response 5.10

The Agency is not making any change in response to this comment. In an initial draft of the transportation Guideline, OPR included a subdivision devoted to transportation-related safety. Many comments objected to that subdivision, however, indicating that the evaluation of safety is far more nuanced than any general statement in the Guidelines would allow. For example, one comment noted:

> Transportation safety is easy to measure after the fact, but difficult to predict during the project development phase. In transportation, we try to create safe environments through detailed design controls for all transportation facilities, including roads, rail lines, bike paths, etc. These design standards, however, oftentimes contradict each other. … Because there are no commonly accepted standards of safe roadway design,

> and because there are currently strong debates within the industry about safer design approaches, inclusion of safety [explicitly in the CEQA Guidelines] will almost certainly lead to additional litigation, delay, and unpredictability.

(Comment from J Tumlin to OPR, November 2014.) Therefore, OPR explained in a revised draft that "[w]hile safety is a proper consideration under CEQA, the precise nature of that analysis is best left to individual lead agencies to account for project-specific and location-specific factors." (Governor's Office of Planning and Research, "Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA, at p. 5.) Instead, OPR added a discussion of safety considerations to its Technical Advisory. The Agency concurs with OPR, and so declines the comment's suggestion to add a separate requirement to analyze safety in the transportation section.

Comment 5.11

Map-based screening for land use projects, accounting for project features, should be used for presumption of impacts

We agree that all land use projects, regardless of location, should use VMT to analyze impacts. In San Francisco, "generally" projects that are within proximity of the transit definitions in section (b)(1) may have less than significant VMT impacts. However, that is not often the case throughout California if transit agencies only provide transit service during peak commute hours and in San Francisco and throughout the state if the project includes features that induce VMT. Such features include an oversupply of vehicular parking. Therefore, we recommend the resources agency provide clarifying language to reflect this evidence.

Response 5.11

The Agency is not making any change in response to this comment. The comment suggests that factors beyond proximity to transit may affect a project's VMT. In particular, the comment notes that over supply of parking and the frequency of transit service may both affect VMT. The Agency agrees; however, no change to the Guidelines is needed. The Guideline created a presumption, based on evidence, that projects located near transit will have a less than significant transportation impact. The presumption is rebuttable, however, as made clear by the modifier "generally." A lead agency would still need to consider project-specific facts, including the effects of parking and transit frequency. Please see also Master Response 4 regarding the presumption.

Comment 5.12

Methodology clarifications

We recommend the resources agency include the January 20, 2016 language drafted by OPR regarding "political boundary". The definition of environment (section 15360) is the "area in which significant effects would occur" regardless of the political boundary. In addition, we recommend the resources agency clarifies that any assumptions used to estimate VMT need not be included in the environmental document, but instead can be included in the administrative record per other provisions of CEQA (e.g., see sections 15088.5, 15126.6). These assumptions, particularly if they are within a travel demand model, can be extensive (e.g., hundreds or thousands of pages) and would conflict with other provisions of CEQA (e.g., section 15141). Lastly, it is unclear the relevance of section 15151, standard of adequacy of EIRs, to this section. We recommend the resources agency includes similar language to that provided in the new section 15064.4(c) for this section instead

Response 5.12

The Agency is not making any change in response to this comment. The comment proposes several changes to the subdivision of the transportation guideline addressing methodology. The Agency finds that none of the proposed changes are necessary. The comment correctly notes that the existing definition of environment is broadly worded, and so there is no need to reference political boundaries in the transportation guideline. Further, the guideline as drafted does not require that all model assumptions be included in the environmental document. Rather, the guideline just requires that the assumptions be explained. Finally, the comment objects to the reference to the standard of adequacy for EIRs. During the development of the transportation guideline, many stakeholders noted that VMT can be measured in many different ways and feared that a lead agency could be challenged for using one model instead of another. The Agency finds it necessary to clarify that the standard of adequacy for the evaluation of transportation impacts is not perfect, but instead a good faith effort to study and explain a project's transportation impacts. The Agency further determined that a cross-reference to the standard of adequacy in existing Section 15151 is the most efficient way to make that clarification. In response to comments regarding the Technical Advisory, please see Master Response 11.

Comment 5.13

Applicability date

Substantial evidence exists today that substantial VMT could result in a significant impact, including from roadway capacity projects. If someone comments on an environmental document asking for VMT analysis or presenting substantial evidence indicating a significant VMT impact, the lead agency should not ignore that comment and point to the applicability date for support. The last major change to CEQA regarding greenhouse gas analysis did not include such a future applicability date.

While we appreciate the enormity of implementing this change in many jurisdictions throughout the state, we are concerned the applicability date is inconsistent with CEQA. Although the CEQA Guidelines are just that, a guide, most lead agencies follow the guidance therein and courts give deference to that guidance. By providing a future applicability date though, the CEQA Guidelines may give lead agencies the false impression of legal protection, in circumstances that there is not ample evidence that a project that produces a substantial amount of VMT may have significant impacts on the environment. Therefore, we recommend the resources agency includes language that encourages lead agencies to consider implementing these changes sooner.

Response 5.13

The comment objects to the phase-in period for the transportation guideline. During the development of the guideline, many stakeholders indicated that while some agencies would be able to implement the changes immediately, others would need time to update their procedures. Recognizing that the practice is evolving in this area, the guideline includes a provision allowing lead agencies almost two years to update their own procedures, while allowing immediate implementation for those that are ready. Notably, this phase is period does not allow a lead agency to ignore evidence of impacts. Caselaw has made clear that agencies must consider evidence of all impacts, even if not described in the Guidelines. (See, e.g., *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099.) With regard to the phase-in period for the transportation guideline, please see Master Response 7.

Comment 5.14

Public Transit

We recommend the resources agency add language to clarify that transit means public transit, as opposed to lead agencies making land use and impact significance decisions on the proliferation of private transit services whose future is more uncertain and unreliable.

Response 5.14

The Agency is not making any change in response to this comment. The comment suggests limiting the provisions in the guideline relating to transit proximity to public transit. The comment does not provide any evidence, however, indicating the private transit would not provide the same reductions in vehicle miles traveled as public transit. Moreover, if evidence existed demonstrating that private transit would have different impacts on vehicle miles traveled, the guideline as currently drafted would allow a lead agency to take such evidence into account. Therefore, no change is needed.

Comment 5.15

Appendix N

The resources agency should also update the checklist associated with Appendix N of the CEQA Guidelines to reflect the changes associated with Appendix G.

Response 5.15

The Agency has made a change in response to this comment. Please see 15-Day language updating the checklist associated with Appendix N.

Comment 5.16

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 **public** transit and non-motorized travel **and the safety of all travelers**. ~~**Except as provided in subdivision (b)(2) below (regarding roadway capacity),**~~ **a** A project's effect on automobile delay ~~**does**~~ **shall** not constitute a significant environmental impact.

Response 5.16

Please see response to comment 5.10.

Comment 5.17

(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 **that exhibit low vehicle miles traveled characteristics and** within **areas that exhibit low vehicle miles traveled or** 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~~ vehicle miles traveled** 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~~ vehicle miles traveled** impact.

Response 5.17

Please see response to comment 5.11.

Comment 5.18

(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~~ vehicle miles traveled** impact. **~~For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements.~~ Roadway capacity projects may induce automobile travel, and vehicle miles traveled, compared to existing conditions. Transportation projects that substantially induce automobile travel may indicate a significant vehicle miles traveled impact.** To the extent that **~~such impacts~~ the potential for induced travel ~~have~~ has** already been adequately addressed at a programmatic level, a lead agency may tier from that analysis as provided in Section 15152

Response 5.18

Please see response to comment 5.11.

Comment 5.19

(3) Other considerations. A project that may conflict with a plan, ordinance or policy addressing the circulation system and adopted for the purpose of avoiding or mitigating an environmental effect, including the safety or performance of public transit, roadways, bicycle lanes and pedestrian paths (except for automobile delay) may indicate a significant transportation impact.

Response 5.19

Please see response to comment 5.11.

Comment 5.20

(~~3~~ 4) 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 **public** transit, proximity to other destinations, etc. For many projects, a qualitative analysis of construction traffic may be appropriate.

Response 5.20

Please see response to comment 5.14.

Comment 5.21

(4 **5**) 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 should not confine its**

evaluation to its own political boundary. 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, **and limitations of a particular model or methodology** should be documented and explained in the environmental document prepared for the project **or in the administrative record, which may include incorporation by reference in the environmental document prepared for the project. The standard of adequacy in Section 15151 shall apply to the analysis described in this section.**

Response 5.21

Please see response to comment 5.12.

Comment 5.22

The provisions of this section shall apply prospectively as described in section 15007. A lead agency may elect **and is advised** to be governed by the provisions of this section immediately. Beginning on July 1, 2019, the provisions of this section shall apply statewide.

Response 5.22

Please see response to comment 5.13.

Comment 5.23

Would the project:

a) Conflict with an ~~applicable~~ plan, ordinance or policy ~~establishing measures of effectiveness for the performance of~~ addressing the circulation system **and adopted for the purpose of avoiding or mitigating an environmental effect**, including **performance and safety of public** transit, roadways, bicycle lanes and pedestrian paths **(except for automobile delay)**? ~~taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?~~

Response 5.23

Please see response to comment 5.10.

Comment 5.24

Conclusion

This concludes our comments on the transportation amendments and additions to the CEQA Guidelines. Thank you for this opportunity to provide input. Your consideration of our comments is appreciated and we welcome any questions or comments you might have.

Response 5.24

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 6 – City and County of San Francisco, Planning Department

Comment 6.1

Thank you for this opportunity to provide comments on the California Natural Resources Agency Secretary's Proposed Amendments and Additions to the CEQA Guidelines, dated January 26, 2018.

Please see attached comment letter from the San Francisco Planning Department, on behalf of the City and County of San Francisco, providing input on the secretary's proposed revisions to the CEQA Guidelines. We appreciate your consideration of our comments and welcome any questions you might have. Please contact me for any follow up regarding the attached comment letter. As the Environmental Review Officer for the City and County of San Francisco ("the City"), and on behalf of the City, I am pleased to respond to the California Natural Resources Agency secretary's request for comment regarding the proposed amendments and additions to the State CEQA Guidelines (hereinafter, "secretary's proposed draft") dated January 26, 2018. The Environmental Planning Division of the San Francisco Planning Department, acting as a Lead Agency for the City, conducts California Environmental Quality Act ("CEQA") review for a wide variety of public and private projects, in both urban and natural environments. Additionally, the San Francisco Planning Department conducts CEQA review on an unusually high volume of projects because, within the City, most building permits are considered discretionary actions that may be subject to CEQA. The San Francisco Planning Department processes approximately 5,000 CEQA determinations per year, the majority of these cases being categorical exemptions. Therefore, we have a unique Lead Agency perspective to offer and we have a vested interest in helping to improve the clarity and effectiveness of the CEQA Guidelines.

Response 6.1

The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 6.2

We present our comments on the secretary's proposed draft in the order of the topics included in the secretary's proposed draft and have included the subject and page number of the secretary's proposed draft for the convenience of reviewers (see http://resources.ca.gov/ceqa/docs/update20l8/proposed- regulatory-text.pdf). We have also reviewed the accompanying document published by the Office and Planning and Research ("OPR") on November, 2017, entitled "Proposed Updates to the CEQA Guidelines" (hereinafter, "OPR's proposed updates;" see http://opr.ca.gov/docs/20171127_Comprehensive_CEQA_Guidelines_ Package_Nov _2017.pdf). We have shown the secretary's proposed draft's text changes as follows: secretary's additions are shown in underline and secretary's deletions are shown in strikethrough, so as to highlight these amendments within the context of the overall text in our comments below. Where our comments include proposals for specific text changes, these are indicated on the secretary's proposed draft with our suggested additions shown in **bold double underline** and deletions shown in **bold strikethreugh.** We believe that our suggested revisions would improve the implementation of CEQA.

Response 6.2

The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 6.3

§ **15064.4: Determining the Significance of Impacts from Greenhouse Gas Emissions** – **pages 11-12**

This section of the secretary's proposed draft clarifies various aspects of CEQA Guidelines Section 15064.4: Determining the Significance of Impacts from Greenhouse Gas Emissions. The section further references CEQA Guidelines Section 15183.5: Tiering and Streamlining the Analysis of Greenhouse Gas Emissions.

San Francisco Planning Department would like to seek a specific clarification to CEQA Guidelines Section 15183.S(b)(l)(F), which is not proposed for amendment in the secretary's proposed draft. This section states that when relying on a plan for the reduction in greenhouse gas emissions, the plan should be adopted in a public process following environmental review. This section should be clarified to recognize that many jurisdictions have specific requirements that effectively mitigate the effects of greenhouse gases, and that these may have proceeded under separate public processes with varying levels of environmental review.
City proposed Edits:

The following revision is therefore suggested for Section 15183.S(b)(l)(F):

> (F) Be adopted in a public process following environmental review. or. if the plan elements include regulations or requirements relied upon for streamlining the analysis of ~~greenhouse~~ gas emissions. those regulations or requirements must be adopted in a public process following environmental review.

Our suggested revision above is consistent with the secretary's proposed revision to CEQA Guidelines Section 15064.4(b): Determining the Significance of Impacts from Greenhouse Gas Emissions, which states, "(3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions (see, e.g.• Section 15183.S(b)). Such requirements must be adopted by the relevant public agency through a public review process... " [the underlined text here is the secretary's proposed draft language in section 15064.4(b)]. This section emphasizes that the plan requirements must be adopted by the relevant public agency, rather than under a specific plan.

Response 6.3

The Agency is not making any change in response to this comment. The comment seeks changes to CEQA Guidelines section 15183.5(b)(1)(F), which is not part of the current proposed rulemaking and is therefore outside the scope of this rulemaking. Moreover, the requested change is not necessary. The 2009 Final Statement of Reasons explained that the Agency added Section 15183.5 provides criteria to assist lead agencies in determining whether a greenhouse gas reduction plan is an appropriate document to use in a cumulative impacts analysis under CEQA. As the comment notes, Section 15064.4

also provides that compliance with regulations can also be factored into a cumulative impacts analysis. Therefore, additional change to 15183.5 to account for compliance with regulations is not needed.

Comment 6.4

The proposed amendments to CEQA Guidelines Section 15125(a)(1) restate recent case law regarding baseline and existing conditions, but the first sentence of the proposed Section 15125(a)(2) appears to conflate requirements for using a future baseline with those for using a historical conditions baseline. Specifically, the *Neighbors for Smart Rail* language cited in OPR's Proposed Updates document on page 93 applies when a lead agency decides to use a future baseline, *not* a historic conditions baseline. (*See Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, at page 453, asking the question "Is it ever appropriate for an EIR's significant impacts analysis to use conditions predicted to prevail in the more distant future, well beyond the date the project is expected to begin operation, to the exclusion of an existing conditions baseline?" This question immediately precedes the *Neighbors* text quoted by OPR on page 93 of the proposed updates document.) In contrast, a long line of cases allows the use of a historic baseline if the decision is supported by substantial evidence in the record, and without the added requirement that the lead agency show that the existing conditions analysis "would be uninformative or misleading to decision makers and the public." (See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310 [allowing the use of a historic conditions baseline and stating that "[n]either CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence"].) For these reasons, we propose that the words "either a historic condition baseline" be deleted from the secretary's proposed new subsection 15125(a)(2).

Response 6.4

The Agency made the changes suggested in this comment. In response to comments regarding baseline and existing conditions, please see Master Response 14.

CEQA Guidelines section 15125, subd. (b)(2) is changed as follows:

(2) A lead agency may use ~~either a historic conditions baseline or a~~ projected future conditions (beyond the date of project operations) ~~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.

Comment 6.5

§ **15126.2. Consideration and Discussion of Significant Environmental Impacts (Energy Impacts) - pages 26-27 and 60**

The proposed amendments to CEQA Guidelines Section 15126.2 appear to implement Public Resources Code Section 21100(b)(3), which requires EIRs to include "measures to reduce the wasteful, inefficient, and unnecessary consumption of energy." However, the City would like clarification as to whether Section 21100 applies to all lead agencies, or only to state lead agencies,

given the fact that it is contained within Chapter 3 of CEQA, which applies to "State Agencies, Boards and Commissions."

Response 6.5

The Agency is not making any change in response to this comment. The comment notes that the authority for the energy section is 21100(b), which is found in Chapter 3 of the Division 13 of the Public Resources Code. Because Chapter 3 is titled "State Agencies, Boards and Commissions," the comment asks whether that section applies to local agencies. Section 21100 directs "[a]ll lead agencies" to prepare an environmental impact report when a project may cause a significant environmental impact, and describes the required content of the report. The Agency is aware of no cases holding that the content requirements do not apply to local agencies. On the contrary, several cases, including the Court of Appeal's decision in *Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256 which is cited in the reference section, have applied the requirement to analyze energy impacts to a local lead agency.

Comment 6.6

Second, the City would like clarification as to what the status of Appendix F: Energy Conservation is after the secretary's proposed additions of energy-related questions to Appendix G: Environmental Checklist Form. Should lead agencies consider the questions in both appendices, or prioritize one?

Response 6.6

The Agency is not making any change in response to this comment. Appendix G is and remains a sample form and may be tailored to satisfy individual agencies' needs and project circumstances. It may be used to meet the requirements for an initial study when the criteria set forth in CEQA Guidelines have been met. Appendix F provides detailed guidance on the analysis of energy impacts. The Agency updated that appendix in 2009 to clarify that the analysis is required. Appendix F will remain within the Appendices of the CEQA Guidelines and is cited within the text of the proposed subdivision of the Guideline.

Comment 6.7

Third, the City proposes that the caveat offered by OPR in its "Proposed Updates" document on page 67, that a full "lifecycle" analysis is not required, be added to CEQA Guidelines Section 15126.2(b), to provide clear guidance in this respect to lead agencies and interested members of the public.

Response 6.7

The Agency is not making any change in response to this comment. New proposed subdivision (b) cautions that the analysis of energy impacts is subject to the rule of reason, and must focus on energy use caused by the project. The Agency explained in the 2009 Final Statement of Reasons that it deliberately avoided the term "lifecycle" because that term is used to describe many different things. In some cases, a "lifecycle analysis" may exceed what CEQA requires even of an indirect effects analysis. Thus, for the same reasons, in adding new subdivision (b), the Agency declines to use the term "lifecycle." The phrase "rule of reason" is well-understood in the CEQA context, however, and appropriately signals that an energy impacts analysis is limited to what is feasible.

Please note that the Agency did make changes to this section, as contained within the proposed 15-day revisions (July 2, 2018), to reflect changes from demand to use.

Comment 6.8

Finally, the City would like some guidance as to what is required under the second question in the proposed new environmental topic "Energy" in the secretary's proposed Appendix G's language, which asks if the project would "conflict with or obstruct a state or local plan for renewable energy or energy efficiency." It is unclear what plans are referenced, and it is also unclear how a mere "conflict" with such a plan would, in and of itself, result in an environmental impact. The City recommends deletion of the secretary's second Energy question, or, in the alternative, to change it to provide greater guidance to lead agencies on what physical environmental impacts are intended to be addressed by this question that are separate and distinct from those covered in the first.

Response 6.8

The Agency is not making any change in response to this comment. The question contained in Appendix G is a list of sample questions for lead agencies. Note, the Agency is simply reinstating the questions that had been included in Appendix G prior to the revisions in the late 1990s. As stated within Appendix F, "[t]he goal of conserving energy implies the wise and efficient use of energy. The means of achieving this goal include:

(3) increasing reliance on renewable energy sources.

Thus, if a proposed project would "[c]onflict with or obstruct a state or local plan for renewable energy or energy efficiency[]" then it could lead to an environmental impact of not achieving the goal of conserving energy.

Comment 6.9

Secretary draft language:
* * * *

(b) Energy Impacts. If the project may result in significant environmental effects due to wasteful, inefficient, or unnecessary consumption of energy, the EIR shall analyze and mitigate that energy use. This analysis should include the project's energy use for all project phases and components, including transportation-related energy, during construction and operation. In addition to building code compliance, other relevant considerations may include, among others, the project's size, location, orientation, equipment use and any renewable energy features that could be incorporated into the project. (Guidance on information that may be included in such an analysis is presented in Appendix F.) This analysis is subject to the rule of reason and shall focus on energy demand that is caused by the project. This analysis may be included in related analyses of air quality, greenhouse gas emissions or utilities in the discretion of the lead agency.

City proposed edits:

(b) Energy Impacts. If the project may result in significant environmental effects due to wasteful, inefficient, or unnecessary consumption of energy, the EIR shall analyze and mitigate that energy use. This analysis should include the project's energy use for all project phases and components, including transportation-related energy, during construction and operation. In addition to building code compliance, other relevant considerations may include, among others, the project's size, location, orientation, equipment use and any renewable energy features that could be incorporated into the project. (Guidance on information that may be included in such an analysis is presented in Appendix F.)

This analysis is subject to the rule of reason and shall focus on energy demand that is caused by the project,: a full "lifecycle" analysis that would account for energy used in building materials and consumer products is not required. This analysis may be included in related analyses of air quality, greenhouse gas emissions or utilities in the discretion of the lead agency.

Response 6.9

The Agency is not making any change in response to this comment. Please see response to comment 6.7.

Comment 6.10

Appendix G:
Secretary draft language:

VI. ENERGY. Would the project:
a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?

b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?
City proposed edits:

VI. ENERGY. Would the project:
a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?

~~b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?~~

Response 6.10

The Agency is not making any change in response to this comment. Please see response to comment 6.8.

Comment 6.11

§ 150126.4: Deferral of Mitigation Measures - pages 27-28

The secretary's proposed draft revises CEQA Guidelines Section 15126.4(a)(l)(B) to further clarify when deferral of mitigation measure details may be permissible. Under the secretary's proposed draft text, which is reproduced and highlighted below, deferral is permissible if it is impractical or infeasible to include those details during the project's environmental review and the lead agency satisfies each of the three further listed criteria. The agency must:

(1) commit itself to the mitigation,
(2) adopt specific performance standards the mitigation will achieve, and
(3) list the potential actions to be considered, analyzed, and potentially incorporated in the mitigation measure

A plain reading of these proposed additions to CEQA Guidelines Section 15126.4 suggests that a lead agency must meet all three of these criteria in order to properly defer development of the details of a mitigation measure. However, the explanation of these proposed amendments on page 99 of OPR's proposed updates suggests that a lead agency may defer development of mitigation measure details if the agency either provides a list of possible mitigation measures, or adopts specific performance standards (see second full paragraph on page 99 of OPR's proposed updates). Please clarify whether OPR's explanation of the proposed amendments accurately describes the additions to CEQA Guidelines Section 15126.4 contained in the secretary's proposed draft text and, if so, please revise the secretary's proposed amendments to CEQA Guidelines Section 15126.4(a)(l)(B) accordingly. (The "and " below in the secretary's proposed draft should then be revised to an "or" to ensure consistency with OPR's explanation of the proposed amendments shown in the second full paragraph on page 99 of OPR's proposed updates. Additionally, an "and either" should be added after "(l) commits itself to the mitigation. This would clarify that (1) is required in all circumstances and a lead agency may elect to implement either (2) or (3).)

Secretary draft language

(B) Where serval measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures ~~should~~ shall not be deferred until some future time. ~~However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.~~ The specific details of a mitigation measure, however, may be deferred when it is impractical or infeasible to include those details during the project's environmental review and the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) lists the potential actions to be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit process may be identified as a future action in the proper deferral of mitigation details if compliance is mandatory and would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.

City proposed edits (for consistency with OPR's proposed u pdates):

(B) Where serval measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures ~~should~~ shall not be deferred until some future time. ~~However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.~~ The specific details of a mitigation measure, however, may be deferred when it is impractical or infeasible to include those details during the project's environmental review and the agency (1) commits itself to the mitigation, **and either** (2) adopts specific performance standards the mitigation will achieve, ~~**and**~~ **or** (3) lists the potential actions to be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit process may be identified as a future action in the proper deferral of mitigation details if compliance is mandatory and would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.

Response 6.11

The Agency revised Section 15126.4 in response to this and other comments. In response to comments regarding deferral of mitigation measures, please see Master Response 15.

The Agency made changes to this section as contained within the proposed 15-day revisions (July 2, 2018), as follows:

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures ~~**should**~~ **shall** not be deferred until some future time. ~~**However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.**~~ **The specific details of a mitigation measure, however, may be ~~deferred~~ developed after project approval when it is impractical or infeasible to include those details during the project's environmental review, ~~and~~ provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) ~~lists~~ identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will ~~to~~ be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as ~~a future action in the proper deferral of~~ mitigation ~~details~~ if compliance ~~is mandatory and~~ would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant** impact to the specified performance standards.

Comment 6.12

15301. Existing Facilities
***
(c) Existing highways and streets, sidewalk-s, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety, and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, pedestrian crossings, and street trees, and other similar improvements that do not create additional automobile lanes).

City proposed edits

15301. Existing Facilities
***
(c) Existing highways and streets, sidewalk-s, 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 and bicycle lanes, **transit improvements such as bus lanes**, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, pedestrian crossings, and street trees, **removal of vehicular travel lanes**, and other similar ~~improvements~~ **alterations** that do not ~~create additional~~ **substantially induce** automobile ~~lanes~~ **travel)**.

Response 6.12

The Agency has made changes in response to the comment. Although not all of commenter's requested changes were made – the Agency finds that the changes accomplish the goals of the commenter's request. Subdivision (c) of Section 15301 has been changed as follows:

(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, transit improvements such as bus lanes, pedestrian crossings, ~~and~~ street trees,**

and other similar ~~improvements~~ alterations that do not create additional automobile lanes).

Comment 6.13

Aesthetics - page 57

OPR's proposed updates document rightly points out on pages 32-33, that "[v]isual character is a particularly difficult issue to address in the context of environmental review, in large part because it calls for exceedingly subjective judgments." The proposed solution subsequently appears to be to import into CEQA a requirement that lead agencies consider a project's consistency with applicable zoning or other regulations governing scenic quality.

The City respectfully disagrees with this approach. This approach misreads *Bowman v. City of Berkeley* (2006) 122 Cal.App.4th 572, appears to conflict with long-standing case law regarding consistency with plans and policies, and runs contrary to the recent amendments pertaining to aesthetic impacts in infill areas contained in Senate Bill 743 (Steinberg, 2013), now codified in Public Resources Code Section 21099. *Bowman* concluded that "aesthetic issues like the one raised here are ordinarily the province of local design review, not CEQA" (*Bowman*, at p. 593.). It is therefore surprising then that compliance with zoning and other regulations is now proposed to be used as part of the CEQA analysis Moreover, lack of compliance with zoning or other plans and policies is not, in and of itself, indicative of a potential environmental impact. What matters is whether that inconsistency results in environmental impacts. (See *Marin Mun. Water Dist . v. Kg Land Cal. Corp.* (1991) 235 Cal.App.3d 1652, 1668.) And, numerous cases have held that absolute consistency with plans and policies is not required. (See *San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498 ["State law does not require perfect conformity between a proposed project and the applicable general plan.... In other words, it is nearly, if not absolutely, impossible for a project to be in perfect conformity with each and every policy set forth in the applicable plan.... It is enough that the proposed project will be compatible with the objectives, policies, general land uses and programs specified in the applicable plan" [citations omitted].) The City is concerned that the proposed language calling for the identification of "conflicts" with applicable zoning or other regulations as part of the CEQA analysis could be construed to impose a heightened consistency requirement, contrary to state law.

Finally, recently adopted Public Resources Code Section 21099(d)(l) states that "aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area shall not be considered significant impacts on the environment." This provision was recently upheld in court, in a case involving the City. (See *Protect Telegraph Hill v. City and County of San Francisco* (2017) 16 Cal.App.5th 261, 272.) Infill sites and transit priority areas are, by definition, in urbanized areas. (See Section 21099(a) [definitions].)

For these reasons, the City believes the draft language regarding conflicts with applicable zoning or other regulations should be deleted. In the alternative, a caveat should be added to refer to the exemption codified in Section 21099(d).

Secretary draft text:

I. AESTHETICS. Would the project:

* * * *

c) Substantially degrade the existing visual character or quality of public views of the site and its surroundings? If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?

City proposed edits:

I. AESTHETICS. Would the project:

C) Substantially degrade the existing visual character or quality of public views of the site and tis surroundings? **~~If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?~~**

Response 6.13

The Agency appreciates the comment's concern about the analysis of aesthetic impacts. As noted in the Initial Statement of Reasons, analysis of aesthetics is inherently subjective. Both the courts and the Legislature have limited the requirement to analyze aesthetics in urbanized areas. (See, e.g., Pub. Resources Code 21099 (limiting the analysis of aesthetics within "transit priority areas").) The Agency disagrees with the comment's interpretation of the proposed changes in Appendix G. Conflict with design guidelines or zoning requirements is not necessarily an environmental impact. As clarified elsewhere in the Guidelines, a conflict with a plan is only relevant to the extent that an adverse environmental impact results from the conflict.

The Agency proposes to recast the existing question on "visual character" to ask whether the project is consistent with zoning or other regulations governing visual character. This change is intended to align with the analysis of the aesthetics issue in the Bowman decision. (*Bowman v. City of Berkeley* (2006) 1222 Cal.App.4th 572.) The court in that case, which involved a challenge to a multifamily residential project in an urban area, noted:

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

(*Bowman, supra*, 122 Cal.App.4th at p. 593 (citations omitted).) This revision is also consistent with the proposed changes in sections 15064 and 15064.7 that recognize the appropriate role of environmental standards in a CEQA analysis. Also, please note, Appendix G is a voluntary form. Agencies may tailor the questions on the form as appropriate. Please see Master Response 18.

Finally, please note that the Agency revised the Aesthetics portion of Appendix G as part of the 15-Day revisions in part to clarify that aesthetics analysis may be limited by Public Resources Code 21099.

Comment 6.14

That concludes our comments on the California Natural Resources Agency Secretary's Proposed Amendments and Additions to the State CEQA Guidelines. Thank you for this opportunity to provide input on the proposed revisions to the CEQA Guidelines. We appreciate your consideration of our comments and welcome any questions or comments you might have.

Response 6.14

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing to the letter only.

Comment 7 - City/County Association of Governments of San Mateo

Comment 7.1

Attached is the City/County Association of Governments of San Mateo County's comments to the CNRA regarding the amendments and additions to the State CEQA guidelines. Please let me know if you have any questions.

Response 7.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 7.2

Thank you for the opportunity to provide comments and suggestions regarding the proposed amendments and additions to the State CEQA Guidelines dated January 26, 2018. Our comments are on the proposed new Section 15064.3 Determining the Significance of Transportation Impacts and issues related to the implementation of Senate Bill 743 (Steinberg 2013) followed by comments on the technical advisory on evaluating transportation impacts in CEQA.

Response 7.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 7.3

Page 11, (c) Applicability If any unexpected delays occur, we would request that the implementation date should be set for one year after the CEQA adoption process concludes. To allow ample time for the implementation of SB 743, lead agencies will need at least a one-year period from the adoption of the new CEQA guidelines to prepare for implementation. This could potentially lead an extension of the required implementation date beyond January 1, 2020 if the CEQA adoption process is not concluded in 2019.

Response 7.3

The Agency is making a change partially in response to this comment. The date on which the provisions would apply statewide begins on July 1, 2020, which will ensure that agencies have ample time to update their own procedures to comply. Please see Master Response 7.

Comment 7.4

Page 68, Appendix G: Link to Congestion Management Programs The draft guidelines propose removal of the reference to the Congestion Management Program (CMP) and any conflict with the CMP included in the existing CEQA checklist, Appendix G, Item B. The CMP legislation requires a Congestion Management Agency (CMA) to use automobile level of service (LOS) in the bi-annual monitoring of a County's network of freeway and arterial routes and has a land use analysis program that assesses impacts of development on the regional transportation system. The CMP legislation also states that the land use analysis program should be coordinated with CEQA efforts. Therefore, a statement that requires projects sponsors to consider the CMP land use analysis program requirements related to the project should continue to be included in the CEQA checklist. This could be accomplished by modifying language in the existing language to read 'Conflict with an applicable Congestion Management Program element such as land use analysis program established by the county congestion management agency for designated CMP roadways."

Response 7.4

The Agency is not making any change in response to this comment. The Legislature directed that the CEQA Guidelines update the analysis of transportation impacts and made clear that auto delay is not an environmental impact that requires analysis under CEQA. Note that the Guidelines still accommodate congestion management plans in other ways. For example, proposed question XVII(a) asks whether a project would conflict with a program addressing the circulation system, which would be one place to analyze non-LOS provisions of congestion management plans. Section 15125(d) also directs lead agencies to consider a project's consistency with regional plans.

Comment 7.5

C/CAG recommends that flexibility be included for lead agencies to use countywide average VMT per capita rather than the proposed regional VMT per capita or city VMT per capita. The overall region that includes San Mateo County is the nine-county San Francisco Bay Area, which ranges from counties that are largely rural and suburban (Napa, Sonoma) to the highly urbanized City/County of San Francisco. San Mateo County falls in between with rural communities like Half Moon Bay along the coast and urbanized areas such as San Mateo and South San Francisco. We believe that measuring average VMT at the county level would be more appropriate given the diverse area such as the Bay Area. This will help the projects in unincorporated areas by providing a clear and streamlined method for assessing the threshold of significance.

Response 7.5

The Agency is not making any change in response to this comment, as it is not directed at the CEQA Guidelines rulemaking. The Technical Advisory that the comment refers to is one of a series of advisories developed by the Governor's Office of Planning and Research. Those advisories provide advice and recommendations, which agencies and other entities may use at their discretion. The Technical Advisory addressing transportation impacts contains technical recommendations regarding

assessment of VMT, thresholds of significance, and mitigation measures. OPR will continue to monitor implementation of these new provisions and may update or supplement that advisory in response to new information and advancements in modeling and methods. The Agency has forwarded comments related to the Technical Advisory to OPR for its consideration. Please see Master Response 11.

Comment 7.6

We appreciate including a list of projects that would not likely lead to a substantial or measurable increase in VMT. We also appreciate the case study of the highway capacity expansion project; however we would appreciate more examples of other types of transportation projects in the technical advisory. We recommend that OPR develop additional case studies that demonstrate the application of the CEQA guidelines which include analysis of modification to the following types of roadway projects: local arterial roadways, conventional highways, and freeway interchanges.

Response 7.6

The Agency is not making any change in response to this comment. Please see Response to Comment 7.5.

Comment 7.7

While reviewing the technical advisory we feel that the methodology for roadway projects seems oversimplified. An example is estimation of VMT impacts from roadway expansion projects on page 20. The equation doesn't consider the type of roadway project, where the project is located, or the usage of the proposed project (Roadway capacity project in rural vs. urban areas produce different VMT). We would like to see example methodologies that account for these factors.

Response 7.7

The Agency is not making any change in response to this comment. Please see Response to Comment 7.5

Comment 7.8

Much emphasis was put on lead agencies to make the final decision on how to approach the guidelines. We think it would be helpful if different approaches were presented to help local agencies come to a final decision that is comprehensive and addresses the goals of the guidelines. A section within the technical advisory that presents various options would be helpful for lead agencies to construct customized guidelines.

Response 7.8

The Agency is not making any change in response to this comment. Please see Response to Comment 7.5

Comment 7.9

We appreciate the opportunity to comment on the proposed amendments and additions to the CEQA guidelines and the proposed technical guidance proposed by OPR.

Response 7.9

The Agency is not making any change in response to this comment. Please see Response to Comment 7.5

Comment 8 - City of Anaheim

Comment 8.1

City of Anaheim staff has reviewed the proposed SB 743 Implementation Guidelines and offers the following comments:

Response 8.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 8.2

Please revise the guidelines to indicate the methodology for non-traditional office, commercial and residential land uses. For instance, the question of how a hotel project would be modeled for vehicle miles travelled (VMT) has been raised to OPR more than once at OPR workshops, however, this question has not yet been answered. Please also revise the guidelines to consider other similar uses that serve larger geographic areas such as hospitals, colleges, tourist-oriented destinations, concert and sporting venues, etc.

Response 8.2

The Agency is not making any change in response to this comment. The comment seeks additional guidance on the analysis of hotel projects. Section 15064.3 sets forth general considerations for determining the transportation impacts of projects. Because the Guidelines apply to all projects proposed by all lead agencies in the state, they must necessarily be general in nature and cannot go into precise detail for particular project types. Moreover, consistent with CEQA's general rules, Section 15064.3 recognizes that lead agencies have discretion in their choice of models and methodologies.

Notably, many jurisdictions already analyze the vehicle miles traveled of proposed projects. The City of Pasadena, for example, recently analyzed the vehicle miles traveled associated with a proposed hotel project, a college of design, and several residential projects. Also, the City of Los Angeles noted in its comments that it is making materials available to help other jurisdictions make the transition.

Comment 8.3

Staff understands the Southern California Association of Governments (SCAG) will be requesting an extension of the timeline to implement the proposed guidelines and concurs with this request. It is critical that lead agencies be provided sufficient time to adequately prepare for the methodological changes that will be required through implementation of SB 743. The currently targeted implementation date of January 1, 2020, as prescribed in the proposed new Guidelines Section 15064.3(c) entitled "Applicability", should be revised to allow for a minimum full two-year implementation opt-in period from the effective date of the final rule-making.

Response 8.3

The Agency is making a change partially in response to this comment. The comment seeks a full two years from the effective date of the updated CEQA Guidelines to begin implementation. As revised in the 15-Day Revisions, Section 15064.3 will become mandatory on July 1, 2020. While not a full two years, the Agency finds the phase-in period to be sufficient for several reasons. First, the general rule is that agencies must update their own procedures to be consistent with CEQA Guidelines updates within 120 days. (See CEQA Guidelines § 15007(d)(2).) Second, the statute requiring these changes was enacted in 2013, and OPR released its first draft of the transportation guideline, which identified vehicle miles traveled as the primary metric, in 2014. Since that time, professional organizations, such as the Association of Environmental Professionals and the California Bar Association, have put on numerous continuing education programs covering these changes. The Southern California Association of Governments has also hosted several workshops to help make local jurisdictions aware of the proposed changes and ways to implement them. Third, at least two local jurisdictions (the City of Pasadena and the City of Los Angeles) have already made, or soon will make, the switch to analyzing vehicle miles traveled. Therefore, the Agency finds that July 1, 2020 is sufficient lead time to enable statewide application of the new guidelines on transportation.

In response to comments regarding the phase-in period, please see Master Response 7.

Comment 8.4

Thank you for addressing our comments. If you have any questions or need any further information, please contact me at REmami@anaheim.net or 714-765-5065.

Response 8.4

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 9 – City of Lemon Grove

Comment 9.1

Thank you for allowing us the opportunity to comment on the 2018 Amendments and Additions to the State CEQA Guidelines (Reference http://resources.ca.gov/ceqa/?utm_source=Members+Only&utm_campaign=920424b1bd-EMAIL_CAMPAIGN_2018_01_12&utm_medium=email&utm_term=0_d35edd2df1-920424b1bd-79404881).

Please consider modifying the State CEQA Guidelines as follows:

Response 9.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 9.2

1. Vehicles Miles Traveled (VMT) should reflect/promote a jobs/housing balance as a part of the qualifying criteria for VMT reductions. Currently it is not addressed. We recommend that Section 15064.3.b.1 be revised to include projects within one half mile of employment centers (zoned for 0.75 floor area ratio or more) to cause a less than significant transportation impact.

Response 9.2

The Agency is not making any change in response to this comment. The comment suggests adding a presumption of less than significant impacts for projects that locate near employment centers. The Agency included a presumption for projects located near transit because the research literature identifies transit proximity as a factor that reduces vehicle miles traveled. Please see Master Response 4 regarding the presumption. The comment did not specify evidence that would support the suggested presumption. Note, however, that agencies may develop their own thresholds of significance that are supported with substantial evidence.

Comment 9.3

2. Currently new housing projects are allowed to locate in areas with poor air quality without mitigation (e.g., Housing next to a freeway). Mitigation measures like planting broad leaf trees and installing HVAC and carbon filtration systems can help reduce exposure levels of new residents to be a less than significant impact. We recommend that in addition to sensitive receptors (e.g., hospitals, schools, daycare facilities, elderly housing and convalescent facilities), require that, parks, housing and places of employment are included as either sensitive receptors or other land uses exposed to substantial pollutant concentrations as a part of CEQA Checklist III (Air Quality) c (previously d).

Response 9.3

The Agency is not making any change in response to this comment. This comment is outside the scope of this rulemaking. Additionally, the California Supreme Court addressed a related issue in *CBIA v. BAAQMD* (2015) 62 Cal.4th 369, and held that "agencies subject to CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users or residents". Cities and counties may, of course, require project modifications to address pollution exposure using their police powers. (Cal. Const., art. XI, § 7; *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal. 4th 435, 455 ("so long as a land use restriction or regulation bears a reasonable relationship to the public welfare, the restriction or regulation is constitutionally permissible").)

The Governor's Office of Planning and Research's recently updated General Plan Guidelines address the issue of land use conflicts near high-volume roadways in depth. It notes that the issue is highly complex. It observes, for example, "[i]nfill development along primary transportation corridors can help to achieve multiple policy objectives (good access to destinations, low VMT, environmental, heath, and economic benefits, fiscal savings for governments and transportation cost savings for citizens), but may also involve residential and commercial development adjacent to high-volume and other roadways elevated levels of air pollution or air toxics." (OPR, General Plan Guidelines (2017), at pp. 189-190.) Additionally, the Air Resources Board provides detailed guidance on mitigating near roadway air pollution.

Comment 9.4

3. A transit agency consultation should not be required for smart growth transit oriented development projects. This implies a similar process to tribal consultations. Transit agencies are notified of General Plan projects and their amendments and do not need further notification during a plan's implementation. We recommend that Sections 15086(a)(5) & 150072(e) be revised as follows: For a project of statewide, regional, or area wide significance, the lead agency should "notice" transit agencies with facilities within one-half mile of the proposed project (not consult).

Response 9.4

The Agency is not making any change in response to this comment. Sections 15086, subd. (a)(5) and 15072, subd. (e) are not intended to create a formal consultation requirement similar to tribal consultations required under AB 52 – codified at Section 21080.3.1 of the Public Resources Code. Tribal consultation is a government to government relationship established to address issues of concern to a tribe. Separately, CEQA encourages agencies to consult with other potentially affected agencies early in the environmental review process. (See, e.g., CEQA Guidelines § 15083.) Stakeholders recommended that the Guidelines encourage such consultation with transit agencies when projects will be located nearby. The proposed addition is not a mandate.

Comment 9.5

Appendix G under current regulations asks whether a project would substantially adversely affect a federally protected wetland. California law protects all waters of the state, while the federal Clean Water Act governs only "navigable waters". Since nothing in CEQA's definition of environment limits consideration to federally regulated resources, we recommend that Appendix G further define all waters of the State to be "navigable waters" in federally protected wetlands or another defined location. We desire lead agencies to consider impacts to wetlands that are protected by either the state or the federal government, but request that these areas be further defined. Wetlands are described as areas that are wet or seasonally wet which could include any location in the City.

Response 9.5

The Agency is not making any change in response to this comment. It was the intent of the Agency to clarify in Appendix G that lead agencies should consider impacts to wetlands that are protected by either the state or federal government. Further, Appendix G provides examples of protected wetlands: "including, but not limited to, marsh, vernal pool, coastal, etc." Thus, additional clarification is not necessary.

Comment 9.6

Thank you for considering our recommendations. Should you have questions, please do not hesitate to call or email me. Please reply to confirm receipt of this email.

Response 9.6

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 10 – City of San Jose, *et al*.

Comment 10.1

Attached is a comment letter from the cities of San Jose, Los Angeles, San Francisco, Long Beach, Oakland and Sacramento on the CEQA Guidelines Update.

Please let us know if you have any questions.

Response 10.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 10.2

On behalf of the cities listed below, we offer this letter in support of the Guidelines Implementing the California Environmental Quality Act (CEQA) that were recently released by the Office of Planning and Research (OPR).

Response 10.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. The Agency further acknowledges with gratitude the valuable insight and expertise that these cities provided to the Agency and to OPR during the development of the transportation impacts guideline. However, this comment does not require a response because it is an introductory paragraph.

Comment 10.3

The transition to using Vehicle Miles Traveled (VMT) for the analysis of transportation impacts, pursuant to Senate Bill (SB) 743, is an exciting and important change. This change gives cities and the State a new tool to address numerous mutual goals including achieving climate action targets, increasing livability and access, and relieving the affordable housing crisis. Our city leaders express support for this change as demonstrated in the attached letter to OPR last July. We recognize the responsibility of local jurisdictions to plan for future development in areas that will result in low VMT outcomes. The State's leadership in advancing to a VMT-based metric will help achieve this outcome.

Response 10.3

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. The Agency notes in particular the comment that:

> The transition to using Vehicle Miles Traveled (VMT) for the analysis of transportation impacts, pursuant to Senate Bill (SB) 743, … gives cities and the State a new tool to address numerous mutual goals including achieving climate action targets, increasing livability and access, and relieving the affordable housing crisis.

This comment carries particular weight as it comes from cities that have been working with VMT for several years and are frequently lead agency for housing projects. However, this comment does not require a response because it is an introductory paragraph.

Comment 10.4

Along with our overall strong support for this advancement, we offer the following comments in response to the release of the recent CEQA Guidelines on evaluating transportation impacts.

Response 10.4

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 10.5

Transportation Projects

Transportation projects that induce VMT should be required to analyze VMT. The Transportation Impacts purpose section states that "vehicle miles is the most appropriate measure of transportation impacts." Conversely, the section goes on to state: "For roadway capacity projects, agencies have the discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements." SB 743 states that automobile delay shall no longer be considered a significant impact on the environment pursuant to CEQA. SB 743 states that exceptions may be made for locations, not types of projects. As documented in OPR's thematic responses and the Natural Resources Agency initial statement of reasons regarding a geographic application exception, OPR and the Natural Resources Agency recommend not including this exception because of numerous concerns regarding lack of environmental protection, confusion, and litigation risk. Therefore, including an exception for transportation projects to this requirement would not only conflict with SB 743, but also OPR and the Natural Resources Agency's own rationale for geographic applicability. As documented with substantial evidence on OPR's website, roadway expansion projects are a primary source of emissions as they induce vehicle travel and sprawl development. VMT is thus an appropriate metric to understand the impacts of increasing roadway capacity.

By leaving it up to agency discretion to adopt VMT for transportation projects the State CEQA Guidelines will also add confusion and added legal risk to CEQA transportation analysis. There is a demonstrated relationship between roadway capacity enhancements and growth in VMT. Thus projects that do not analyze their VMT effect will be at risk of litigation, for good reason. Furthermore, by having a different metric for transportation projects than other projects will cause confusion as to the purpose and intent of CEQA as it relates to transportation. Therefore, transportation projects should also be measured under VMT analysis to ensure their impacts are being addressed in a way that advances the achievement of a lower VMT future, and reduces litigation.

Response 10.5

The Agency is not making any change in response to this comment. The comment objects to the discretion provided in subdivision (b)(2) to use a measure other than vehicle miles traveled to analyze the transportation impacts of roadway capacity projects. SB 743 provided discretion to OPR and the Agency to determine the metric by which transportation impacts should be evaluated. (Pub. Resources Code § 21099(b)(2), (c)(1).) Given that the legislation required a shift in the status quo, it was appropriate to give the Agency discretion, exercised after intensive public and stakeholder input, in scope of the change. The comment's objection appears to primarily relate to emissions associated with capacity expansion. Whether a roadway's transportation impacts are measured using vehicle miles

traveled or level of service, the lead agency must analyze greenhouse gas and other pollution associated with the project. (See, Pub. Resources Code § 21099(b)(3) ("This subdivision does not relieve a public agency of the requirement to analyze a project's potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation"); see also proposed Section 15064.3(b)(2) ("For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements") (emphasis added).) To fully assess those impacts, induced travel resulting from roadway capacity expansion must also be analyzed. (See, e.g., California Department of Transportation, Guidance for Preparers of Growth-related, Indirect Impact Analyses (2006).) The comment also suggests that confusion may result in CEQA practice. The Agency respectfully disagrees. Roadway capacity projects are only a small category of all projects studied under CEQA, and they are typically undertaken by specialized agencies such as Caltrans, regional transportation commissions, etc. Thus, for these reasons, the Agency finds that widespread confusion is not likely to result.

Comment 10.6

If a lead agency wants to adopt a transportation project with significant VMT impacts (e.g., highway widening projects mentioned within regional bond measures), CEQA does not prevent this. Instead, CEQA will require a lead agency to identify mitigation measures and alternatives that reduce the harmful environmental effects associated with substantial increases in VMT and adopt a statement of overriding considerations if the lead agency rejects those measures or alternatives that reduce VMT. Therefore, we recommend the Secretary reinstitute the January 20, 2016 language drafted by OPR in Section 15064.3 regarding induced vehicle travel. Agencies can continue to analyze LOS in addition to VMT, at their discretion, but outside of their CEQA assessments.

Response 10.6

The Agency is not making any change in response to this comment. Please see Response to Comments 10.5, above.

Comment 10.7

2) In concurrence with OPR's recommendation, all land use projects, not just those in Transit Priority Areas (TPAs), should be required to use a VMT metric. We concur with the current version of the Guidelines to require VMT analysis for all land use projects in the state regardless of their location. Some agencies have requested that VMT replace the LOS metric only for infill projects within Transit Priority Areas (TPAs), while retaining LOS as the metric for projects outside of TPAs. We find significant flaws in this approach on both technical and legal grounds. Restricting the VMT analysis to projects that are within TPAs will likely undermine the streamlining objectives of SB 743 for infill projects. This bifurcated approach would not preclude legal challenge that an infill project within a TPA could be shown to aggravate congestion on street intersections that fall outside of TPAs. In addition to creating legal uncertainty, this approach would also create a double burden for infill projects to evaluate both VMT and LOS, while land use projects that are far from transit access would have more limited LOS analysis. The result would only further the existing incentive under CEQA to reward projects far from transit and high employment areas, and would be inconsistent with the statute. VMT is the appropriate tool to review land use projects on the basis of transportation efficiency and its close association with GHG emissions. We urge the Natural Resources Agency to preserve the existing framework to apply VMT as the transportation metric under CEQA for all land use projects.

Response 10.7

The Agency is not making any change in response to this comment. Commenter makes a statement in support of the current version of the Guidelines and notes that limiting the change to projects within Transit Priority Areas, as requested by some comments, would place additional burdens and litigation risk on infill projects. The Agency agrees. No further response is required.

Comment 10.8

3) Lead Agencies should have greater discretion on transit-proximity and a presumption of less than significant impact. We have concerns that the language in Section (b)(1) is overly-conclusive that 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. Land use factors that influence travel behavior can vary greatly, even within transit priority areas, and more so within high quality transit areas. There are many areas throughout the state that could meet this definition that currently consist of very low residential density and low transit utilization, though by definition would qualify for a presumption of less than significance based on proximity of a transit stop with a corresponding bus service that operates within minimum 15-minute peak headways. Major cities are quickly making available sketch modeling tools that can easily demonstrate the VMT performance of land use projects. The current Guidelines language urges agencies to conclude less than significant impact on VMT without supporting evidence, which may unnecessarily expose infill projects to legal challenge. To better protect from legal challenges and support transparency, we recommend that lead agencies should have greater discretion to determine when a project would be presumed to be less than significant based on supporting evidence.

Response 10.8

The Agency is not making any change in response to this comment. The comment objects to the provision in subdivision (b)(1) that states that, generally, agencies should presume that projects within one-half mile of transit will have a less than significant transportation impact. The basis for that presumption is significant research indicating that projects located close to existing transit will enable lower vehicle use because of the availability of transit.

The comment suggests that factors beyond proximity to transit may affect a project's VMT. The Agency agrees; however, no change to the Guidelines is needed. The presumption is rebuttable, as made clear by the modifier "generally." A lead agency would still need to consider project-specific facts, including the effects of parking and transit frequency. Moreover, Public Resources Code section 21099(e) allows lead agencies to adopt their own thresholds of significance that are more protective of the environment. Thus, a city may adopt its own procedures that account for local conditions.

Comment 10.9

4) Land use projects, including reuse projects, should be measured against regional and statewide VMT-reduction goals instead of only being compared to the VMT of existing conditions. The Land Use Projects statement (page 79 of Guidelines) should be amended in the following way: "Projects that decrease vehicle miles traveled in the project area according to regional and state goals of reducing VMT should be considered to have less than significant transportation impact."

Response 10.9

The Agency is not making any change in response to this comment. The comment suggests that projects should be measured against statewide and regional goals for the reduction of vehicle miles traveled. The Agency agrees that consistency with statewide and regional plans for the reduction of vehicle miles traveled is important; however, the specific changes proposed are not necessary. Existing Section 15125(d) already requires analysis of "inconsistencies between the proposed project and applicable … regional plans." The Appendix G questions related to transportation similarly ask about consistency with plans.

Comment 10.10

We appreciate the efforts and leadership of the Office of Planning and Research and the State in crafting guidance for cities. We look forward to continuing to work together throughout the rulemaking process.

Response 10.10

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 11 – City of Los Angeles, Department of Transportation and Department of City Planning

Comment 11.1

Please see our attached comment letter on behalf of the Los Angeles Department of Transportation (LADOT) and the Los Angeles Department of City Planning (DCP). As a soon-to-be early adopter of VMT, we appreciate the opportunity to informed feedback to the Natural Resources Agency on the CEQA formal rule-making process pursuant to SB 743.

Response 11.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 11.2

The City of Los Angeles Departments of Transportation (LADOT) and City Planning (DCP) appreciate the opportunity to review the "Proposed CEQA Guideline Implementing SB743," released by the Office of Planning and Research (OPR) in November 2017. The proposed guideline, submitted to the Natural Resources Agency for final rulemaking and adoption, introduces a new section to CEQA (15064.3) that establishes vehicle-miles-traveled (VMT) as the most appropriate measure of transportation impacts. Our departments acknowledge OPR's leadership during these past four years in carrying out the difficult task of recommending transformational changes that shift how cities and regions evaluate transportation impacts.

Response 11.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 11.3

The proposed guideline to implement SB743 is a crucial step toward realizing climate policy priorities shared by both the State and the City of Los Angeles. SB743 has the potential to transform the way transportation and infrastructure projects are delivered. Until the guidelines are implemented, the state environmental process will remain disconnected from climate policy objectives. This change provides cities and the State with a new tool to address numerous mutual goals including achieving climate action targets, increasing livability and access, and addressing the affordable housing crisis. We recognize the responsibility of local jurisdictions to plan for future development in areas that will result in low VMT outcomes. The State's leadership in advancing to a VMT-based metric will help achieve this outcome. Along with our overall strong support of OPR's recommendations, we offer the following comments:

Response 11.3

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. In particular, the Agency agrees with the comment that the proposed transportation guideline "provides cities and the State with a new tool to address numerous mutual goals including achieving climate action targets, increasing livability and access, and addressing the affordable housing crisis." However, this comment does not require a response because it is an introductory paragraph.

Comment 11.4

1. Land Use Projects

- We concur with OPR's recommendation that all land use projects, not just those within transit priority areas (TPA), should be required to use a VMT metric. We understand that some agencies have requested that VMT replace the LOS metric only for infill projects within TPAs, while retaining LOS as the metric for projects outside of them. Such an approach may have significant flaws on both technical and legal grounds. Restricting the VMT analysis to projects that are within TPAs will likely undermine the streamlining objectives of S8743 for infill projects. Since the scope of many traffic studies extend beyond a one-half mile radius, project impacts under LOS analysis would be hard to determine based on a TPA boundary. This bifurcated approach may result in legal challenge for an infill project within a TPA shown to aggravate congestion on roadway facilities that fall outside of the TPA. In addition to creating legal uncertainty, this approach would also create a new burden for infill projects that choose to evaluate both VMT and LOS, whereas land use projects that are far from transit access would have more limited LOS analysis (as they do today). The result would only further the existing incentive under CEQA to reward projects far from transit and high employment areas, while overburdening projects in a TPA area. This approach would be inconsistent with intended outcomes of SB743. VMT is the appropriate tool to review land use projects on the basis of transportation efficiency and its close association with GHG emissions. We urge the Natural Resources Agency to preserve the existing framework to apply VMT as the transportation metric under CEQA for all land use projects.

Response 11.4

The Agency is not making any change in response to this comment. The CEQA Guidelines will apply the vehicle miles traveled metric statewide. The Agency agrees that limiting the change to transit priority areas would burden infill projects, create legal uncertainty, and fail to analyze the full effects of outlying projects' transportation impacts.

Comment 11.5

We are concerned that the language in Section (b)(l) is overly-conclusive that 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. Land use factors that influence travel behavior can vary greatly, even within TPAs, and more so within high quality transit areas. Many areas throughout the state that could meet this definition currently consist of very low residential density and low transit utilization. Yet, by definition, they would qualify for a presumption of less than significance based on proximity to a transit stop with a corresponding bus service that operates within minimum 15-minute peak headways. Major cities, such as Los Angeles, are developing sketch modeling tools that can easily and quickly demonstrate the VMT performance of land use projects. The language in the proposed Guideline urges agencies to conclude less than significant impact without supporting evidence, which may unnecessarily expose infill projects to legal challenge. To better protect from legal challenges and support transparency, we recommend that lead agencies should have greater discretion to determine when a project would be presumed to have less than significant impacts based on supporting evidence.

Response 11.5

The Agency is making changes in part in response to this comment.

Section 15064.3 describes the general rule for evaluating transportation impacts of projects. As a general rule, lead agencies should presume that projects located near existing transit stations will have a less than significant transportation impact. The basis for that presumption is significant research indicating that projects located close to existing transit will enable lower vehicle use because of the availability of transit. Please see Master Response 4.

The comment suggests that factors beyond proximity to transit may affect a project's vehicle miles traveled. The Agency agrees; however, no change to the Guidelines is needed. The presumption is rebuttable, as made clear by the modifier "generally." A lead agency would still need to consider project-specific facts, including the effects of parking and transit frequency. Moreover, Public Resources Code section 21099(e) allows lead agencies to adopt their own thresholds of significance that are more protective of the environment. Thus, a city may adopt its own procedures that account for local conditions. The section was revised, however, to make clear that it provides only a presumption.

Comment 11.6

2. Transportation Projects

While the Guideline stresses that VMT is the most appropriate measure of transportation impacts, the proposed language in Section 15064.4(b)(2) recommends agency discretion in determining the appropriate measure of transportation impact for roadway capacity projects. SB743 states that automobile delay shall no longer be considered a significant impact on the environment pursuant to

CEQA. It further provides that exceptions may be made for locations, though nowhere does it mention an exception could be made based on project types. Therefore, including an exception for transportation projects from the need to evaluate VMT may conflict with the direction in SB743. A lead agency's decision to exclusively retain a LOS-based analysis for transportation projects still may not prevail in the face of a legal challenge, thereby giving the agency discretion dubious value.

Response 11.6

The Agency is not making changes in response to this comment. As the comment notes, SB 743 provided discretion to OPR and the Agency to determine the metric by which transportation impacts should be evaluated, and to determine in which locations such metrics should apply. (Pub. Resources Code § 21099(b)(2), (c)(1).) Given that the legislation required a shift in the status quo, it was appropriate to give the Agency discretion, exercised after intensive public and stakeholder input, in scope of the change. The Agency appreciates the comment's concern, but also notes that roadways are in specific, identifiable locations. They are mapped. Their precise locations are included in planning and engineering documents.

Comment 11.7

OPR has compiled research substantiating the induced VMT associated with roadway expansion projects, which is included on Page 20 of the "Technical Advisory on Evaluating Transportation Impacts in CEQA" released in November 2017. The CEQA Guidelines deferring to agencies to determine which metrics to consider when evaluating a transportation project's impact may provide misleading direction where evidence is available that a project will result in increased VMT. This presents challenges since VMT is found to be the appropriate metric that satisfies the intent of SB743. In addition, the decision to exempt a class of projects on policy grounds is the domain of the legislature, which have the ability to exempt the evaluation of specific roadway projects of state priority by statute under Division 13, Chapter 2.6 of the California Public Resources Code.

Response 11.7

The Agency is not making any change in response to this comment, for several reasons. First, as noted in Response to Comment 11.6, the Public Resources Code provided the Agency with broad discretion to determine the scope of changes made in the transportation section. Second, the comment implies that by providing discretion in the choice of metric for roadway projects the guideline exempts such projects from environmental review. On the contrary, whether a roadway's transportation impacts are measured using vehicle miles traveled or level of service, the lead agency must analyze, among other impacts, greenhouse gas and other pollution associated with roadways. (See, Pub. Resources Code § 21099(b)(3) ("This subdivision does not relieve a public agency of the requirement to analyze a project's potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation"); see also proposed Section 15064.3(b)(2) ("For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements") (emphasis added).) To fully assess those impacts, induced travel resulting from roadway capacity expansion must also be analyzed. (See, e.g., California Department of Transportation, Guidance for Preparers of Growth-related, Indirect Impact Analyses (2006).)

Comment 11.8

We suggest that the Natural Resources Agency support CEQA Guideline language that provides lead agencies with the best guidance in making full disclosure under law and not subject projects from unwarranted legal challenges considering the evidence available in the record. If a lead agency wants to adopt a transportation project with significant VMT impacts (e.g., highway widening projects), then CEQA does not prevent this. Instead, CEQA will require a lead agency to identify mitigation measures and alternatives that reduce the harmful environmental effects associated with increases in VMT and adopt a statement of overriding considerations if the lead agency rejects those measures or alternatives that reduce VMT. Therefore, we recommend the Secretary reinstitute the January 20, 2016 language drafted by OPR in Section 15064.3 regarding induced vehicle travel. Agencies can continue to analyze LOS in addition to VMT, at their discretion, but outside of their CEQA assessments.

Response 11.8

The Agency is not making any change in response to this comment. As explained in Responses to Comments 11.6 and 11.7, above, the guideline requires analysis of impacts associated with expanding capacity.

Comment 11.9

3. Timing

We understand that some agencies are concerned with the pace of the anticipated transition once the new CEQA Guideline takes effect. Over the past three years, LADOT has worked to develop a VMT evaluation methodology, in collaboration with the Los Angeles Department of City Planning, to transition the City to evaluate VMT. This program was funded by a grant from the Strategic Growth Council with the goal that Los Angeles could lead the way and serve as a model to other agencies transitioning to this new approach in evaluating transportation impacts under CEQA. In the months ahead, LADOT will finalize its VMT Calculator, a sketch model tool that evaluates the VMT impacts of development projects seeking entitlements within the City's jurisdiction. LADOT will gladly participate in webinars or workshops to share lessons learned and to demonstrate its new VMT tools to assist other agencies in preparing for this important transition.

Response 11.9

The Agency is not making any changes in response to this comment. The Agency thanks commenter for its support.

Comment 11.10

We appreciate the efforts and leadership of the Office of Planning and Research and the State in crafting this guidance and look forward to helping advance the practice throughout the state. Thank you for considering our recommendations.

Response 11.10

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 12 - City of Mission Viejo

Comment 12.1

Hello ~ please find attached letter regarding the City's comments on the California Natural Resources Agency Proposed Rulemaking on the 2018 Amendments and Additions to the State CEQA Guidelines on Evaluating Transportation Impacts. The original letter shall be mailed out today.

Response 12.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 12.2

The City of Mission Viejo extends its appreciation for the opportunity to review and comment on the California Natural Resources Agency's proposed regulatory text on amendments and additions to the State CEQA Guidelines in the California Code of Regulations.

Response 12.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 12.3

The City of Mission Viejo's comments pertain specifically to proposed new section 15064.3: Determining the Significance of Transportation Impacts, which sets forth significant and fundamental changes to the manner in which transportation impacts would be analyzed in environmental documents for land use projects. New Section 15064.3 of the proposed CEQA Guidelines update would require that Lead Agencies no longer utilize Levels of Service (LOS) criteria in determining and mitigating significant transportation impacts under CEQA. Instead, Lead Agencies would be required to use the new criterion of Vehicle Miles Traveled, pursuant to the State Legislature's 2013 adoption of SB 743 (Steinberg).

Response 12.3

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 12.4

1) That the effective date of requiring VMT analyses on land use projects be extended from the proposed date of July 1, 2019, to two years from the effective date of rulemaking, to provide lead agencies with necessary and sufficient time to transition effectively from the traditional Levels of Service analysis to the new VMT analysis requirement; and,

Response 12.4

The Agency is making a change partially in response to this comment. The comment seeks a full two years from the effective date of the updated CEQA Guidelines to begin implementation. As revised in the 15-Day Revisions, Section 15064.3 will become mandatory on July 1, 2020. While not a full two years, the Agency finds the phase-in period to be sufficient for several reasons. First, the general rule is that agencies must update their own procedures to be consistent with CEQA Guidelines updates within 120 days. (See CEQA Guidelines § 15007(d)(2).) Second, the statute requiring these changes was enacted in 2013, and OPR released its first draft of the transportation guideline, which identified vehicle miles traveled as the primary metric, in 2014. Since that time, professional organizations, such as the Association of Environmental Professionals and the California Bar Association, have put on numerous continuing education programs covering these changes. As comment 12.6 notes, the Southern California Association of Governments has also hosted several workshops to help make local jurisdictions aware of the proposed changes and ways to implement them. Third, at least two local jurisdictions (the City of Pasadena and the City of Los Angeles) have already made, or soon will make, the switch to analyzing vehicle miles traveled. Therefore, the Agency finds that July 1, 2020 is sufficient lead time to enable statewide application of the new guidelines on transportation. Please also see Master Response 7.

Comment 12.5

2) That the new VMT analysis requirement be applied to land use projects in Transit Priority Areas (TPAs) only (areas located within ½ mile of major transit stops and high quality transit corridors), as authorized under SB 743 legislation. Outside of Transit Priority Areas, any application of VMT analysis should be at the election of the Lead Agency, versus a statewide mandate as currently proposed.

Response 12.5

The Agency is not making any change in response to this comment. In response to comments to regarding the analysis of vehicle miles traveled outside of transit priority areas, please see Master Response 3.

Comment 12.6

The City of Mission Viejo respectfully requests the Natural Resources Agency's thoughtful consideration of the detailed comments as presented in Attachment 1, and looks forward to the Agency's responses to these comments. The City of Mission Viejo has actively participated in the Southern California Stakeholders Working Group discussions on SB 743 implementation since 2014, and envisions that frequent and active continuation of a working partnership between local jurisdictions, transportation agencies, metropolitan planning organizations, and the State Office of Planning and Research are both necessary and vital in the years to come, to enable an effective transition to VMT analysis.

Response 12.6

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment, and appreciates the comment's willingness to continue participating in on-going collaboration on implementation. However, this comment does not require a response because it a closing paragraph.

Comment 12.7

Extend the Effective Date for Requiring VMT Analysis on Land Use Projects from July 1, 2019 to Two years from the Effective Date of Rulemaking

The proposed CEQA Guidelines amendments [Section 15064.3(c) Applicability] include a significant change in how Lead Agencies would conduct transportation analyses for land use projects, eliminating the use of Levels of Service (LOS) which measures congestion, and instead replacing said metric with Vehicle Miles Traveled (VMT) which measures the distance of automobile travel generated by a proposed project.

The proposed regulatory text states that Lead Agencies can elect to implement the VMT analysis requirement immediately -- upon state adoption of the CEQA Guidelines amendments -- but that all Lead Agencies must implement the new VMT requirement in CEQA transportation analyses for land use projects no later than July 1, 2019.

The City of Mission Viejo opposes the July 1, 2019 deadline for mandatory statewide implementation of VMT analyses for land use projects. The City of Mission Viejo recommends, instead, that the grace period for VMT analysis implementation be at least two years from the effective date of the final rulemaking.

The justification and rationale for the two-year grace period include the following:

a) The two-year grace period is both necessary and critical to allow local jurisdictions the ability to transition effectively to the new VMT analysis requirement.

Discussions with former staff from the City of Pasadena and a review of articles on local jurisdictions that have already implemented VMT analyses for CEQA purposes, reveal that a two-year timeframe is necessary to holistically transition from LOS to VMT. The requested two-year grace period allows for the Lead Agencies to conduct significant preparatory activities, such as planning time to conduct public outreach, revise traffic study requirements, develop any new local transportation models capable of analyzing VMT at a project level, conduct any overarching General Plan amendments to support the new VMT thresholds, and conduct studies to adopt citywide strategies to VMT mitigation, such as fee programs to support alternative transportation modes. The July 1, 2019 effective date does not provide adequate lead time to conduct such activities.

While it has been argued that SB 743 implementation has been under discussion since 2014, and that local jurisdictions should have begun the work to transition to VMT analyses, the City of Mission Viejo would counter that the discussion of SB 743 implementation has and continues to be a considerable work in progress, with many approaches discussed, presented and modified over the years, as a result of State Office of Planning and Research (OPR) and stakeholder discussions. Thus, any planning work conducted early on, in advance of the final rulemaking, would have been compromised with shifts in methodology and approach that have evolved in SB 743 implementation (e.g., the applicability of, and methodology for VMT assessment and selection of highway capacity projects).

The City of Mission Viejo has also welcomed State OPR's development of a companion SB 743 Technical Advisory, which has been prepared to assist Lead Agencies on how to analyze transportation impacts under CEQA. However, upon inquiry at a January 31, 2018 SB 743 Stakeholders Working Group meeting, State OPR staff advised that a necessary update and revision

to the Technical Advisory would not be completed and available by the time of final rulemaking which is anticipated by January 2019.

As discussed in Comments 2 and 3 herein, the Technical Advisory is in need of significant revision to include case studies examples and additional technical information as requested from stakeholders. The Technical Advisory needs to be updated and made available in a revised edition, before any mandatory VMT analysis is imposed upon Lead Agencies. A two-year grace period will afford State OPR staff with the necessary time to complete an update of the Technical Advisory.

The two-year grace period is recognized in the 1/26/2018 "Notice of Proposed Rulemaking" for the CEOA Guidelines amendment, which states on Page 8 that "Agencies will be able to begin using the new methods as soon as the CEQA Guidelines are adopted, *but the CEQA Guidelines provides a two-year grace period for those agencies that need time to update their own procedures."* (emphasis noted).

As noted above, stakeholders have been meeting with State OPR staff to tackle the issue of how to effectively implement the transition from LOS to VMT analysis at the project level. Throughout these discussions, stakeholders have identified outstanding data needs and methodological questions that Lead Agencies would face with immediate implementation of a VMT analysis at a project-level geography. The two-year grace period was recognized by State OPR staff in the many meetings on SB 743 implementation with Southern California stakeholders, in addition to being recognized in the CEQA Amendments "Notice of Proposed Rulemaking.

In contrast, the July 1, 2019 effective date for statewide implementation of the VMT analysis, as currently established in the draft regulatory text, does not provide 1gencies with the above-identified two-year grace period, and should be revised accordingly. The City of Mission Viejo maintains that the two-year grace period should continue to be honored.

City of Mission Viejo Recommendation:
Amend New Section 15064.3(c) as follows:

(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 two years from the effective date of the final rulemaking.

Response 12.7

Please see response to comment 12.4. Also, comments on OPR's Technical Advisory are beyond the scope of this rulemaking. The Agency has forwarded those comments to OPR for its consideration. To the extent that the comment suggests that a later date for mandatory implementation in order to allow OPR to further revise its Technical Advisory, the Agency disagrees for the reasons set forth in Response to Comment 12.4. Finally, the Agency also declines the specific language suggested by the comment because it would require users of the Guidelines to research the effective date of the Guidelines to know

when the transportation section becomes mandatory. Including a specific date in the Guidelines is clearer.

Comment 12.8

Apply VMT Analysis in Transit Priority Areas Only, With An Elective Opportunity Outside Transit Priority Areas

The 2013 adoption of SB 743 (Steinberg) established that Levels of Service (LOS) analysis be eliminated as a threshold of significance for transportation analysis under CEQA, for projects located within Transit Priority Areas, and that a new criterion be established to encourage projects within walking distance of mass transit facilities, downtowns and town centers.

The new metric, as proposed in the CEQA Guidelines Amendment, is Vehicle Miles Traveled (VMT). Further, the proposed regulatory text would require that VMT analysis be applied to all development projects, regardless if said projects are located within, or outside, a Transit Priority Area.

The City of Mission Viejo continues to maintain that the mandatory use of VMT analysis in CEQA documents should be applied only to land use projects located within Transit Priority Areas. Outside of Transit Priority Areas, any application of VMT analysis should be at the election of the Lead Agency, versus a statewide mandate as currently proposed.

The City of Mission Viejo expresses concern that in many communities, new land use projects that are located outside of Transit Priority Areas would not have access to supportive transit infrastructure and services that would allow a new land use project to effectively reduce its VMT to below existing conditions. The City of Mission Viejo is further concerned that the lack of effective VMT reduction mitigation measures that would realistically be effective and available to land use projects outside of Transit Priority Areas to reduce project VMT, would increase project costs and increase processing time, and result in an overabundance of Environmental Impact Reports, compromised with Statements of Overriding Considerations.

The City's recommended approach- requiring that VMT analysis be applied only to projects located in Transit Priority Areas - allows resources to be expended where there is an immediate benefit to using VMT analysis: in areas that are already positioned and planned with alternate transportation options or committed programs to reduce or maintain VMT. In many cases, land use projects located in areas outside of Transit Priority Areas will be hard-pressed to deliver a platform of effective mitigation measures capable of achieving identified VMT thresholds.

The City of Mission Viejo appreciates that the companion "Technical Advisory on

Evaluating Transportation Impacts Under CEQA" strives to provide guidance on how land use projects can be mitigated to reduce VMT. However, the City of Mission Viejo expresses concern that the November 2017 version of the Technical Advisory has eliminated the case study examples for land use projects that were included in the January 2016 draft, which were to provide sample applications on how to apply, and most importantly, how to mitigate, project-level generated VMT.

The omission of case study examples between the January 2016 and the November 2017 draft of the Technical Advisory, continues to generate concern on the efficacy of requiring VMT analyses for land use projects located outside of Transit Priority Areas.

As an example, the City of Mission Viejo Case Study that was included in the January 2016 version of the Technical Advisory [Office Project: Mission Viejo Medical Center, page 53] is located outside of a Transit Priority Area. To reduce project-level VMT, the Case Study analysis proposed mitigation that includes the medical office project providing a transit subsidy to all employees, which would provide 50% of the needed reduction in project VMT. However, this area (South Orange County) is faced with continued reduction or elimination in bus transit service and routes, due to declining transit ridership. Thus, a mitigation measure that requires the employers to provide a transit subsidy to employees, achieves little VMT benefit if there are no existing or planned transit opportunities for the employees to use. Further, in reviewing the referenced, CAPCOA strategies to reduce VMT, there are no applicable, alternate options available in the CAPCOA suite to make up for this degree of difference in VMT reduction.

Further, the recommended use of CAPCOA measure TRT-6: Encourage Telecommuting and Alternate Work Schedules, may work for a traditional office setting where an employer can stagger the working hours of its employees, but this strategy is likely not feasible in the Mission Viejo Case Study project, where the office building will house multiple tenant doctor offices that will have scheduling needs of patients that are not conducive to imposing alternate work week schedules of its employees.

Had this case study project been required to conduct a VMT analysis based on the thresholds and applications as currently proposed in the Technical Advisory, the City of Mission Viejo would have had to adopt a Statement of Overriding Considerations on transportation impacts, as there would not have been a suite of realistic and effective strategies to reduce VMT to below the recommended thresholds.

The City of Mission Viejo is concerned that this outcome will be shared by many Lead Agencies, resulting in an overabundance of EIRs compromised with Statements of Overriding Considerations, if the VMT CEQA analysis is imposed statewide upon all Lead Agencies.

For this reason, the City of Mission Viejo respectfully recommends that the CEQA

Guidelines eliminate the statewide mandate for VMT analysis, and instead allow for:

(1) the VMT analysis to be required in Transit Priority Areas only; and, (2) for all other locales, be subject to the elective decision of the Lead Agency, taking into consideration realistic opportunities and constraints specific to each jurisdiction.

City of Mission Viejo Recommendation:

Amend new Section 15064.3(c) as follows, which also incorporates the recommended revision to the effective date of the VMT analysis, pursuant to Comment 1 above.

(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~~ to projects located within Transit Priority Areas, two years from the effective date of the final rulemaking. Lead agencies may also elect to apply the provisions of this section to areas outside of Transit Priority Areas.

Response 12.8

The Agency is not making any change in response to this comment. The comment remarks extensively on a case study example that OPR had prepared in an early version of its Technical Advisory. Comments on OPR's Technical Advisory are outside of the scope of this rulemaking. The Agency has forwarded those comments to OPR for its consideration.

To the extent that the comment suggests that mitigation is not feasible in certain locations, the Agency disagrees. Please see Master Response 6 on mitigation of vehicle miles traveled. Please also note that the determination of the feasibility of any mitigation measure is to be made by the lead agency. If an agency, such as the City making this comment, finds that no mitigation measures are feasible, the agency may still adopt the project if it makes findings that the benefits of the project outweigh its adverse impacts.

Finally, the comment appears to suggest that the new Guideline should only apply in areas where vehicle miles traveled is already low. The Agency disagrees. First, the Legislature has already announced that the status quo has led to unacceptable outcomes. (See, SB 743 (Steinberg, 2013) § 1(a)(2) ("New methodologies under the California Environmental Quality Act are needed for evaluating transportation impacts that are better able to promote the state's goals of reducing greenhouse gas emissions and traffic-related air pollution, promoting the development of a multimodal transportation system, and providing clean, efficient access to destinations").) Second, the point of CEQA is to analyze a project's potential *adverse* impacts. Selective analysis of vehicle miles traveled would allow high-impact projects to avoid analysis. For these reasons, the Agency declines to adopt the specific language proposed in the comment.

In response to comments regarding the Technical Advisory, please see Master Response 11.

Comment 12.9

The City of Mission Viejo appreciates the significant investment in staff time and funding that State OPR and a consortium of major Metropolitan Planning Organizations have dedicated towards addressing SB 743 implementation, and the stewardship that the Southern California Association of Governments has provided to Southern California Stakeholders by convening working group meetings since 2014 between State OPR and representatives of government, transportation agencies, developers, environmental and transportation attorneys and consultants, and the business communities, to tackle SB 743 implementation.

The City of Mission Viejo has been an active participant in these working group meetings. We have found these meetings to be an excellent forum for stakeholders to conduct a one-on-one dialogue with State OPR staff, and for all the attendees to share their perspectives, approaches and recommendations on how best to implement the new requirements for VMT analysis. As part of these discussions, stakeholders have identified missing gaps in information and methodology that need to be addressed and reconciled, in order to allow for a seamless transition from LOS to VMT analyses for CEQA purposes. One specific recommendation that was raised early on, was the request to include specific case studies in the companion Technical Advisory to illustrate how a VMT analysis and mitigation could be applied to actual projects.

As noted above in Comment 2, the November 2017 edition of the companion Technical Advisory document has omitted the three case study examples of how a VMT analysis could be conducted for land use and transportation projects. This is a significant and serious omission.

Response 12.9

The Agency is not making any change in response to this comment. Please see Master Response 11.

Comment 12.10

Establish VMT Thresholds and VMT Metrics for Key Land Uses Not Covered in the Technical Advisory:

The Technical Advisory addresses VMT thresholds and metrics for office, retail, and residential land uses. For all other remaining land uses, the Technical Advisory (page 14: Other Project Type) states the Lead Agencies could, using more location-specific information, develop the metrics and thresholds for land use types not addressed in the Technical Advisory.

The City of Mission Viejo does not agree with this approach. VMT metrics and thresholds for other key land uses not covered in the Technical Advisory should be discussed, considered and developed in a more comprehensive and holistic approach by state agencies, MPOs and Lead Agencies, to maintain a presence of some degree of statewide consistency in approach and application. Saddling local jurisdictions and other Lead Agencies such as educational institutions with this requirement, would impose a significant budgetary and resource impact and also effectively halt development processing opportunities while such thresholds are under research and consideration by Lead Agencies.

The City of Mission Viejo thus recommends that State OPR consider the expansion of the Technical Advisory to address VMT thresholds and metrics for key land uses not currently addressed in the Technical Advisory. These land uses could include, but not be limited to:

(1) Educational Facilities, including Public and Private Schools (K-12) separate from Public and Private Colleges and Universities;
(2) Industrial Land Uses;
(3) Medical Offices and Health Care Facilities; and,
(4) Special Land Uses such as Theme Parks, Airports, Stadiums

Response 12.10

Please see response to comment 12.8.

Comment 12.11

City of Mission Viejo Recommendation:

For the reasons noted above, the City of Mission Viejo recommends that new Section 15064.3(c) be amended to provide a two-year grace period for mandatory application of VMT analyses statewide, as recommended in Comments #1 and 2 above.

Response 12.11

Please see responses to comment 12.4-12.10 above.

Comment 13 - City of San Marcos

Comment 13.1

Please verify receipt of comments. Thank you.

Response 13.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it requests a verification that comments were received only.

Comment 13.2

The City of San Marcos (City) thanks you for the opportunity to provide comments regarding the "Proposed Updates to CEQA Guidelines" (Guidelines) document dated November 2017 prepared by the Governor's Office of Planning and Research (OPR). This letter specifically responds to the addition of the Energy and Wildfire Sections, and the change to the Transportation Section of Appendix G.

Response 13.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 13.3

With regard to Energy, will OPR be providing guidance to assist lead agencies in threshold development to address the question of what is considered wasteful, inefficient, or unnecessary consumption of energy? As to the Wildfire category, the City is concerned that question XX. b), which asks about wildfire exposure to project occupants, is contrary to the historical CEQA analysis methodology that focuses on project impacts to the surrounding environmental condition.

Response 13.3

The Agency is not making any change in response to this comment. Commenter has requested the Agency to use a different set of comments sent the same day. Please see Comment Letter 14. Commenter did not request to have this comment letter removed so Agency has maintained the copy within the public record.

Comment 13.4

The Transportation Section replacement of LOS with VMT for impact assessment is problematic for local Cities, where impacts relative to a regional average for land use, i.e. Countywide VMT average for use in identifying the 85th% threshold, may be a poor representative of the City, and a better threshold could be used using 85% of Citywide average VMT/capita (or employee). With this in mind, in development of VMT impact assessment, the City requests direction from OPR as to flexibility in the guidelines to allow the use of a citywide average for land use in the VMT impact methodology.

Response 13.4

See Comment No. 13.3. Additionally, for comments in regard to the Technical Advisory, please see Master Response 11.

Comment 13.5

The City requests notification of any changes to the Guidelines that may result from public comment prior to final rulemaking process approval.

Response 13.5

See Comment No. 13.3.

Comment 14 - City of San Marcos (2)

Comment 14.1

Please use these comments. Thank you.

Response 14.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it requests Agency to consider this set of comments.

Comment 14.2

The City of San Marcos (City) thanks you for the opportunity to provide comments regarding the "Proposed Updates to CEQA Guidelines" (Guidelines) document dated November 2017 prepared by the Governor's Office of Planning and Research (OPR). This letter specifically responds to the addition of the Energy and Wildfire Sections, and the change to the Transportation Section of Appendix G.

Response 14.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 14.3

With regard to Energy, will OPR be providing guidance to assist lead agencies in threshold development to address the question of what is considered wasteful, inefficient, or unnecessary consumption of energy?

Response 14.3

The Agency is not making any change in response to this comment. This comment is outside the scope of the rulemaking as it pertains to whether the Office of Planning and Research will provide future guidance rather than on the proposed rulemaking. Also, please note, additional guidance regarding the analysis of energy impacts is contained in existing Appendix F.

Comment 14.4

As to the Wildfire category, the City is concerned that question XX. b), which asks about wildfire exposure to project occupants, is contrary to the historical CEQA analysis methodology that focuses on project impacts to the surrounding environmental condition.

Response 14.4

The Agency is not making any change in response to this comment. The Agency was careful in considering the California Supreme Court's decision in *CBIA v. BAAQMD* (2015) 62 Cal.4th 369. In this decision, the Court held that "agencies subject to CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users or residents." (*Id.* at p. 377.) The Agency believes this is commenter's point made in the comment. But the California Supreme Court further explained that the general rule does not apply to effects the project might risk exacerbating. Specifically, it held:

> [W]hen a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users. In those specific instances, it is the project's impact on the environment – and not the environment's impact on the project – that compels an evaluation of how future residents or users could be affected by exacerbated conditions.

(*Id.*, at p. 377.) In this context, an effect that a project "risks exacerbating" is similar to an "indirect" effect. Describing "indirect effects," the CEQA Guidelines state: "If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment." (CEQA Guidelines, § 15064, (d)(2).) Just as with indirect effects, a lead agency should confine its analysis of exacerbating effects to those that are reasonably foreseeable. (*Id.* at subd (d)(3).)

By stating in Appendix G that lead agencies should analyze effects that a project might "cause or risk exacerbating" provides the necessary clarification that environmental documents need not analyze effects that the project does not cause directly or indirectly.

Comment 14.5

The Transportation Section replacement of LOS with VMT for impact assessment is problematic for local Cities, where impacts relative to a regional average for land use, i.e. Countywide VMT average for use in identifying the 85th% threshold, may be a poor representative of the City, and a better threshold could be used using 85% of Citywide average VMT/capita (or employee). With this in mind, in development of VMT impact assessment, the City requests direction from OPR as to flexibility in the guidelines to allow the use of a citywide average for land use in the VMT impact methodology.

Response 14.5

The Agency is not making any change in response to this comment. The Guidelines do not set a threshold for vehicle miles traveled. OPR's technical advisory provides a suggested threshold, but also notes that lead agencies have discretion to use other thresholds supported with substantial evidence. In response to comments regarding the Technical Advisory, please see Master Response 11.

Comment 14.6

The City requests notification of any changes to the Guidelines that may result from public comment prior to final rulemaking process approval. Please feel free to contact me at (760) 744-1050 extension 3237 or svandrew@san-marcos.net regarding this comment letter.

Response 14.6

The Agency is not making any changes in response to this comment. The comment requests notification only and is not a specific comment on the proposed rulemaking.

Comment 15 – Alameda County Transportation Commission

Comment 15.1

The attached letter includes Alameda CTC's comments in response to the Notice of Proposed Rulemaking regarding amendment and additions to the CEQA Guidelines, released on January 26, 2018. We commend the extensive outreach efforts of OPR to make this significant milestone updating the CEQA guidelines to implement SB 743. We certainly appreciate the opportunity to participate in this process.

Please let me know if there are any questions. Thank you.

Response 15.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 15.2

Thank you for the opportunity to provide comments regarding the proposed amendments to the California Environmental Quality Act (CEQA) Guidelines dated January 26, 2018, related to the implementation of Senate Bill 743 (SB 743). The comments from the Alameda County Transportation Commission (Alameda CTC) are related to the proposed new Section 15064.3 "Determining the Significance of Transportation Impacts" and issues and related changes to Appendix G of the guidelines.

Response 15.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 15.3

Overall, Alameda CTC commends the Governor's Office of Planning and Research (OPR) for its extensive and participatory process to engage various stakeholders to update the CEQA Guidelines for evaluating transportation impacts, as required by SB 743. Alameda CTC appreciates OPR for developing several versions of the guidelines prior to finalizing them for the rulemaking process by incorporating numerous stakeholder comments from across the state over a four-year period. We again appreciate the opportunity to participate in the entire guidelines development process through the State Working Group and the Bay Area SB 743 Working Group, which

Alameda CTC convened. Alameda CTC reaffirms its commitment to achieving regional and state goals related to greenhouse gas (GHG) emissions reductions by supporting transportation options that reduce vehicle miles traveled (VMT).

Alameda CTC has the following comments on the updated CEQA Guidelines released on January 26, 2018 as part of the rulemaking process:

Response 15.3

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. The Agency also acknowledges with gratitude that the commenter assisted OPR and the Agency in convening regional transportation professionals to provide input as the transportation guideline was under development. Additionally, the Agency appreciates the comment's acknowledgment of the intensive public outreach that OPR, along with the Agency, conducted in developing the Guidelines. As the comment notes, these changes have been underway for over four years. The Agency notes that this degree of outreach, while appropriate in this circumstance, far exceeds what is typical, even for a controversial CEQA Guidelines update. The comment does not require a response as it commends Agency for its overall work on the rulemaking.

Comment 15.4

Appendix G: The revision to Appendix G of the CEQA Guidelines removed the reference to Congestion Management Program (CMP) consistency. While we understand that the prior checklist language referred to the CMP Level of Service, which is fundamentally in conflict with the objective of SB 743, many CMPs include multimodal performance standards that should be referenced as part ofland development review. Many CMPs have expanded to also monitor performance of alternative transportation modes. Further, we anticipate that the CMP statute will be reformed soon to be consistent with SB 375 and SB 743. Therefore, we recommend that Appendix G retain a specific reference to the CMPs to ensure that lead agencies continue to assess consistency as part of CEQA, ensuring coordination of analysis and efficiency of review. We suggest the following language be added to the

"Transportation" section of Appendix G:

"Would the project conflict with an applicable multimodal transportation infrastructure management program and related standards that are consistent with SB 375 and SB 743 established by the local congestion management agency?"

Response 15.4

The Agency has made changes in part in response to this comment. As reflected in the 15-Day changes, the Agency added the word "program" back to the Appendix G question asking about consistency with plans.

Additionally, while the Legislature directed that the CEQA Guidelines update the analysis of transportation impacts and made clear that auto delay is not an environmental impact that requires analysis under CEQA, the Guidelines still accommodate consideration of congestion management programs in other ways. For example, proposed question XVII(a) asks whether a project would conflict with a program addressing the circulation system, which would be one place to analyze non-LOS

provisions of congestion management plans. Section 15125(d) also directs lead agencies to consider a project's consistency with regional plans.

Finally, please note that Appendix G is a suggested form only, and so is written to be useful to a broad set of lead agencies. Agencies may customize the form to address impacts that are common in their jurisdiction. Also, specialized agencies, such as congestion management agencies, may consult with local governments to ensure that their particular issues are addressed in the environmental review process.

Comment 15.5

Threshold of Significance: The Technical Advisory released in November 2017 identifies specific thresholds of significance for the VMT metric for various types of projects. Page 12, "Recommended Thresholds for Residential Projects" identifies significance of threshold as "exceeding a level of 15 percent below existing VMT per capita." It further defines that

"existing VMT per capita may be measured as regional VMT per capita or as city VMT per capita." For projects in the unincorporated county areas, the guidelines state that the local agency can compare a residential project's VMT to (1) the region's VMT per capita, or (2) the aggregate population-weighted VMT per capita of all cities in the region. In many instances, for a very diverse region such as the Bay Area, applying a regional-level VMT average may be either too penalizing (for suburban areas) or may lead to evading meeting the VMT objective (for core urban areas). Adding the option of a county-level VMT average to the different geography level threshold options would provide a balanced middle-ground option to avoid these extremes while aligning with the climate change goals of SB 743. This will also help the projects in the unincorporated areas with a clear and streamlined method for assessing the threshold of significance. Therefore, Alameda CTC requests that a county-level VMT threshold be added to the baseline or existing VMT threshold options for comparison.

Response 15.5

The Agency is not making any change in response to this comment, as it is directed to the OPR Technical Advisory. The Agency has forwarded these comments to OPR for its consideration. Also, please note, lead agencies have discretion to establish their own thresholds of significance. OPR's Technical Advisory contains only non-binding advice. In response to comments regarding the Technical Advisory please see Master Response 11.

Comment 15.6

Thank you for your consideration of Alameda CTC's comments in this important rulemaking process to finalize the CEQA Guidelines. Please contact Tess Lengyel, Deputy Executive Director of Planning and Policy (tlengyel@alamedactc.org; 510.208.7428), if you have any questions.

Response 15.6

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is closing paragraph only.

Comment 16 - Contra Costa County, Department of Conservation and Development

Comment 16.1

I'm writing to provide comments on the subject document. Specifically, revisions to: Appendix G -

XVII. TRANSPORTATION~~/TRAFFIC~~

Response 16.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introduction paragraph.

Comment 16.2

1. The 1-20-16 proposal included the following revision which reflected the safety language in SB 743, "...addressing the safety or…". The 11/2017 revisions removed this addition. With that removal, the safety intent of the SB 743 is no longer reflected in Appendix G which is a critical tool for local jurisdiction in reviewing projects. I urge the State to re-insert that statement in to the Checklist in order to fulfill the intent of the legislation.

Response 16.2

The Agency is not making any change in response to this comment. In an initial draft of the transportation Guideline, OPR included a subdivision devoted to transportation-related safety. Comments from transportation professionals, both written and provided during workshops and presentations, objected to that subdivision, however. Comments indicated that the evaluation of safety is far more nuanced than any general statement in the Guidelines would allow. (See, e.g., Response to Comment 5.10.) Therefore, OPR explained in a revised draft that "[w]hile safety is a proper consideration under CEQA, the precise nature of that analysis is best left to individual lead agencies to account for project-specific and location-specific factors." (Governor's Office of Planning and Research, "Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA, at p. 5.) Instead, OPR added a discussion of safety considerations to its Technical Advisory. The Agency concurs with OPR, and so declines the comment's suggestion to add a separate requirement to analyze safety in the transportation section.

Please also note, Appendix G is a suggested form. Lead agencies should normally address the questions from the Appendix G checklist that are relevant to a project's environmental effects. However, substantial evidence of potential impacts that are not listed on the form should also be considered. Notwithstanding, the safety element remains within Appendix G, as it proposed XVII. c asks whether the project would "substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)."

Comment 16.3

2. I was unable to locate the public comment which suggested the removal of that language in the public comment files on your website. Please identify the individual, agency or other organization which requested the language be removed and the rationale provided.

Response 16.3

The Agency is not making any change in response to this comment. Please see Response to Comment 16.2, above.

Comment 16.4

3. The language in the November 2017 Technical Advisory on Evaluating Transportation Impacts in CEQA that begins on Page 21, "Because safety concerns result from many different factors…best addressed at a programmatic level". Presents several problems, a) the accuracy of this statement is, on the face of it, incorrect. Safety concerns are regularly if not most often identified at the project level, b) the statement presents an internal conflict with State planning documents. In Appendix B: SB 743 Safety Technical Advisory in the 2017 General Plan Guidelines, the discussion of applicability of SB 743 safety elements begins with project level elements ("sharp curves or dangerous intersections") and continues to focus on project level impacts throughout the new Appendix.

Response 16.4

The Agency is not making any change in response to this comment. The comment addresses the discussion of safety in OPR's Technical Advisory and General Plan Guidelines, neither of which are part of the Agency's rulemaking package. The Agency has forwarded the comments to OPR for its consideration. In response to comments regarding the Technical Advisory, please see Master Response 11.

Comment 16.5

4. Stepping back from the specifics above, it bears explanation as to how the original, pre-SB743 Appendix G language could have more references to safety than the proposed revisions. Not only was the 11/2017 language ("…addressing the safety or…") removed, but the safety language under the current Appendix G ("f) Conflict with adopted policies…or safety of such facilities?") was removed as well. It would appear that despite the passage of SB 743, the proposed revisions are a step backward in terms of safety.

Response 16.5

The Agency is not making any change in response to this comment. Please see Response to Comment 16.2, above. Please also note, Appendix G is a suggested form. Lead agencies should normally address the questions from the Appendix G checklist that are relevant to a project's environmental effects. However, substantial evidence of potential impacts that are not listed on the form should also be considered. Notwithstanding, the safety element remains within Appendix G, as it proposed XVII. c asks whether the project would "substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)."

Comment 16.6

5. The County has experienced schools being sited in exurban and rural areas, outside the voter approved urban limit line, with very limited connecting transportation infrastructure. This practice is in glaring contrast to local (growth management, complete streets, safe routes to school), state (GHG reduction legislation, complete streets legislation, health in all policies, safe routes to school, etc.), and regional planning policies (priority development areas) which is allowed under permissive State school siting guidelines. These specific conflicts are in addition to the more obvious, general need to have

coherent land development as espoused throughout the State's General Plan Guidelines. The safety elements in SB 743, as reflected in the original Appendix G revisions, gave the County a tool to address this widely acknowledged problem. I understand there is an ongoing process at the Department of Education to address this issue. However, as anyone who has experience with this topic will attest, a) success in solving the seemingly intractable problems with school siting practices is far from guaranteed, and b) new regulations, assuming they will be effective, will not be in place for years at best.

Response 16.6

The Agency is not making any change in response to this comment. The comment does not appear to raise a specific comment to this rulemaking requiring a response. With respect to Appendix G, however, please see response to comment 16.5.

Comment 16.7

The original implementation guidance for AB 32 (Global Warming Solutions Act of 2006) included guidance for improved school siting in the original draft, that language was removed in the final version with no explanation. The Health in All Policies initiative included school siting solutions in its original charge. That issue was removed in subsequent documents without explanation. When CDPH staff was questioned on the removal, it was stated, "I'm not allowed to discuss that topic". OPR and CDE held a symposium in 2012 acknowledging the conflict between school siting practices and the new, prevailing land use planning paradigm and indicated that changes were coming. I bring this history up for several reasons, a) to highlight how much time has passed since the intent to solve the problem has been expressed, and b) to observe that there appears to be some very effective opposition to addressing the school siting problem. In the interest of transparency, and in order for interested jurisdictions to more effectively engage on this topic, the State should disclose the specific source of the opposition.

Response 16.7

The Agency is not making any change in response to this comment. The comment does not appear to raise a specific comment to this rulemaking requiring a response.

Comment 16.8

The original Appendix G language at least gave local jurisdictions the tools to indirectly address the issue. Again, the County respectfully requests that the language be reinserted.

Response 16.8

The Agency is not making any change in response to this comment. Please see response to comment 16.5.

Comment 16.9

Thank you for this opportunity to comment on these policies.

Response 16.9

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a conclusion paragraph.

Comment 17 – County of El Dorado

Comment 17.1

Please find attached our comments on the Comprehensive CEQA Update, specifically Section 15064.3 on Transportation Impacts.

Response 17.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introduction paragraph.

Comment 17.2

We appreciate the opportunity to comment on the Amendments and Additions to the State CEQA Guidelines. Specifically, our comments focus on the proposed Section 15064.3 "Determining the Significance of Transportation Impacts" and the associated Technical Advisory on Evaluating Transportation Impacts in CEQA, dated November 2017. In general, we support the intent to reduce greenhouse gases. The El Dorado County Community Development Services has the following comments on the Proposed Regulatory Text, released January 29, 2018 and the Technical Advisory:

Response 17.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introduction paragraph.

Comment 17.3

The Proposed Regulatory Text (Section 15064.3 (a)) states "Generally, vehicle miles traveled is the most appropriate measure of transportation impacts." However, VMT by itself is not enough to quantify a reduction in greenhouse gas emissions.

Response 17.3

The Agency is not making any changes in response to this comment. The comments suggests that studying vehicle miles traveled is not sufficient to reduce greenhouse gas emissions.

The Agency has added Section 15064.3 in response to the legislative direction in Senate Bill 743, which added Section 21099 to the Public Resources Code. That legislation directed the Agency to develop an update to the CEQA Guidelines to specifically address transportation impacts. Section 1 of SB 743 expressed the Legislature's intent that to change the way that transportation impacts are evaluated in CEQA. Specifically, Section 1(a)(2) states:

> Transportation analyses under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) typically study changes in automobile delay. New methodologies under the California Environmental Quality Act

> are needed for evaluating transportation impacts that are better able to promote the state's goals of reducing greenhouse gas emissions and traffic-related air pollution, promoting the development of a multimodal transportation system, and providing clean, efficient access to destinations.

Thus, reducing greenhouse gas emissions was one of several objectives. Notably, while the comment suggests that VMT is not an appropriate metric to study transportation impacts, the Legislature specifically suggested vehicle miles traveled as one of several potential metrics. (See, Pub. Resources Code 21099(b)(1) ("In developing the [guideline, OPR and the Agency] shall recommend potential metrics to measure transportation impacts that may include, but are not limited to, vehicle miles traveled, vehicle miles traveled per capita, automobile trip generation rates, or automobile trips generated").) Therefore, as explained in the Initial Statement of Reasons, the Agency finds that vehicle miles traveled is an appropriate measure of transportation impacts.

Comment 17.4

To reiterate our previous comments, while VMT does measure the number and length of each trip, it does not take into account the travel speed of each trip. Since vehicles emit different levels of greenhouse gases at different travel speeds, VMT by itself is not enough to quantify a reduction in greenhouse gases. For example, a short-distance trip in very congested conditions may result in more greenhouse gases than a longer trip with very little congestion.

Response 17.4

The Agency is not making a change in response to this comment. While greenhouse gas emissions are one of several impacts related to transportation, Section 15064.3 implements the Legislatures directive to update the analysis of transportation impacts in CEQA. Please also see Response to Comment 17.3.

Comment 17.5

Furthermore, while VMT is sometimes categorized by travel speed, most travel demand models do not take intersection delay into account when calculating the congested speeds. Greenhouse gas emissions increase when vehicles are idling in traffic on congested roadways, but the proposed VMT metric does not take that factor into account.

Response 17.5

The Agency is not making a change in response to this comment. While greenhouse gas emissions are one of several impacts related to transportation, Section 15064.3 implements the Legislatures directive to update the analysis of transportation impacts in CEQA. Please also see Response to Comment 17.3.

Comment 17.6

While we support OPR's goal of reducing greenhouse gases, the revised guidelines could unfairly hinder economic development in rural areas, while not adequately addressing greenhouse gas emissions.

Response 17.6

The Agency is not making a change in response to this comment. While greenhouse gas emissions are one of several impacts related to transportation, Section 15064.3 implements the Legislatures directive to update the analysis of transportation impacts in CEQA. Please also see Response to Comment 17.3.

Additionally, the Agency disagrees that the CEQA Guidelines will hinder economic development. On the contrary, the Standardized Regulatory Impact Assessment prepared for the Guidelines indicates that lead agencies are likely to experience cost savings from the changes. Moreover, even if a lead agency proposes a project with significant vehicle miles traveled impacts, it may still adopt such a project if it finds that the benefits, including economic benefits, outweigh those impacts. (CEQA Guidelines § 15093 (statement of overriding considerations).)

Comment 17.7

The vast majority of the research cited on VMT and induced demand is based in urban areas and not applicable to rural areas. More research is needed for rural areas on all topics in order to develop substantial evidence for thresholds used in environmental documents.

Response 17.7

The Agency is not making any change in response to this comment. The requirement to study induced demand does not arise out of this rulemaking package. Greenhouse gas emissions and other pollutants associated with roadway capacity expansions must be evaluated with or without these Guidelines. (See, Pub. Resources Code § 21099(b)(3) ("This subdivision does not relieve a public agency of the requirement to analyze a project's potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation").) To fully assess those impacts, induced travel resulting from roadway capacity expansion must also be analyzed. (See, e.g., California Department of Transportation, Guidance for Preparers of Growth-related, Indirect Impact Analyses (2006).)

Comment 17.8

The Technical Advisory (page 8) states "fifteen percent reductions in VMT are typically achievable at the project level in a variety of place types. (Quantifying Greenhouse Gas Mitigation Measures, p 55, CAPCOA, 2010)." Most of the transportation mitigation strategies are "negligible in rural areas,' resulting in few options for mitigating potential VMT impacts in El Dorado County.

Response 17.8

The Agency is not making any change in response to this comment. The comment is directed to OPR's Technical Advisory and not this rulemaking package. The Agency has forwarded the comments to OPR for its consideration. Additionally, please note that El Dorado County contains a variety of place types. Further, OPR's Technical Advisory notes that thresholds may be established on a case by case basis in rural areas.

Comment 17.9

Additionally, the Technical Advisory (page 20) acknowledges that the proposed induced demand methodology is not appropriate for rural areas, but rural is defined as "non -MPO." El Dorado County is primarily rural land; however, we are covered under the SACOG MPO.

Response 17.9

The Agency is not making any change in response to this comment. The comment is directed to OPR's Technical Advisory and not this rulemaking package. The Agency has forwarded the comments to OPR for its consideration.

Comment 17.10

The research cited in the Technical Advisory is primarily based on urban or suburban areas. More research is needed for rural areas. Lead agencies need to be able to defend against lawsuits on CEQA documents; however, it will be difficult to do that if there is limited data on how VMT and induced demand thresholds and mitigations are applied in rural areas.

Response 17.10

The Agency is not making any change in response to this comment. The comment is directed to OPR's Technical Advisory and not this rulemaking package. The Agency has forwarded the comments to OPR for its consideration.

Comment 17.11

Implementation in rural areas should be optional until sufficient data is available to establish state-of-the-practice methodology, thresholds, and mitigation measures for rural areas. It is unclear at this point if the less than two years will be a sufficient time period.

Response 17.11

The Agency is not making any change in response to this comment. The comment is directed to OPR's Technical Advisory and not this rulemaking package. The Agency has forwarded the comments to OPR for its consideration. Please see Master Response 11. Please also note that with regard to roadway capacity expansions, the Guidelines leave lead agencies their choice of methodology. Please see Master Response 5.

Comment 17.12

It is unclear at this point if the less than two years will be a sufficient time period.

Response 17.12

The Agency is not making any change in response to this comment. Please see Response to Comment 17.11, and Master Response 7 regarding the phase-in period.

Comment 17.13

While we support the provision for VMT thresholds to be determined on a case-by-case basis in rural areas, we believe the definition of "Rural Areas" is too narrow. For example, El Dorado County is in the SACOG MPO, however the vast majority of our County land is rural in nature. There are very few, if any, locations within our County that could be classified as "congested urban regions" for the purposes of estimating induced demand elasticities.

Response 17.13

The Agency is not making any change in response to this comment. The comment is directed to OPR's Technical Advisory and not this rulemaking package. The Agency has forwarded the comments to OPR for its consideration. Please also note, Section 15064.3(b)(4) leaves lead agencies considerable discretion in their choice of methodology.

Comment 17.14

We propose that the guidelines be revised so that each jurisdiction can designate urban, suburban, and rural areas within its own boundaries. This change would ensure that the methodology is applied accurately throughout California.

Response 17.14

The Agency is not making any change in response to this comment. Please see Response to Comment 17.13.

Comment 17.15

The Proposed Regulatory Text (Section 15064.3 (c)) states, "Beginning on July 1, 2019, the provisions of this section shall apply statewide." This is contrary to the proposed language released by OPR in November 2017. Additionally, OPR's senior planner Chris Ganson, stated that this was an error in the Proposed Regulatory Text during a recent webinar on this topic (UC Berkeley's Tech Transfer PL-52 Webinar on March 7, 2018).

Response 17.15

The Agency is making a change partially in response to this comment. In response to comments regarding the applicability of the CEQA Guidelines, please see Master Response 7.

Comment 17.16

El Dorado County, as a predominantly rural county, respectfully request not requiring the use of VMT as the standard for transportation impacts statewide until substantive research has been collected for rural areas. It is clear that the original legislation was to implement the methodology for urban and city congested areas. It was not intended to apply to the rural areas in the state. Requiring the use of a standard, which is not supported by technical analysis or data, opens up the potential for lawsuits against any local jurisdiction that is not urban in character.

Response 17.16

The Agency is not making a change in response to this comment. Please see Master Response 3 regarding the geographic application of this Guideline.

Comment 18 – Placer County

Comment 18.1

Placer County appreciates the opportunity to provide comments on the proposed Amendments and Additions to the State CEQA Guidelines. After reviewing the submitted information, the County offers the attached comments for your consideration.

Response 18.1

The Agency is not making any changes in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 18.2

Placer County appreciates the opportunity to provide comments on the proposed Amendments and Additions to the State CEQA Guidelines. The Proposed Rulemaking provides several good clarifications to text in the Guidelines. After reviewing the submitted information, the County offers the following comments for your consideration regarding the proposed rulemaking:

Response 18.2

The Agency is not making any changes in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 18.3

§15062 Notice of Exemption – it is unclear what information this addition is attempting to make available to the reviewing public. Is the goal of this addition to distinguish the actual person (or persons?) involved with the project instead of say, the company, developer, legal team, agency, etc. that is a project proponent? Clarification regarding what this modification is attempting to achieve would help define what specific information 15062(a)(6) is asking lead agencies to include on the NOE.

Response 18.3

The Agency is making changes in response to the comment as follows:

"(6) ~~The~~ If different from the applicant, the identity of the person undertaking ~~an activity~~ the 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."

As explained in the Initial Statement of Reasons, the proposed addition implements Assembly Bill 320 (Hill, 2011). That bill amended Public Resource Code, sections 21108 and 21152 requiring certain information to be included in the Notice of Exemption consistent with CEQA Guidelines section 21065, subdivisions (b) and (c). Specifically, AB 320 requires the Notice of Exemption to include the identity of the person undertaking an activity, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use.

According to bill analysis in the Assembly: "This bill intends to prevent the dismissal of important and meritorious CEQA cases and the over-naming of parties by requiring a petitioner or plaintiff to only name, as a real party in interest, the persons listed in the project's NOD or NOE. This would allow a petitioner or plaintiff in a CEQA action to easily ascertain the real parties in interest so he/she knows who to name and not name in the lawsuit. This bill would establish that the petitioner or plaintiff's failure to name a party, other than those identified by a lead agency in an NOD or NOE, is not grounds for dismissal pursuant to the indispensable party rules."

The Agency made a further change to reflect the fact that an applicant for a permit may not be the only person or entity undertaking an activity.

Comment 18.4

§15064 Determining the Significance of the Environmental Effects Caused by a Project – the proposed text in 15064(b)(2) appears internally inconsistent without the benefit of the caselaw and/or the Resources Agency statement of reason behind the modification. The second sentence ("When using a threshold, the lead agency should briefly explain how compliance with the threshold means the project's impacts are less than significant…") could be interpreted to be at odds with the third sentence ("Compliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence indicating the project's effects may still be significant"). Additional clarifying language in the Guidelines (possibly adding the term "likely" or "normally" to the 2nd sentence) would be beneficial to explain that compliance with a significance threshold may not guarantee that a project's impacts are less than significant.

Response 18.4

The Agency is not making any changes in response to this comment. New subdivision (b)(2) serves several functions. In the first sentence, it signals that thresholds may assist a lead agency in determining significance. The second sentence directs lead agencies to explain how application of a threshold to a particular project would result in a less than significant impact. The third sentence reiterates the lead agency's obligation to consider evidence that a project will have significant impacts despite compliance with the threshold. The Agency references the caselaw supporting the new subdivision in the reference and authority portion of Section 15064.

Comment 18.5

§15064.3 Determining the Significance of Transportation Impacts – the new section notes that VMT is the most appropriate measure of transportation impacts with no basis for the statement.

Response 18.5

The Agency is not making any changes in response to this comment. The comment states that Section 15064.3 "notes that VMT is the most appropriate measure of transportation impacts with no basis for the statement." The Agency disagrees.

The Initial Statement of Reasons noted that Senate Bill 743 identified vehicle miles traveled as one of several potential measures to replace level of service in the new transportation Guideline. (ISOR, at p. 15.) The Initial Statement of Reasons also noted that methodologies for evaluating a project's vehicle miles traveled are already in use. (*Id*. at pp. 14-15.) Additionally, in explaining why the Agency rejected an alternative that would have retained the status quo in most areas of the state, the Agency set forth the many other reasons supporting the selection of vehicle miles traveled:

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

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

(*Id*. at pp. 16-17.)

The Notice of Proposed Rulemaking also summarized the expected benefits of analyzing vehicle miles traveled, including:

- Better health and avoided health care costs.
- Reduction in transportation, building energy, and water costs.
- Reduction in travel times to destinations.
- Cleaner water.

(Notice of Proposed Rulemaking, at pp. 26-27.) See also Master Responses 1-3.

Comment 18.6

In addition, the section notes that the provisions apply statewide on July 1, 2019; however, the new VMT guidelines don't require statewide implementation until January 1, 2020.

Response 18.6

The Agency is making changes partially in response to this comment. As indicted in the 15-Day revisions, the provisions of the new transportation guideline would become mandatory beginning July 1, 2020. In response to comments regarding applicability of the CEQA Guidelines, please see Master Response 7.

Comment 18.7

§15064.7 Thresholds of Significance – the final sentence added to 15064.7(b) notes that lead agencies may use thresholds on a case-by-case basis as provided in newly added Section 15064(b)(2) but it is unclear how Section 15064(b)(2) specifically provides for case-by-case thresholds (is it just that it doesn't preclude a case-by-case approach?). Further, 15064.7(c) adds "or using" at the beginning of this subsection.

Response 18.7

The Agency is not making any changes in response to this comment. As the comment notes, the Agency has added a sentence to Section 15064.7 to clarify that agencies may use thresholds on a case-by-case basis. That sentence includes a cross-reference to the new subdivision (b)(2) which states the rules on the use of a threshold for determining significance. That cross-reference is necessary to signal that if using a threshold on a case-by-case basis, an agency must still explain how compliance with the chosen threshold means the impact is less than significant, and that the agency must consider evidence to the contrary. No further additions are necessary.

Comment 18.8

We would recommend also adding "use" at the end of the subsection as well (i.e., "provided the decision of the lead agency to adopt "or use" such thresholds is supported….")

Response 18.8

The Agency is not making any changes in response to this comment. Adding "or using" to the clause at the beginning of the sentence makes sufficiently clear that the whole sentence applies to both "adopting" and "using" a threshold. No additional changes are necessary.

Comment 18.9

§15075 Notice of Determination on a Project for Which a Proposed Negative or Mitigated Negative Declaration Has Been Approved - this comment is consistent with comment #1 above: it is unclear what information this addition (i.e., subsection (8)) is attempting to make available to the reviewing public.

Response 18.9

The Agency is not making changes in response to this comment. Please see Response to Comment 18.3.

Comment 18.10

§15094 Notice of Determination – same comment as #1 and #5 above.

Response 18.10

Please see Response to Comment 18.3. Please also note, the Agency is making changes to that section as indicated in the 15-Day Changes:

"~~The~~ If different from the applicant, the identity of the person undertaking ~~an activity~~ the 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"

Comment 18.11

§15357 Discretionary Projects – the new language regarding the key question adds clarity; however, the language also refers only to those concerns that might be raised in an environmental impact report. Is this very specific language intentional, or could it be modified to say "those concerns that might be raised in a CEQA impact analysis"?.

Response 18.11

The Agency is making changes in response to the comment as follows:

"The key question is whether the public agency can use it subjective judgment to decide whether and how to carry out or approve a project. ~~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.~~"

Comment 19 – Riverside County Transportation Commission

Comment 19.1

Please find attached the comments from the Riverside County Transportation Commission on the proposed Update to the State CEQA Guidelines. A hard copy of the attached letter has also been sent.

Response 19.1

The Agency is not making any changes in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 19.2

The Riverside County Transportation Commission (Commission) appreciates the opportunity to comment on the Proposed Updates to the CEQA Guidelines (Guidelines Update), particularly the updates related to implementation of SB 743 and the corresponding Technical Advisory on Evaluating Transportation Impacts in CEQA (Technical Advisory). Although the Commission recognizes any changes in CEQA require consideration of many factors and interests, the Commission continues to have concerns with the Guidelines Update, which, in its current form, will have negative impacts on transportation improvement projects throughout the state, and in particular transportation improvement projects central to the implementation of Regional Transportation Plans/Sustainable Communities Strategies (RTP/SCS) that the California Air Resources Board (CARB) has found meet and exceed the state's greenhouse gas (GHG) emission reduction targets. The Revised Proposal will also likely have a negative impact on meeting regional housing needs.

Response 19.2

The Agency is not making any changes in response to this comment. The comment is introductory in nature, and specific responses to specific comments are provided below.

Comment 19.3

Included below are general comments and other more specific comments and edits to the Guidelines Update text. The Commission appreciates the Natural Resource Agency's consideration of these comments.

Response 19.3

The Agency is not making any changes in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 19.4

General Comments

1. Transport at ion Uniform Mitigation Fees (TUMF) program.

Under the TUMF, developers of residential, industrial, and commercial property pay a development fee to fund transportation projects that will be required as a result of the growth the projects create. The TUMF funds both local and regional arterial projects. Currently, TUMF are calculated based on a project's impacts to the level of service (LOS). But with the Guidelines Update, LOS may no longer be use d. The Commission suggests the Guidelines Up dat e explain that although LOS may not be used to determine a project's CEQA impact, LOS may still be used in the context of TUMF contributions.

Response 19.4

The Agency is not making any changes in response to this comment. The new guideline on transportation states that auto delay is not an environmental impact. Public Resources Code section 21099 is clear, however, that the guidelines do not "preclude the application of local general plan policies, zoning codes, conditions of approval, thresholds, or any other planning requirements pursuant to the police power or any other authority." Because the Guidelines are directed at implementation of CEQA, no further clarification is needed regarding other development fees.

Comment 19.5

2. The Guidelines Update seems inconsistent with Regional Housing Need Allocations (RHNA) and may result in a disproportionate impact on low-income housing.

Under California Government Code section 65583(a)(1), the State Department of Housing and Community Development allocates a region's share of the statewide housing need to Councils of Governments (COG) based on Department of Finance population projections and regional population forecasts used in preparing regional transportation plans. The COG develops a Regional Housing Need Allocation Plan (RHNA-Plan) allocating the region's share of the statewide need to cities and counties within the region. Areas that tend to be allocated high numbers of affordable housing units also tend to be outside the urban core. And, affordable housing tends to be most needed by disadvantaged communities. Rural cities and counties lacking large employment centers, faced with the need to build more housing, including affordable housing, will be unable to approve those projects without preparing a full environmental impact report because of likely significant transportation impacts related to the new residents needing to drive long distances for jobs. Thus, the Guidelines Update will likely be an impediment to affordable housing construction and compliance with RHNA. Therefore, we suggest a broad, categorical exemption (as distinguished from the highly qualified and conditioned existing exemptions, which effectively still require CEQA review albeit with some minimal streamlining} for affordable housing projects.

Response 19.5

The Agency is not making any changes in response to this comment. The comment does not reflect any specific guideline proposed for addition or amendment. The comment suggests that the new transportation guideline is inconsistent with the Regional Housing Needs Assessment (RHNA) process and may adversely affect affordable housing. See Master Response 8 on affordable housing. Also, please note, as a result of SB 375, the RHNA process is now more closely tied to transportation planning. The Southern California Association of Governments (SCAG) developed the RHNA Allocation Plan that includes the area addressed in the comment. Notably, SCAG's comment letter states that "implementation of SB 743 will serve to facilitate achievement of many of the regional goals identified in SCAG's adopted 2016 RTP/SCS, specifically those pertaining to regional sustainability, improved

transportation system efficiency, providing more and better mobility options including transit and active transportation, *encouraging construction of more affordable housing*, improved air quality and promoting environmental preservation." (See Comment 36.1 (emphasis added).)

Comment 19.6

As currently proposed, the language states: "For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements." Although the currently proposed language is an improvement over previous versions, and the Commission appreciates the apparent intent to grant transportation agencies discretion to determine the metric for evaluating traffic impacts of highway and road projects, the Commission is concerned the proposed language creates ambiguity as to whether transportation agencies may rely solely on measures of traffic congestion such as LOS to determine the significance of traffic impacts, or whether the final seven words ("consistent with CEQA and other applicable requirements") mandate a Vehicle Miles Travelled (VMT) analysis due to, for example, the state's climate change legislation.

Response 19.6

The Agency is not making any change in response to this comment. The comment suggests that the phrase "consistent with CEQA and other applicable requirements," is ambiguous. The Agency disagrees. The modifier is necessary in this context because the sentence creates an exception to the general rule that vehicle miles traveled is the primary measure of transportation impacts. In providing discretion to lead agencies for roadway capacity projects, it is necessary to clarify that the discretion is limited. Public Resources Code section 21099, which requires the development of this guideline, states that "does not relieve a public agency of the requirement to analyze a project's potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation." (Subdivision (b)(3).) Therefore, the phrase clarifies that CEQA's normal rules apply, even where a lead agency has discretion to pick which metric to study the impact.

Comment 19.7

Holding every individual project to a VMT standard is not an efficient means of project delivery, nor will it best achieve the broad set of objectives outlined in both state and regional plans and programs. Strategic highway improvements supporting freight mobility are important for the competitiveness of California's economy as well as for local commerce. To that end, we would also request the freight corridors documented in the California Freight Mobility Plan (CFMP) be exempt from the requirement for induced growth analysis.

Response 19.7

The Agency is not making any changes in response to this comment. The comment suggests that analysis of vehicle miles traveled is not an efficient method of project delivery. The Agency notes that SB 743 directed the development of a guideline on environmental analysis, not project delivery. Nevertheless, the guideline includes several efficiencies. First, the presumption of a less than significant transportation impact for transportation projects that reduce vehicle miles traveled will significantly streamline the analysis for such projects. Second, the guideline expressly encourages agencies to tier the analysis for later projects where the impact was adequately addressed in a programmatic review. If done correctly, a regional transportation plan EIR will have analyzed the induced travel of proposed

capacity expansion, and the individual roadway projects can tier from that document. (See, e.g., California Department of Transportation, Guidance for Preparers of Growth-related, Indirect Impact Analyses (2006).)

Comment 19.8

This bullet suggests any exceedance of a municipality's minimum parking requirements would eliminate the presumption of less than significant transportation impacts. However, many municipalities now have *very* minimal parkin g requirements in urban settings (to encourage infill consistent with the state's policy goals). For example, the City of Sacramento requires only 0.5 parking spaces per dwelling unit in urban areas. Eliminating the less than significant presumption for a multi-family project in Sacramento that provides, for example, merely 0.75 parking spaces per dwelling unit (less than one per unit, but 50 percent more than required) seems too severe. The Commission suggests revising this statement to read: "Includes substantially more parking for use by residents, customers, or employees of the project than required by the jurisdiction."

Response 19.8

The Agency is not making any change in response to this comment. Comments on OPR's Technical Advisory are beyond the scope of this rulemaking. The Agency has forwarded those comments to OPR for its consideration. Please also note, the Technical Advisory contains advisory recommendations only, not binding requirements. In response to comments regarding the Technical Advisory, please see Master Response 11.

Comment 19.9

5. Technical Advisory, page 15.

The Guidelines Update explains that in "rural areas of non-MPO counties (i.e., areas not near established or incorporated cities or towns), fewer options may be available for reducing VMT, and significance thresholds may be best determined on a case-by-case basis." This statement should not be limited to rural areas of non-MPO counties. Many geographically large MPO counties also have extensive rural areas . Rural areas are rural areas and should be treated the same, regardless of whether that rural area happens to be located within the technical geographic limit s of an MPO county.

Response 19.9

The Agency is not making any change in response to this comment. Please see Master Response 11.

Comment 19.10

6. Technical Advisory, page 17.

The first bullet -point on page 17 should be revised. It states the addition of through lanes on existing or new highways, including general purpose lanes, HOV lanes, peak period lanes, auxiliary lanes, and lanes through grade-separated interchanges "would likely lead to a measurable and substantial increase in vehicle travel." But the Guidelines Update should not be making such determinations on a generalized basis. CEQA requires each project to be analyzed individually. These generalizations, without specific project facts, disadvantage the types of projects listed and may encourage litigation

seeking to stall crucial improvements (even HOV lane projects) before they have even been proposed.

Response 19.10

The Agency is not making any change in response to this comment. Please see Master Response 11.

Comment 19.11

7. Technical Advisory, page 27.

The text presumes roadway capacity expansion increases VMT. This is inconsistent with how projects operate in the real world in that some projects expand roadway capacity but actually result in a *reduction* of VMT by providing more efficient routes between two locations, by reducing speeds on roadways in a manner that causes drivers to opt for other methods of travel, etc. The Guidelines Update should treat roadway capacity expansion consistently and without drawing conclusions. At a minimum, the bullet-points should be modified to be less conclusory (i.e., using the word "may"). For example:
"The ability to travel a long distance in a short time may increase the attractiveness of destinations that are further away, increasing trip length and vehicle travel" (first bullet);
"Faster travel times on a route may attract more drivers to that route ..." (third bullet);
"Faster travel times along a corridor may lead to land development further along that corridor; that development may generate and attract longer trips, which increases vehicle travel" (fifth bullet).

Response 19.11

The Agency is not making any change in response to this comment. Please see Master Response 11.

Comment 19.12

8. Technical Advisory, pages 27 to 29.

The Guidelines Update should not be evaluating studies and reaching conclusions such as those discussed in the text's statement that peer reviewed studies have "demonstrated a causal link between highway capacity increases and VMT increases." Whether a certain project induces demand that will result in an increase in VMT should be analyzed on a case-by-case basis, as is expected under CEQA. Lead agencies are granted responsibility to evaluate evidence, including studies and expert reports, as applied to individual projects. The Guidelines Update should not be making determinations on the validity of studies and reaching conclusions that could limit a lead agency' s discretion. Projects such as highway capacity increases should be analyzed just as any other project (i.e., does it directly or indirectly increase VMT?) without a negative bias being projected by the state in the form of regulatory documents.

Response 19.12

The Agency is not making any change in response to this comment. Please see Master Response 11.

Comment 19.13

Additionally, although new roadways and capacity-increasing projects *may* increase VMT and the desirability of development in certain areas, any increases in VMT should be attributed to new developments (i.e., *growth)* that occurs as a result of the new roadway or capacity-increasing project rather than the roadway project. That is, a roadway project without any additional population increase or proposed development should not be required to mitigate VMT for development projects that only *may* occur as a result of the roadway, nor should a future developer be allowed to avoid mitigation for a project because the mitigation was already assumed and shouldered by the roadway project.

Response 19.13

The Agency is not making any change in response to this comment. Please see Response to Comment 19.8. Please also see, California Department of Transportation, Guidance for Preparers of Growth-related, Indirect Impact Analyses (2006).

Comment 19.14

The Commission greatly appreciates the Natural Resource Agency's thoughtful consideration of these comments and concerns.

Response 19.14

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 20 - County of San Diego

Comment 20.1

Attached is The County of San Diego's comment letter regarding the Notice of Proposed Rulemaking Amendments and Additions to the State CEQA Guidelines.

Please review the attached letter, and let me know if there are any questions.

Confirmation of this letter would be appreciated.

Response 20.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 20.2

The County of San Diego (County) reviewed the California Natural Resources Agency (Agency) Notice of Proposed Rulemaking - Amendments and Additions to the State CEQA Guidelines dated January 26 (Project).

The County appreciates the opportunity to review the Project and offers the following comments for your consideration. The County previously submitted comments on the 2014 CEQA Guidelines Updates and Preliminary Evaluation of Alternative Methods of Transportation Analysis (Attachment A). Please note that none of these comments should be construed as County support for this Project.

Response 20.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 20.3

1. New Code Section 15064.3 (Determining the Significance of Transportation Impacts) will have wide ranging impacts to the way local agencies evaluate projects through CEQA. The County appreciates the State providing planning agencies with the necessary implementation time to update their procedures. The County anticipates needing the next two years to coordinate internally and to communicate with the public stakeholders to comprehensively prepare for this massive shift in CEQA environmental analysis methodology. The flexibility that will be allowed for each jurisdiction to implement the new CEQA guidelines is a critical component of the statewide effort that will involve land uses ranging from downtown urban areas within Cities to suburban and rural communities or Counties.

Response 20.3

The Agency is making a change partially in response to this comment. The date on which the guidelines become mandatory is July 1, 2020. In response to comments regarding the applicability of the CEQA Guideline, please see Master Response 7.

Comment 20.4

2. Consistent with the County's recently adopted Climate Action Plan (CAP), the recognized benefits of reducing Vehicle Miles Traveled (VMT) include better health and avoided health care costs; reduction in transportation, building energy, and water costs.

Response 20.4

The Agency is not making any change in response to this comment. The Agency concurs that reducing vehicle miles traveled will result in multiple benefits to human health and the environment.

Comment 20.5

The County appreciates the opportunity to comment on this Project. We look forward to receiving future documents related to this Project and providing additional assistance at your request. If you have any questions regarding these comments, please contact Timothy Vertino, Land Use / Environmental Planner, at (858) 495- 5468, or via e-mail at timothy.vertino@sdcounty.ca.gov.

Response 20.5

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 20.6

The County of San Diego (County) has received and reviewed the Office of Planning and Research's (OPR) "Possible Topics to be Addressed in the 2014 California Environmental Quality Act (CEQA) Guidelines Update" and the "Preliminary Evaluation of Alternative Methods of Transportation Analysis", dated December 30, 2013, and appreciates this opportunity to comment. County Planning & Development Services (PDS) and Department of Public Works (DPW) have completed their review and have the following comments.

Response 20.6

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph. Also, comments 20.6 through 20.32 address an early version of the Guidelines update that OPR developed. Thus, they are not directed specifically at this rulemaking. Nevertheless, where the comment addresses an issue that is related to the current rulemaking, the Agency provides responses below.

Comment 20.7

The County appreciates the efforts of OPR to streamline, provide clarification and reduce redundancies in the CEQA Guidelines. The County supports CEQA Guideline changes that provide for a thorough project analysis while streamlining and simplifying the process and reducing costs. The following comments provide specific feedback on the detailed areas proposed for changes.

Response 20.7

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 20.8

Section 15065 - A suggestion is made to add roadway widening and provision of excess parking as examples of projects that may achieve short-term environmental goals (congestion relief) to the disadvantage of long-term environmental goals (reducing greenhouse gas emissions). Specific examples should not be added until a decision is made on an alternative methodology for addressing transportation impacts. A conflict could occur where a mitigation measure for road widening (under a Level of Service analysis) could also be identified as a significant impact under Section 15065, requiring an EIR. If OPR does choose to add these as examples, the examples should.

Response 20.8

The Agency is not making any change in response to this comment. No proposal was made to amend section 15065 of the CEQA Guidelines, thus this comment is outside the scope of the proposed rulemaking.

Comment 20.9

Section 15082 - County staff disagrees with the suggestion to add clarification that Notices of Preparation (NOPs) must be posted at the County Clerk's office. In San Diego County, posting by the County Clerk is a

completely electronic process that is duplicative of the existing website posting that is done by the lead County Department. In addition, in San Diego County, the requirement to post with the County Clerk is typically associated with an additional fee ($50) that would unnecessarily increase costs for the project applicant, without any additional public noticing benefit.

Response 20.9

The Agency is not making any change in response to this comment. The proposed amendment to section 15082 is consistent with section 21092.3 of the Public Resources Code, which requires that notices "be posted in the office of the county clerk… and shall remain posted for a period of 30 days."

Comment 20.10

Section 15357 - Additional guidance on whether a project is ministerial or discretionary would be helpful, provided that the additional language does not limit the ability of a local agency to interpret when a project would meet the identified criteria of requiring "the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity... " The decision on whether the exercise of judgment or deliberation is required may vary depending on the nature of the applicable regulations of the local jurisdiction or agency.

Response 20.10

The Agency is not making any change in response to this comment. The Agency refers the reader to the proposed amendment to 15357 and the proposed 15-day changes stating: "The key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project."

Comment 20.11

Regarding proposed changes to Appendix G: Environmental Study Checklist, we offer the following comments that correspond to the bulleted suggestions provided in the QPR document:

Response 20.11

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 20.12

It is unclear what purpose a new question about the conversion of open space would accomplish. The suggestion states, "Add a question about conversion of open space generally, and then give examples (agriculture, forestry, habitat connectivity, etc.) of possible impacts". It seems as though impacts to agriculture, forestry and habitat are already addressed in existing Appendix G questions related to Agricultural and Biological Resources. A new question should not be added if it creates redundancy with existing issue areas.

Response 20.12

The Agency is not making any change in response to this comment. This comment is directed at an early version of OPR's proposed update. No proposed change was made to Appendix G with regard to open space. Thus this comment is outside the scope of the proposed rulemaking.

Comment 20.13

A new question about the cumulative loss of agricultural land is not needed as CEQA already requires that cumulative impacts be considered. As there is not a corresponding question regarding cumulative impacts for every CEQA subject area in Appendix G, a cumulative impact question is not needed in the Agricultural Resources section. The existing question in Section XVIII. Mandatory Findings of Significance in the CEQA Appendix G is adequate to cover cumulative impacts, including cumulative impacts to agricultural resources.

Response 20.13

The Agency is not making any change in response to this comment. This comment is directed at an early version of OPR's proposed update. No proposed change was made to Appendix G with regard to cumulative loss of agricultural land. Thus, this comment is outside the scope of the proposed rulemaking.

Comment 20.14

The suggestion to add a fire hazard question pursuant to SB 1241 should be considered together with the existing fire hazard question h) listed under VIII. Hazards and Hazardous Materials. Any new question should be reviewed to ensure there is no redundancy with the existing fire hazard question.

Response 20.14

The Agency is not making any change in response to this comment. Please see proposed addition XX. Wildfire. Appendix G is a suggested form. Lead agencies should normally address the questions from the Appendix G checklist that are relevant to a project's environmental effects. However, substantial evidence of potential impacts that are not listed on the form must also be considered.

Comment 20.15

County staff agrees that the question about unique paleontological resources and unique geological features that is currently in Section V. Cultural Resources should be moved to Section VI. Geology and Soils.

Response 20.15

The Agency is not making any change in response to this comment. Commenter agrees to the proposed change identified within the rulemaking. No further response is required.

Comment 20.16

The County agrees that question c) in Section X. Land Use and Planning should be removed as it is duplicative of issues addressed in the Biological Resources section.

Response 20.16

The Agency is not making any change in response to this comment. Commenter agrees to the proposed change identified within the rulemaking. No further response is required.

Comment 20.17

A new question about providing excess parking is not needed. Parking restrictions should be implemented at the local level through zoning or other local ordinances.

Response 20.17

The Agency is not making any change in response to this comment. This comment is directed at an early version of OPR's proposed update. No proposed change was made to Appendix G with regard to excess parking. Thus, this comment is outside the scope of the proposed rulemaking.

Comment 20.18

The CEQA Guidelines, Appendix G, XVIII. Utilities and Service Systems should be revised to remove redundancy. Regarding the suggestion to add questions related to energy infrastructure in this section, the County will be interested in reviewing and commenting on specific proposed language, when it is developed, as there are many large transmission line projects and large scale energy infrastructure projects proposed in the San Diego region/.

Response 20.18

The Agency is not making any change in response to this comment. The Agency proposed changes to section XVIII Utilities and Service Systems. No comments were made on the proposed change. Additionally, the Agency added proposed changes energy infrastructure but no comments were made in response to those changes. No further response is required.

Comment 20.19

OPR should ensure that Appendix G questions are consistent with other Sections of the CEQA Guidelines.

Response 20.19

The Agency is not making any change in response to this comment. OPR and the Agency ensured that Appendix G is consistent with the CEQA Guidelines.

Comment 20.20

New Appendix - The OPR suggests adding a new Appendix to the CEQA Guidelines that provides a sample Mitigation Monitoring and Reporting Program (MMRP). The County of San Diego typically uses a project's Conditions of Approval document as the project's MMRP, as this document provides the timing requirements, authority and implementation assurances for each mitigation measure in one place. If a new Appendix with a sample MMRP is provided, it should be clear that it does not represent a prescriptive requirement for an adequate MMRP.

Response 20.20

The Agency is not making any change in response to this comment. This comment is directed at an early version of OPR's proposed update. The Agency did not propose a sample MMRP as part of the rulemaking. Thus, this comment is outside the scope of the rulemaking.

Comment 20.21

New Appendix - The OPR suggests a new appendix addressing Transportation Impacts. This appendix should address local conditions, safety and mode conflicts. QPR may also want to consider revising the Traffic and Transportation Appendix G questions to address safety issues.

Response 20.21

The Agency is not making any change in response to this comment. This comment is directed at an early version of OPR's proposed update. The Agency did not propose a new appendix addressing Transportation Impacts. Thus, this comment is outside the scope of the rulemaking. OPR developed a detailed Technical Advisory on transportation impacts as a resource for lead agencies.

With respect to revising the Traffic and Transportation Appendix G questions. The Agency has proposed changes to this Section within Appendix G but commenter has made no comment as to those changes. No further response is required.

Comment 20.22

The County looks forward to the development of alternative metrics that may better promote the establishment of multimodal transportation networks and infill development, and allow for context sensitive analysis in areas such as rural villages, suburban neighborhoods and industrial/commercial areas. The proposed alternative metrics appear to be well suited for analysis in urban type environments, but it is unclear if the metrics can be applied effectively to the level and type of mobility desirable and compatible with rural environmental and residential systems.

Response 20.22

The Agency is not making any change in response to this comment. Please see Master Response 2 explaining why vehicle miles traveled is the most appropriate measure of transportation impacts.

Comment 20.23

Of the two preliminary replacement metrics identified, Vehicle Miles Traveled (VMT) and Automobile Trips Generated (ATG), both are simple and less complicated than LOS. Under a LOS Analysis, local jurisdictions identify impacts and require new development to build transportation networks based on the LOS analysis. It is unclear how effective VMT and/or ATG would be in identifying the local impacts of new development and the build-out of transportation networks. The ultimate metric selected must be equitable to all forms of transportation in both urban (e.g. infill sites within transit priority areas) and rural environments. If such equity cannot be demonstrated, it may be necessary for LOS type analyses to continue to be an allowed alternative for the assessment of transportation impacts.

Response 20.23

The Agency is not making any change in response to this comment. Please see Master Response 2 explaining why vehicle miles traveled is the most appropriate measure of transportation impacts.

Comment 20.24

The document discusses possible mitigation options that could be used under the VMT and ATG analysis scenarios. Under both scenarios, a listed mitigation option is to locate the project in a more central location or a location that facilitates transit or active mode transportation. Relocating the project will not always be a viable mitigation option, particularly in the County where there are limited urban centers and transit nodes. Whatever analysis method is chosen, there needs to be feasible mitigation options that will serve the needs of counties and rural communities. New development currently mitigates its fair share of road improvements based on a LOS analysis. Any new methodology should provide guidance on the nexus that would need to be demonstrated to justify mitigation requirements for road improvements, as a need will continue to exist in this area. The new methodology needs to provide a nexus that would allow local governments to continue to require fair share mitigation that would recoup the costs of a project's roadway impacts. For example, many jurisdictions rely on transportation impact fee programs that allow fair share contributions toward future road improvements as a means to mitigate a project's cumulative impacts.

Response 20.24

The Agency is not making any change in response to this comment. This comment does not address any specific proposed CEQA Guideline. The Guidelines do not preclude local governments from adopting impact fee programs outside of CEQA. OPR's General Plan Guidelines provide additional information regarding impact fees.

Comment 20.25

Another solution that wasn't proposed, but is equally viable, is simulation. This is a logical extension of delay, but takes into account distance, delay, speed, and travel time. Rather than require projects to mitigate based on delay at intersections, an analysis approach could be based on queue clearing and segment analysis based on the number of stops, or travel speed, or total trip time. This idea has been around for many years, but was such a switch from delay that it was never pursued. If we are truly going to move away from delay, this approach should be considered.

Response 20.25

The Agency is not making any change in response to this comment. This comment does not address any specific proposed CEQA Guideline. No further response is required. However, please note that OPR considered similar approaches in its Preliminary Evaluation of Alternative Methods of Transportation Analysis in 2013, and the subsequent discussion of public comments on that document. However, OPR found that those approaches did not achieve the statutory interests and would substantially increase cost of analysis.

Comment 20.26

In addition to promoting "the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and diversity of land uses", the alternative criteria/metrics should also

promote the safety of the traveling public. At this time, neither the current LOS analysis metric nor the proposed metrics explicitly identify public safety as a potential transportation impact. The environmental benefits of maintaining or improving public safety through transportation improvements/mitigation should be captured by any future alternative metric.

Response 20.26

The Agency is not making any change in response to this comment. Please see Master Response 10 regarding transportation safety.

Comment 20.27

The Highway Safety Manual (HSM) should be incorporated into any future metric. The HSM was published in 2010 and was intended to be a companion to the Highway Capacity Manual. Implementation manuals were published in 2012. Now is the time to include safety in the project review process. Projects have always been conditioned based on capacity thresholds, but not safety thresholds. Within the typical project development process and during environmental analysis, agencies can apply the HSM to include quantitative safety in alternatives development and analysis. The HSM provides methods for agencies to objectively define locations or projects for which the potential for safety improvement is indeed significant or not. With adoption of tools and methods in the HSM, agencies can incorporate the historic safety performance of the existing road into their designation of project type and support the identification of likely reasonable alternatives. Furthermore, agencies can apply the HSM to support explicit consideration of quantitative safety during alternatives development and analysis. In the event that agencies select an alternative that does not have the highest predicted safety performance (e.g., because environmental or other impacts were greater for the particular geometric configuration), agencies can use the HSM to identify mitigating strategies to improve safety performance for the selected alternative.

Response 20.27

The Agency is not making any change in response to this comment. Please see Master Response 10 regarding transportation safety.

Comment 20.28

A new transportation analysis approach should attempt to thread existing requirements for Complete Streets and greenhouse gas reduction, to better integrate and streamline the CEQA review process.

Response 20.28

The Agency is not making any change in response to this comment. This comment does not address any specific proposed CEQA Guideline. Please see Master Response 2 explaining why vehicle miles traveled is the most appropriate measure of transportation impacts.

Comment 20.29

Consistent with SB743, parking impacts of certain projects should not be considered significant impacts on the environment. Parking requirements should be under the purview of local jurisdictions as regulated by local ordinances.

Response 20.29

The Agency is not making any change in response to this comment. The Agency agrees that adequacy of parking is a social, not an environmental, impact. For that reason, in 2009, the Agency removed a question from Appendix G that asked about parking adequacy. (See Final Statement of Reasons, Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97 (2009), pp. 96-97. Nevertheless, at least one court found that lack of parking was an environmental impact. (Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist. (2013) 215 Cal.App.4th 1013.) Also, while SB 743 expressly states that parking is not an environmental impact, it did so only for certain types of projects. (See, Pub. Resources Code § 21099(b)(1).) Therefore, the Agency cannot state in the Guidelines that parking is not an environmental impact.

Comment 20.30

Additionally, OPR should look to other countries and states for additional guidance in the development of metrics that increase mobility and livability. At the state level, Washington State has developed a policy of "concurrency". The concept that as new development occurs, all components of a transportation network must be in place "concurrently". However, even they struggle to make the concurrency policy work for all modes. This paper evaluates different strategies to "Make Concurrency More Multimodal."

Response 20.30

The Agency is not making any change in response to this comment. This comment does not address any specific proposed CEQA Guideline. This comment is not in regard to any specific proposed CEQA Guideline. No further response is required. However, please note that OPR considered similar approaches were considered in the its Preliminary Evaluation of Alternative Methods of Transportation Analysis published by OPR in 2013, and the subsequent discussion of public comments on that document. However, they were OPR found that those approaches did not to achieve the statutory interests and to would substantially increase cost of analysis.

Comment 20.31

OPR should address the timing of implementation of new transportation analysis metrics. LOS analysis is imbedded in transportation planning documents and local agency ordinances and plans and procedures for CEQA review. It will take some time to unravel LOS from the framework of transportation planning and analysis. OPR should provide ample time for local agency implementation.

Response 20.31

Please see Response to Comment 20.3, above.

Comment 20.32

The County appreciates the opportunity to comment on possible updates to the CEQA Guidelines and looks forward to reviewing the proposed text changes when they are available. If you have any questions regarding these comments, please contact Jennifer Domeier, Land Use Environmental Planner, at (858) 495-5204, or via email at jennifer.domeier@sdcounty.ca.gov.

Response 20.32

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 21 - County of Santa Barbara

Comment 21.1

Please find attached the County of Santa Barbara's comments on the Amendments and Additions to the State CEQA Guidelines.

Response 21.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 21.2

Thank you for the opportunity to comment on the CEQA Guidelines Update. The County of Santa Barbara appreciates all the effort from the Office of Planning and Research that went into the amendments. While we have no new comments on the current proposal, we still have lingering concerns regarding the updates to Transportation Impacts stemming from Senate Bill 743. Attached is our letter on the January 20, 2016, draft proposal, which we respectfully submit to your agency for consideration.

Response 21.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 21.3

Thank you for the opportunity to comment on the Revised Proposal to Update the CEQA Guidelines Implementing Senate Bill 743, dated January 20, 2016. The County appreciates the effort that went into this proposal, including the responses to public comments, the simplified statutes/guidelines, and the detailed Technical Advisory. The following comments focus primarily on the County's remaining concerns regarding implementation of the updated guidelines:

Response 21.3

The Agency is not making any change in response to this comment. In response to comments regarding the Technical Advisory, please see Master Response 11. Comments on OPR's Technical Advisory are beyond the scope of this rulemaking. The Agency has forwarded those comments to OPR for its consideration. Please also note, the Technical Advisory contains advisory recommendations only, not binding requirements.

Comment 21.4

The County appreciates that the recommended threshold of a 15 percent reduction in VMT

over existing conditions is discussed in the Technical Advisory rather than in the statutes/guidelines. County staff continues to have concerns that:

(1) This threshold will trigger individual EIRs for small/medium projects that are consistent with planned growth in our communities and their associated land use designations.

Response 21.4

The Agency is not making any change in response to this comment. Please see Response 21.3.

Comment 21.5

The suggested alternatives and mitigation measures (Technical Advisory Section G) are not feasible for small/medium projects in rural or semi-rural areas. In fact, the only types of projects that could implement measures (such as access to transit, access to goods and services, affordable housing, improvement of bicycle/pedestrian networks, etc.) in unincorporated lands are large projects that would have other types of significant impacts on the County's environmental resources.

Response 21.5

The Agency is not making any change in response to this comment. Please see Response 21.3. Please also note, CEQA does not require jurisdictions to adopt infeasible mitigation.

Comment 21.6

The guidance and case studies in the Technical Advisory to help lead agencies apply this threshold do not account for jurisdictions like Santa Barbara with expansive rural areas and remote urban communities.

Response 21.6

The Agency is not making any change in response to this comment. Please see Response 21.3.

Comment 21.7

With regard to the above concerns, additional recommendations on how to address VMT programmatically in large unincorporated areas would be helpful. The County of Santa Barbara has an approved Climate Action Plan and continues to take progressive steps toward reducing greenhouse gas emissions. Based on OPR's Revised Proposal, it is clear that the County will need to take fm1her steps to reduce VMT; however, it is still unclear what those steps should or could be. Measures such as adding alternative transportation systems, restricting parking, adding mixed uses, or increasing access to transit are not feasible in rural and semi-rural areas.

Response 21.7

The Agency is not making any change in response to this comment. Please see Response 21.3. Please also note, OPR provides information regarding mitigation options for rural areas on its website.

Comment 21.8

County staff has the following concerns related to recommendations in the Technical Advisory:

(1) The guidance states that lead agencies should address the full area over which the project affects travel behavior, even if the effect crosses political boundaries. Without additional guidance or examples showing reasonable extent, this analysis will likely be too burdensome and result in an unrealistic assessment of project effects.

Response 21.8

The Agency is not making any change in response to this comment. Please see Response 21.3.

Comment 21.9

The arbitrary screening threshold of 100 trips/day across the board for small projects makes it difficult for lead agencies to set regionally-specific screening criteria and will likely set a fair argument standard that unnecessarily triggers EIRs for medium- sized projects.

Response 21.9

The Agency is not making any change in response to this comment. Please see Response 21.3.

Comment 21.10

Additional guidance should be provided on setting a baseline for existing conditions given that regional VMT can change with time.

Response 21.10

The Agency is not making any change in response to this comment. Please see Response 21.3.

Comment 21.11

As a final note, the County is concerned that this update will invalidate the transportation impact sections of existing certified EIRs or adopted NDs/MNDs due to a change in circumstances (CCR§15162). The CEQA Statutes and Guidelines encourage tiering from existing environmental documents whenever feasible (PRC §21093). County staff recommends that a grandfathering process be set forth to allow continued use of CEQA documents that were certified/adopted by a given date.

Response 21.11

The Agency is not making any change in response to this comment. The Guidelines Update has not changed the rules regarding subsequent environmental review. Moreover, the Guidelines cannot create a grandfathering process that the statute does not provide. If tiering from a programmatic document, additional review might be needed if the impacts of the project were not adequately addressed in the first tier. The new guideline need not be a change in circumstances requiring new review. OPR and the Agency chose vehicle miles traveled as the new transportation metric in part because many agencies already evaluate a project's vehicle miles traveled as part of greenhouse gas and energy analyses.

Comment 21.12

Please consider these comments when finalizing your proposal. If you have any questions or comments regarding this letter, or would like to discuss these issues further, please call Mindy Fogg at (805) 884-6848.

Response 21.12

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 22 - County of Santa Clara Department of Planning and Development

Comment 22.1

To the California Natural Resources Agency:

Attached is our letter with comments on the November 2017 version of the CEQA Guidelines update.

Response 22.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph. Also, while the comments are directed to OPR and its November 2017 proposal to the Agency, the Agency is construing those comments to be comments on the rulemaking described in the January 2018 notice.

Comment 22.2

The County of Santa Clara Department of Planning and Development offers the following comments on the proposed November 2017 Proposed Updates to the CEQA Guidelines.

Response 22.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 22.3

1. §l5064(b)(2)

Because a lead agency will already have considered substantial evidence in using a threshold, it appears the last sentence in this proposed section is referring to outside input. Therefore, we suggest the following edit (suggested edits are in underline/strikethrough format) to clarify:

Compliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence submitted by other agencies or the public indicating that the project's environmental effects may still be significant.

Response 22.3

The Agency is not making any change in response to this comment. Lead agencies are not relieved of the obligation to consider substantial evidence whether submitted by other agencies, the public, or otherwise. Further qualifying the guideline may place unintentional limitations on that obligation.

Comment 22.4

2. §15051(c)

OPR has proposed to change this section as follows:

(c) Where more than one public agency equally meets the criteria in subdivision (b), the agency which will act first on the project in question will normally shall be the lead agency.

We think this change introduces too much uncertainty into the process and may lead to unnecessary delays on reaching resolution on who the lead agency shall be. We would prefer to see shall retained and qualified as follows:

(c) Where more than one public agency equally meets the criteria in subdivision (b), the agency which will act first on the project in question shall be the lead agency unless there are special circumstances that warrant otherwise.

Response 22.4

The Agency is not making any change in response to this comment. As explained in the Initial Statement of Reasons, the purpose of this proposed change is to clarify that where more than one public agency meets the criteria in subdivision (b) of section 15051 of the Guidelines, that agencies may agree pursuant to subdivision (d) of section 15051 of the Guidelines to designate one entity as lead. The comment did not indicate any harm that may come from allowing agencies to agree which will be lead. Further, the existing Guidelines already allow agencies to designate a lead agency by agreement. Therefore, this change is necessary to maintain internal consistency within the Guidelines.

Comment 22.5

3. Appendix G - Environmental Checklist Form

Overall, the County feels that OPR has made some welcome improvements to the checklist by consolidating redundant criteria and clarifying unclear wording subject to interpretation. However, we recommend additional changes below to ensure consistency with guidance from the State Supreme Court under California Building Industry Association v. Bay Area Air Quality Management District and to prevent any ambiguity on significance criteria. We also propose further clarifications to OPR-proposed revisions and new language within the checklist, which introduces new interpretation challenges for Lead Agencies.

I. AESTHETICS

OPR has the following changes to item c):

c) Substantially degrade the existing visual character or quality of public views of the site and its surroundings? If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?

The County would note that mere conflict with zoning or other regulations governing scenic quality is not in and of itself an environmental impact, and we would recommend deleting the new second sentence. This recommendation is also inconsistent with the OPR-proposed change to criteria b) in XI. LAND USE, which replaces conflict with cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation.

Response 22.5

The Agency is not making any change in response to this comment. The purpose of this proposed change is to align the analysis with the court's decision in *Bowman v. City of Berkeley* (2006) 122 Cal.App.4th 572. While the court found that local laws do not preempt CEQA, the court also found that aesthetic issues "are ordinarily the province of local design review, not CEQA." As noted in the Initial Statement of Reasons, analysis of aesthetics is inherently subjective. Both the courts and the Legislature have limited the requirement to analyze aesthetics in urbanized areas. (See, e.g., Pub. Resources Code 21099 (limiting the analysis of aesthetics within "transit priority areas").) The Agency disagrees with the comment's interpretation of the proposed changes in Appendix G. Conflict with design guidelines or zoning requirements is not necessarily an environmental impact. As clarified elsewhere in the Guidelines, and as noted in the comment, a conflict with a plan is only relevant to the extent that an adverse environmental impact results from the conflict. Please also see Master Response 18 regarding Appendix G.

Comment 22.6

IX. HAZARDS AND HAZARDOUS MATERIALS

Because a new wildfire section of the checklist is proposed to be added, the following criteria seems redundant to us, and we recommend that the revised question g) below be deleted in its entirety:

h) g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

Response 22.6

The Agency is not making any change in response to this comment. Commenter requests the proposed revised question in Appendix G be deleted in its entirety. However, SB 1241 (Kehoe, 2012) requires OPR to develop "amendments to the initial study checklist of the [CEQA Guidelines] for the inclusion of questions related to fire hazard impacts for projects located on lands classified as state responsibility areas, as defined in section 4102, and on lands classified as very high fire hazard severity zones, as defined in subdivision (i) of section 51177 of the Government Code." (Pub. Resources Code, § 21083.01.) Also, please note, Appendix G is a sample form only. Lead agencies are free to customize the form consistent with CEQA. Please also see Master Response 18 regarding Appendix G.

Comment 22.7

X. HYDROLOGY AND WATER QUALITY

OPR has proposed the following changes to criteria b):

b) Substantially deplete decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin (e.g., the

production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?

Although the addition of sustainable groundwater management of the basin is a worthy addition, we would note that deleting the language within parenthesis above causes the County some concerns. The County unincorporated areas are rural and any effects of a proposed project on nearby wells that are used as a water source should be evaluated as a part of the environmental review, when relevant, and we recommend this example be retained.

Response 22.7

The Agency is not making any change in response to this comment. The purpose of deleting the example given for lowering the groundwater table because there are many other potential impacts that could result from lowering groundwater levels including subsidence, altering surface stream hydrology, causing migration of contaminants, etc. Additionally, Appendix G is a suggested form. Lead agencies should normally address the questions from the Appendix G checklist that are relevant to a project's environmental effects. However, substantial evidence of potential impacts that are not listed on the form must also be considered. Finally, the changes allow for consideration of a broader set of issues related to groundwater use. Please also see Master Response 18 regarding Appendix G.

Comment 22.8

XI. LAND USE AND PLANNING

OPR has proposed the following changes to criteria b):

b) Conflict Cause a significant environmental impact due to a conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

We consider that the deletion of applicable and of an agency with jurisdiction over the project

(including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) would leave this requirement unnecessarily open ended.

Although the County is in favor of evaluating conflicts with policies only from the standpoint of whether it would cause an environmental impact, we would note that this significance criteria is redundant in light of the fact that environmental impacts are already being evaluated in the specific topic areas against applicable regulatory settings. Therefore, it begs the question why there needs to be a separate land use impact? Moreover, policies and regulations are not necessarily related to land use, so this criterion does not fall clearly into a section on land use.

It should also be noted that while §15125(d) requires that an EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans, the Appendix G environmental checklist is also used for Initial Studies that lead to a negative declaration or mitigation negative determination. So, this requirement is not universal to all CEQA documents that might rely on the checklist.

Due to the above reasons, we would recommend either deleting this question in its entirety or revising the criteria as follows:

b) Conflict Cause a significant environmental impact due to a conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

Response 22.8

The Agency is not making any change in response to this comment. The purpose of the proposed change is to clarify that the focus of the analysis should not be on the conflict with the land use plan but instead on any adverse environmental impact that might result from the conflict. While Appendix G is a suggested form – this sample question is not redundant in that it a lead agency may not ignore regional needs and the cumulative impacts of a proposed project. (See e.g., *Marin Mun. Water Dist. V. Kg Land Cal. Corp* (1991) 235 Cal.App.3d 1652, 1668. As stated in the foregoing, Appendix G is a suggested form. Lead agencies should normally address the questions from the Appendix G checklist that are relevant to a project's environmental effects. However, substantial evidence of potential impacts that are not listed on the form must also be considered. Please also see Master Response 18 regarding Appendix G.

Comment 22.9

XIV. POPULATION AND HOUSING.

Regarding the addition of the word unplanned to population growth in criteria b), the County finds this term to be vague and suggests further elaboration from OPR to avoid confusion. For example, if the project is consistent with a jurisdiction's general plan, land use element, or housing element, would it be considered "unplanned"?

Response 22.9

The Agency is not making any change in response to this comment. The proposed change to Population and Growth is to clarify that the question should focus on unplanned growth. Growth that is planned, and the environmental effects of which have been analyzed in connection with a land use plan or a regional plan, should not by itself be considered an impact. Appendix G is a suggested form. Lead agencies should normally address the questions from the Appendix G checklist that are relevant to a project's environmental effects. However, substantial evidence of potential impacts that are not listed on the form must also be considered. Please also see Master Response 18 regarding Appendix G.

Comment 22.10

The County of Santa Clara has long evaluated projects in relation to whether they are in a wildland-urban interface, an evaluation this new section builds upon. However, the County feels that criteria b) is problematic as currently written:

b) Due, to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?

First, the County notes that the phrase "and thereby expose project occupants to" is in conflict with guidance from the State Supreme Court under California Building Industry Association v. Bay Area Air Quality Management District in that it refers to an impact on the project rather than the project's impact on the environment. Second, without additional guidance from State agencies, such as Cal Fire, Lead Agencies will find it difficult to implement a highly technical evaluation of fire risk based on such factors as slope and prevailing winds.

Response 22.10

The Agency is not making any change in response to this comment. The comment suggests that the question in Appendix G conflicts with the holding in the State Supreme Court's decision in *CBIA v. BAAQMD*. The Agency disagrees. The question asks about those risks to project occupants that the project exacerbates. The court confirmed that such impacts are a proper subject of review under CEQA. "When a proposed project risks exacerbating those environmental hazards or conditions that already exist an agency must analyze the potential impact of such hazards on future residents or users." (*CBIA v. BAAQMD* (2015) 62 Cal.4th 369, 377.) Please also see Master Response 12 regarding wildfire.

Comment 22.11

4. §15064.3

OPR has proposed text under 15064.3(b)(l), which is referenced in the XVII. Transportation section of the Appendix G checklist, that provides criteria for evaluating transportation impacts for land use projects, as follows:

Land Use Projects, Vehicle miles traveled exceeding an application 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 chicle miles traveled in the project area compared to existing conditions should be considered to have a less than significant transportation impact.

The County agrees that 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. In addition, the County also appreciates that when compared to earlier versions of the proposed guidelines, this text provides more flexibility for lead agencies to determine VMT thresholds.

This flexibility is especially important given the wide variety of land use contexts that exist throughout the state, from transit-rich urban areas to rural areas where local land use policies allow some local-serving or resource-based development to occur but where VMT reduction opportunities are limited. Given most of unincorporated County is rural in nature, while still being a part of a larger urban region, we welcome the flexibility.

Response 22.11

The Agency is not making any change in response to this comment. The Agency notes the commenter's support for the proposed language.

Comment 23 – Sonoma County

Comment 23.1

Attached are comments from Sonoma County staff.

Response 23.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it requests Agency to consider this set of comments.

Comment 23.2

Sonoma County staff appreciates the opportunity to comment on the proposed modifications to the CEQA Guidelines. Many of the proposed amendments already represent CEQA best practices. However, some of the "vehicle miles travelled" amendments are unclear, and in part because of their urban focus, could result in unintended consequences. An underlying purpose of SB 743 was to prevent CEQA from becoming an obstacle to environmental objectives. With that purpose in mind, Sonoma County staff offers the following comments and suggestions:

Response 23.2

The Agency is not making any change in response to this comment. Where commenter provides specific comments, the Agency responds more fully below.

Comment 23.3

Comments on proposed new Guideline 15064.3

1. The reasoning the Natural Resources Agency has stated for utilizing "vehicle miles travelled" (VMT) as a metric for transportation impacts is that VMT is associated with other impacts, most importantly air quality impacts, including greenhouse gases. While this is indisputable, using VMT as a metric for other impacts without qualification that it is a proxy could lead to duplicative analysis or the double counting of impacts. If there is a failure to recognize that decarbonizing automobile transportation mitigates the "impact" of "vehicle miles travelled," this will make it more complex to decarbonize the automobile transportation sector. Sonoma County staff therefore believes that the term "automobile travel" should be replaced with "fossil-fueled automobile travel" in proposed section 15064.3.

Response 23.3

The Agency is not making any change in response to this comment. The section is intended to clarify that the primary consideration, in an environmental analysis, is the amount and distance that a project might cause people to drive. This captures two measures of transportation impacts: auto trips and vehicle miles traveled. These factors were identified by the legislature in SB 743. Electric vehicles can reduce project impacts, and that mitigation will likely be addressed in the analysis of a project's greenhouse gas emissions and energy impacts. While greenhouse gas emissions are one potential transportation-related impact, Senate Bill 743 required the Guidelines to include a measure of transportation impacts that accounts for not just greenhouse gas emissions, but also that promotes multimodal transportation and a diversity of land uses. Further, SB 743 suggested that vehicle miles traveled should be that measure. The comment's suggested change would not further the legislation's intent, and so is rejected.

Comment 23.4

2. Sonoma County staff greatly appreciates and supports the inclusion of the language regarding methodological discretion in proposed section 15064.3(d) but would request that the first sentence be clarified to accurately reflect the breadth of that discretion: "A lead agency has discretion to choose the most appropriate methodology to evaluate significance, and in doing so, to choose the appropriate methodology to evaluate a project's vehicle miles travelled."

Response 23.4

The Agency is not making any change in response to this comment. Commenter cites to a proposed Guideline subdivision that is not included in proposed section 15064.3. The Agency believes the comment refers to subdivision (b)(4). The commenter's suggested change does not, however, add clarity to the proposed subdivision. The suggested change would appear to give agencies discretion to not evaluate a project's vehicle miles traveled. SB 743 directed the Agency to identify criteria to evaluate the transportation impacts of projects. Section 15064.3 identifies vehicle miles traveled as the primary measure of impacts, consistent with the suggestion in Public Resources Code Section 21099. Section 15064.3(b)(4) recognizes the discretion that lead agencies typically have in choosing the methodology to evaluate an impact.

Comment 23.5

The proposed language of section 15064.3(a) states, "For the purposes of this section,

'vehicle miles travelled' refers to the amount and distance of automobile travel attributable to a project." Different "attribution" methodologies can be equally accurate but fundamentally different, and in some cases in a diametrically opposed manner; for example, production methodologies fundamentally differ from consumption methodologies in "attributing" VMT. If the Natural Resources Agency uses the term "attributable" in this context, then the Natural Resources Agency should add a definition of that term that recognizes that there are multiple approaches towards attribution. In addition, the Office of Planning and Research's "technical" observation that while different metrics can be used, incompatible metrics should not be used in making comparisons should be included in the amendments.

Response 23.5

The Agency is not making any change in response to this comment. As explained above, because subdivision (b)(4) recognizes a lead agency's methodology in analyzing vehicle miles traveled, it is not necessary to add a definition of "attributable" in the Guideline. The comment's observation regarding OPR's technical advisory is not clear; however, to the extent the comment is concerned that a lead agency's choice of methodology might obscure a full impact analysis, the Agency notes that existing Guidelines Section 15151 states the standard of adequacy for any analysis. It provides that the standard is not perfect; rather, courts look at "adequacy, completeness, and a good faith effort at full disclosure."

Comment 23.6

Sonoma County staff also suggests that the "purpose" language in the guideline be revised to clearly acknowledge that projects—more than just "land use" projects, as stated in section 15064.3(b)(1)—can both increase and decrease VMT. With these concerns in mind, we suggest that the proposed language be revised to state: "For the purposes of this section, 'vehicle miles travelled' refers to the amount and

distance of fossil-fueled automobile travel, and the change in that amount that results from the project."

Response 23.6

The Agency is not making any change in response to this comment. The purpose language is located in section 15064.3 (a) and does not focus on land use impacts. Section 15064.3, subd. (b) discusses the criteria for analyzing transportation impacts. Subdivision (b) further identifies that both land use and transportation projects may have VMT impacts and that a reduction in vehicle miles traveled is a basis to find that impacts are less than significant. The remainder of the comment's suggested revisions are rejected for the reasons described in Response to Comment 23.4.

Comment 23.7

3. The shift from local and regional congestion to "vehicle miles travelled" raises issues of geographic scope that the Natural Resources Agency should not ignore. The proposed section 15064.3(b)(1) uses the term "in the project area" without explanation solely in the "land use" context. The methodological provisions do not discuss geography even though geography is a core methodological issue.

Response 23.7

The Agency is not making any change in response to this comment. The comment does not make any specific suggestions. The Agency further notes that the Guidelines do not define the geographic scope for any other type of analysis. Additionally, the Agency notes that the phrase "in the project area" in subdivision (b)(1) is consistent with the definition of "environment" which refers to "conditions which exist within the area which will be affected by a proposed project[.]" Therefore, no changes are necessary.

Additionally, OPR's Technical Advisory provides advisory guidance on geographic extent of analysis (p. 4., Considerations for All Projects).

Comment 23.8

The trips that travel through an agency's jurisdiction may be national or international. All CEQA projects have at least some connection to "vehicle miles" in interstate commerce. However, just because national and international miles could theoretically be tracked in some manner, with methods that could conceivably be developed in the future, that does not mean that doing so would be meaningfully related to the scope of an agency's authority to impact VMT. State agencies have limited authority. Local agencies have even more geographically limited authority, and that authority allows neither extraterritorial regulation nor local discrimination against extraterritorial commerce. (E.g., City of Los Angeles v. Shell Oil Co. (1971) 4 Cal.3d 108, 119.) CEQA does not require analysis that is a "meaningless exercise" and the Guidelines should recognize this principal in this context. (San Diego Navy Broadway Complex Coal. v. City of San Diego (2010) 185 Cal.App.4th 924, 940.) Sonoma County staff requests additional language clarifying that all VMT analysis and all associated models have boundaries, and that the necessity of setting boundaries calls for reasonable line drawing. Section 15064.3(b)(4) should explicitly include language like the following: "While extraterritorial analysis may be required to evaluate transportation impacts, the boundaries utilized in estimating vehicle miles travelled should be reasonably related to the scope of an agency's authority and reasonable judgments about the agency's meaningful ability to influence transportation impacts. The relationship between the agency's jurisdiction and the geographic scope of analysis calls for reasonable line drawing by the agency based

on substantial evidence." Failing to constrain analysis of "vehicle miles travelled" to that which is reasonable, meaningful, and informative relative to the scope of agency authority will only incentivize the much broader enactment of ministerial standards, which does not appear to be the Natural Resources Agency's intent.

Response 23.8

The Agency is not making any change in response to this comment. The comment appears to express concern that the geographic scope of an analysis of vehicle miles traveled may extend beyond an agency's ability to regulate the impact. CEQA requires analysis of a project's impacts, regardless of whether the impacts are within the agency's jurisdiction. The Agency appreciates the comment's concern regarding reasonableness, and notes that subdivision (b)(4) expressly references the standard of adequacy in Section 15151. That section calls not for perfection, but a good faith effort at full disclosure. That standard, together with subdivision (b)(4)'s express acknowledgment of lead agency discretion and professional judgment is sufficient to address the concern raised in the comment.

Comment 23.9

Finally, and relatedly, the proposal uses the term "vehicle miles travelled" but does not explain how freight fits into that proposal, including in the Office of Planning and Research's "technical" documents. This is a tremendously significant gap. If the Natural Resources Agency adopts these guidelines, Sonoma County staff requests robust guidance in the Guidelines and Final Statement of Reasons with respect to freight. The Natural Resources Agency should clarify what it means by the terms "vehicle" and "automobile," and again, Sonoma County staff requests that these clarifications in the proposed amendments take into account the scope of agency authority.

Response 23.9

The Agency is not making any change in response to this comment. Proposed Section 15064.3, subdivision (a), states, "For the purposes of this section, 'vehicle miles traveled' refers to the amount and distance of automobile travel attributable to a project." The Agency disagrees that the words "automobile" and "vehicle" require further definition in the Guidelines. Impacts related to automobiles and freight are analyzed as appropriate throughout a CEQA analysis. How precisely one defines any given vehicle for analysis is primarily a methodological question, and subdivision (b)(4) defers to the professional judgment of the agency. Notably, the guideline uses the terms automobile and vehicle both because those terms are commonly understood and they are used in the statute. (Pub. Resources Code § 21099(b)(1) ("In developing the criteria, the office shall recommend potential metrics to measure transportation impacts that may include, but are not limited to, vehicle miles traveled, vehicle miles traveled per capita, automobile trip generation rates, or automobile trips generated").) Also note, elsewhere in a related provision of CEQA, the statute refers to "cars and light duty trucks." Finally, for additional consideration, OPR's Technical Advisory includes additional advisory discussion of accounting for freight.

Comment 23.10

4. The proposed addition to section 15125(a)(3) correctly states that "hypothetical conditions" that "might be allowed" cannot be the baseline. The term "might be allowed" is misleading, however, since there is no legal difference between cases where the conditions "might be" allowed and where they "are" allowed if the conditions are hypothetical. We also note that the amendment addresses only one fact pattern in which hypothetical conditions are improperly utilized as the baseline. We suggest a

minor amendment to track case law: "A lead agency may not rely on hypothetical conditions, such as those that could or should have existed but have not occurred, under existing permits or plans, as the baseline." (Center for Biological Diversity v. Dept. of Fish & Wildlife (2015) 234 Cal.App.4th 214, 249; Communities for a Better Environment v. South Coast Air Quality Management District, (2010) 48 Cal.4th 310, 321; Citizens for East Shore Parks v. State Lands Commission (2011) 202 Cal.App.4th 549, 561; CREED-21 v. City of San Diego (2015) 234 Cal.App.4th 488, 507.)

Response 23.10

The Agency has made a change in the section addressed in this comment. The new language states:

"An existing conditions baseline shall not include ~~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."

The change makes the language in this subdivision consistent with the remainder of the section. Agencies do not "rely" on a baseline; rather, this subdivision is about what conditions may be included in the description of "existing conditions." The Agency declines to make the specific change requested in the comment because the agency disagrees that "might be" is misleading. The sentence refers to permits and plans. Plans often provide for conditional uses. Therefore, "might be" is a more inclusive phrase that covers uses that are allowed in a permit or might be allowed as a conditional use in a plan.

Comment 23.11

Section 15125 addresses the baseline for normal CEQA impacts, but it uses terms like "local and regional," and "the vicinity of the project," and it has never been updated to address the incremental impact of global greenhouse gas emissions. Sonoma County staff requests that this omission be remedied in this update in order to avoid technical controversies about CEQA terminology that distract from environmentally meaningful analysis.

Response 23.11

The Agency is not making any change in response to this comment. This comment is outside the scope of the current rulemaking. Please also note, the Agency has updated Section 15064.4 which contains guidance specific to the analysis of greenhouse gas emissions. The Agency declines to make further changes at this time.

Comment 23.12

6. The proposed amendment to section 15064(b)(2) is unnecessary and unclear, and it will lead to pointless arguments about the location of the explanation of significance thresholds as well as arguments about what type of explanation or analysis is required. First, significance thresholds may not involve issues of "compliance." Second, significance thresholds require reasonable line drawing, and that line drawing is not typically included within an EIR for reasons of practicality. Suggesting that every EIR needs to explain every significance threshold it uses, which amounts to requiring an explanation of agency explanations, is unreasonable. The proposed language should be omitted or, alternatively, amended to make it clear that analysis of significance thresholds within an EIR is not required. However, if it is the Natural Resources Agency's intent to require explanatory discussion of thresholds specifically within the body of an EIR, then the amendment should be clarified and also provide that this discussion may be incorporated by reference.

Response 23.12

The Agency has made a change partially in response to this comment. The additions in subdivision (b)(2) are drawn from caselaw discussing the use of thresholds of significance. Also, the Agency disagrees that briefly explaining use of a threshold is burdensome or confusing. Both existing sections 15063 (initial study) and 15128 (effects found to not be significant) require at least a brief explanation of the reasons a lead agency reached a conclusion regarding significance. The Agency has, however, deleted the proposed addition that would require a description of the substantial evidence that supports the conclusion. While such evidence must exist in an agency's administrative record, it can be incorporated by reference in an agency's environmental document. No further change is necessary.

Comment 23.13

Sonoma County staff thank the Natural Resources Agency for its efforts and for its consideration of these comments. In the past, the Legislature has responded to public controversy regarding efforts to reduce VMT by dramatically constraining agency authority. While SB 743 provides a new and valuable opportunity to the Natural Resources Agency to encourage the reduction of VMT, given the importance of reducing greenhouse gases, the Natural Resources Agency would be wise to be mindful of past experience so that its actions endure longer than the trip reduction efforts that gave way to the prohibitions in Health and Safety Code sections 40454 and 40717.9. Ensuring that CEQA's process is workable is part of your agency's fiduciary responsibility in implementing the statute. Even if our suggestions are not adopted, explanations in the Final Statement of Reasons will provide valuable assistance to agencies and stakeholders.

Response 23.13

The Agency is not making any change in response to this comment. The Agency appreciates the concern regarding durability, and notes that the Legislature mandated the changes involving vehicle miles traveled. Both OPR and the Agency worked extensively with stakeholders and those that will implement these changes for nearly five years to ensure that the changes are workable. OPR and the Agency maintain open lines of communication with local governments, and the Agency expects that issues encountered in implementation will inform future updates to the Guidelines. As to the comments raised in the body of the letter, the Agency is providing responses to comments in the Final Statement of Reasons. See specific responses to comments above.

Comment 24 - Stanislaus County, Environmental Review Committee

Comment 24.1

Thank you for the opportunity to review the above-referenced project.

The Stanislaus County Environmental Review Committee·(ERC) has reviewed the subject project and has no comments at this time.

The ERC appreciates the opportunity to comment on this project.

Response 24.1

The Agency is not making any change in response to this comment. The Agency thanks the Commenter for the comment that the County has reviewed the proposed rulemaking and has no further comment.

Comment 25 - East Bay Regional Park District

Comment 25.1

Please accept the attached comments on the proposed amendments to the State CEQA Guidelines. Please feel free to contact me with any questions.

Response 25.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 25.2

The East Bay Regional Park District ("District") appreciates the opportunity to provide comments on the proposed amendments and additions to the State California Environmental Quality Act (CEQA) Guidelines. The District is a special district charged with protecting open space and providing public access throughout Alameda and Contra Costa County. The District currently manages over 121,000 acres of open space in 73 regional parks and over 200 miles of regional trails.

Response 25.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 25.3

The District supports the goals of the amendments and additions to the State CEQA Guidelines, particularly as it relates to analysis of transportation impacts, to support development that is accessible to transit. However, the District remains concerned that the lack of guidance and specificity in the guidelines regarding analysis of park and open space improvements exposes the agency and similar agencies to potential challenges arising from analysis of transportation impacts.

Response 25.3

The Agency is not making any change in response to this comment.

The comment expresses concern about the lack of guidance that is specific to park and open space projects. Section 15064.3 sets forth general considerations for determining the transportation impacts of projects. Because the Guidelines apply to all projects proposed by all lead agencies in the state, they must necessarily be general in nature and cannot go into precise detail for particular project types.

Comment 25.4

Currently, the Institute for Transportation Engineers does not publish trip generation rates for park projects. This, coupled with the lack of published guidance from the Office of Planning and Research (OPR), leaves projects intended to protect the environment, provide for healthful outdoor recreation, and manage demand for public access to regional parklands at risk.

Response 25.4

The Agency is not making any change in response to this comment. Agencies considering park and open space projects need not rely on trip generation rates published by the Institute of Transportation Engineers. Consistent with CEQA's general rules, Section 15064.3(b)(4) recognizes that lead agencies have discretion in their choice of models and methodologies. Additionally, note that subdivision (b)(3) allows lead agencies to perform a qualitative analysis where models are not available for quantitatively evaluate a project's vehicle miles traveled. Thus, the Agency finds the guideline contains sufficient flexibility to account for a wide range of project types. Also, the reference to the standard of adequacy in subdivision (b)(4) should signal that perfection in the analysis is not required. Rather, a lead agency need only make a good faith effort at full disclosure.

Comment 25.5

We recognize the requirement for analysis of transportation impacts using Vehicle Miles Traveled (VMT) methodology is optional until January of 2020. The District would welcome the opportunity to work with the OPR and similar agencies to develop guidance necessary to ensure such projects can adequately evaluate transportation impacts without undue burden and exposure to legal challenge arising from ambiguity.

Response 25.5

The Agency is not making any change in response to this comment. The Agency acknowledges commenter's willingness to work with OPR in the future.

Comment 25.6

Thank you for the opportunity to provide comments.

Response 25.6

The Agency is not making any change in response to this comment The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 26 - Yuba County Water Agency, *et al*.

Comment 26.1

Please see the attached.

Response 26.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 26.2

The signatories to this letter are water agencies, or representatives of water agencies, who have identified an important ambiguity in the California Environmental Quality Act (CEQA) and the existing Guidelines concerning the filing of notices of exemption and determination (NOEs and NODs,

respectively) for water projects. This ambiguity can be resolved through limited amendments to the Guidelines. We propose that the Guidelines be amended as proposed in this letter's enclosure to address the issues discussed below and provide clearer guidance to water agencies and the public that is interested in their projects.

Response 26.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 26.3

Under CEQA and the current Guidelines, local agencies must file their NOEs and NODs for projects for which they are the lead agencies "with the county clerk of each county in which the project will be located." (Public Resources Code § 21152, subds. (a)-(b); Guidelines §§ 15062, subd. (c)(2); 15094, subd. (d).) Determining in what counties to file NOEs and NODs should be a relatively simple matter for land use projects, which usually will be physically located in one county or, in limited cases, two counties.

This determination, however, is a much different matter for some water projects. Water projects can affect streamflows in many counties. Water transfers encouraged by state law theoretically could affect not only streamflows in rivers located between the point where an action makes water available for transfer and the downstream point where the transferred water is diverted, but also end uses in counties that are physically distant from both the source of the water and the point at which the water is diverted from a stream. (See Water Code §§ 109, 475 (state policies favoring water transfers.) Moreover, given that the Central Valley Project and the State Water Project are an integrated system, water transfers theoretically can result in different reservoir-storage levels in counties that do not include the points at which transfer water is released, the points at which it is diverted downstream or the points at which it is applied to end use. All of those factors are further complicated by the fact that streams often define counties' boundaries. All of these circumstances, in combination with CEQA's requirements about where NOEs and NODs must be filed, cause significant uncertainty about the counties in which those notices must be filed.

This uncertainty is exacerbated by several elements of CEQA and its interpretation by the courts. First, CEQA requires that NODs must be filed within five working days after the lead agency's approval of the project becomes final. (Public Resources Code § 21152, subd. (a).) This requirement means that, where an NOD for a water project must be filed in several counties, all of those filings must occur in a very short period of time. Second, under CEQA, multiple statute of limitations may begin as of "the date of the filing" of the NOD or NOE. (Public Resources Code § 21167, subds. (b)-(d).) Because it is uncertain in exactly what counties NOEs and NODs must be filed for many water project, it may result in arguments regarding exactly which filing in which county triggers the statute of limitations. Third, at least in relation to NOEs, the courts have held that CEQA's notice and posting procedures must be strictly followed or the benefit of CEQA's 35-day statute of limitations that is based on a NOE may be lost and the default 180-day statute of limitations may apply. (*Latinos Unidos de Napa v. County of Napa* (2011) 196 Cal.App.4th 1154.)

The attached proposed amendments would clarify these ambiguities. The attached proposed amendments would specify that, for purposes of filing NOEs and NODs, for water projects would be located in the counties where: (1) the lead agency's headquarters is located; and (2) the lead agency has

a point of diversion or rediversion that will be utilized by the project. The latter part of this definition is based on Water Code section 1312. Under that statute, the notice of a water-right application to the State Water Resources Control Board must be published in newspapers of general circulation "within the county wherein the point of diversion lies, or, if there are points of diversion in more than one county, in each county in which a point of diversion lies." Applying this standard in the CEQA Guidelines would allow water agencies and the public to understand clearly in what counties NOEs and NODs must be published, while providing notice in the counties that the Legislature already has indicated are appropriate for similar notices for water projects.

Response 26.3

The Agency is not making any change in response to this comment. The proposed changes in the sections regarding Notices of Determination and Notices of Exemption relate to identifying the applicant, and are being proposed for consistency with the statute. Thus, the comments are outside the scope of the current rulemaking. The Agency also declines to make the proposed changes because the term “project location” does not require further elaboration. Other portions of the Guidelines require identification of the project location as part of the project’s description in environmental documents, for example. The Notice of Completion Form also asks for identification of the project location. The Agency recognizes the logistical challenge that posting notices in many different counties may pose. However, that is a result of the language of the statute, and so is a matter that the legislature is better equipped to address.

Comment 26.4

We appreciate your attention to this matter. If you have any questions, please do not hesitate to contact Ryan Bezerra at Bartkiewicz, Kronick & Shanahan.

Response 26.4

The Agency is not making any change in response to this comment The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 26.5

a) When a public agency decides that a project is exempt from CEQA pursuant to Section 15061, and the public agency approves or determines to carry out the project, the agency may file a Notice of Exemption. The notice shall be filed, if at all, after approval of the project. Such a notice shall include:
(1) A brief description of the project,
(2) The location of the project (either by street address and cross street for a project in an urbanized area or by attaching a specific map, preferably a copy of a U.S.G.S. 15' or 7-1/2' topographical map identified by quadrangle name).
(3) A finding that the project is exempt from CEQA, including a citation to the State Guidelines section or statute under which it is found to be exempt,
(4) A brief statement of reasons to support the finding, and
(5) The applicant’s name, if any.
(b) A Notice of Exemption may be filled out and may accompany the project application through the approval process. The notice shall not be filed with the county clerk or the OPR

until the project has been approved.
(c) When a public agency approves an applicant's project, either the agency or the applicant may file a Notice of Exemption.
(1) When a state agency files this notice, the notice of exemption shall be filed with the Office of Planning and Research. A form for this notice is provided in Appendix E. A list of all Association of Environmental Professionals 2018 CEQA Guidelines 136 such notices shall be posted on a weekly basis at the Office of Planning and Research, 1400 Tenth Street, Sacramento, California. The list shall remain posted for at least 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.
(2)(A) When a local agency files this notice, the notice of exemption shall be filed with the county clerk of each county in which the project will be located. Copies of all such notices shall be available for public inspection and such notices shall be posted within 24 hours of receipt in the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than 12 months.
(B) For purposes of filing a notice of exemption, a local agency's water project is located in the county where the lead agency's headquarters is located and in each county where a local agency has a point of diversion or re diversion that will be used in implementing the project.
{00055868.3}
(3) All public agencies are encouraged to make postings pursuant to this section available in electronic format on the Internet. Such electronic postings are in addition to the procedures required by these guidelines and the Public Resources Code.
(4) When an applicant files this notice, special rules apply.
(A) The notice filed by an applicant is filed in the same place as if it were filed by the agency granting the permit. If the permit was granted by a state agency, the notice is filed with the Office of Planning and Research. If the permit was granted by a local agency, the notice is filed with the county clerk of the county or counties in which the project will be located.
(B) The Notice of Exemption filed by an applicant shall contain the information required in subdivision (a) together with a certified document issued by the public agency stating that the agency has found the project to be exempt. The certified document may be a certified copy of an existing document or record of the public agency.
(C) A notice filed by an applicant is subject to the same posting and time requirements as a notice filed by a public agency.
(d) The filing of a Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180 day statute of limitations will apply.
(e) When a local agency determines that a project is not subject to CEQA under sections 15193, 15194, or 15195, and it approves or determines to carry out that project, the local agency or person seeking project approval shall file a notice with OPR identifying the section under which the exemption is claimed.

Response 26.5

Please see Response to comment 26.3.

Comment 26.6

§ 15075. Notice of Determination on a Project for Which a Proposed Negative or Mitigated Negative Declaration Has Been Approved.
(a) The lead agency shall file a notice of determination within five working days after deciding to carry out or approve the project. For projects with more than one phase, the lead agency shall file a notice of determination for each phase requiring a discretionary approval.
(b) The notice of determination shall include:
(1) An identification of the project including the project title as identified on the proposed negative declaration, its location, and the State Clearinghouse identification number for the proposed negative declaration if the notice of determination is filed with the State Clearinghouse.
(2) A brief description of the project.
(3) The agency's name, the applicant's name, if any, and the date on which the agency approved the project.
(4) The determination of the agency that the project will not have a significant effect on the environment.
(5) A statement that a negative declaration or a mitigated negative declaration was adopted pursuant to the provisions of CEQA.
(6) A statement indicating whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted.
(7) The address where a copy of the negative declaration or mitigated negative declaration may be examined.
(c) If the lead agency is a state agency, the lead agency shall file the notice of determination with the Office of Planning and Research within five working days after approval of the project by the lead agency.
(d)(1) If the lead agency is a local agency, the local agency shall file the notice of determination with the county clerk of the county or counties in which the project will be located within five working days after approval of the project by the lead agency. If the project requires discretionary approval from any state agency, the local lead agency shall also, within five working days of this approval, file a copy of the notice of determination with the Office of Planning and Research.
(2) For purposes of filing a notice of determination, a local agency's water project is located in the county where the lead agency's headquarters is located and in each county where a local agency has a point of diversion or rediversion that will be used in implementing the project.
(e) A notice of determination filed with the county clerk shall be available for public inspection and shall be posted by the county clerk within 24 hours of receipt for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period during which it was posted. The local lead agency shall retain the notice for not less than 12 months.
(f) A notice of determination filed with the Office of Planning and Research shall be available for public inspection and shall be posted for a period of at least 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.
(g) The filing of the notice of determination pursuant to subdivision (c) above for state agencies and the filing and posting of the notice of determination pursuant to subdivisions (d) and (e) above for local agencies, start a 30-day statute of limitations on court challenges

to the approval under CEQA.
(h) A sample Notice of Determination (Rev. 2011) is provided in Appendix D. Each public agency may devise its own form, but the minimum content requirements of subdivision (b) above shall be met.
Public agencies are encouraged to make copies of all notices filed pursuant to this section available in electronic format on the Internet. Such electronic notices are in addition to the posting requirements of these guidelines and the Public Resources Code.

Response 26.6

Please see Response to comment 26.3.

Comment 26.7

(a) The lead agency shall file a Notice of Determination (Rev. 2011) within five working days after deciding to carry out or approve the project.
(b) The notice of determination shall include:
(1) An identification of the project including the project title as identified on the draft EIR, and the location of the project (either by street address and cross street for a project in an urbanized area or by attaching a specific map, preferably a copy of a U.S.G.S. 15' or 7-1/2' topographical map identified by quadrangle name). If the notice of determination is filed with the State Clearinghouse, the State Clearinghouse identification number for the draft EIR shall be provided.
(2) A brief description of the project.
(3) The lead agency's name, the applicant's name, if any, and the date on which the agency approved the project. If a responsible agency files the notice of determination pursuant to Section 15096(i), the responsible agency's name, the applicant's name, if any, and date of approval shall also be identified.
(4) The determination of the agency whether the project in its approved form will have a significant effect on the environment.
(5) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.
(6) Whether mitigation measures were made a condition of the approval of the project, and whether a mitigation monitoring plan/program was adopted.
(7) Whether findings were made pursuant to Section 15091.
(8) Whether a statement of overriding considerations was adopted for the project.
(9) The address where a copy of the final EIR and the record of project approval may be examined.
(c) If the lead agency is a state agency, the lead agency shall file the notice of determination with the Office of Planning and Research within five working days after approval of the project by the lead agency.
(d)(1) If the lead agency is a local agency, the local lead agency shall file the notice of determination with the county clerk of the county or counties in which the project will be located, within five working days after approval of the project by the lead agency. If the project requires discretionary approval from any state agency, the local lead agency shall also, within five working days of this approval, file a copy of the notice of determination with the Office of Planning and Research.
(2) For purposes of filing a notice of determination, a local agency's water project is located in the county where the lead agency's headquarters is located and in each county where a

local agency has a point of diversion or re diversion that will be used in implementing the project.
(e) A notice of determination filed with the county clerk shall be available for public inspection and shall be posted within 24 hours of receipt for a period of at least 30 days. Thereafter, the clerk shall return the notice to the local lead agency with a notation of the period during which it was posted. The local lead agency shall retain the notice for not less than 12 months.
(f) A notice of determination filed with the Office of Planning and Research shall be available for public inspection and shall be posted for a period of at least 30 days. The Office of Planning and Research shall retain each notice for not less than 12 months.
(g) The filing of the notice of determination pursuant to subdivision (c) above for state agencies and the filing and posting of the notice of determination pursuant to subdivisions (d) and (e) above for local agencies, start a 30-day statute of limitations on court challenges to the approval under CEQA.
(h) A sample notice of determination is provided in Appendix D. Each public agency may devise its own form, but any such form shall include, at a minimum, the information required by subdivision (b). Public agencies are encouraged to make copies of all notices filed pursuant to this section available in electronic format on the Internet. Such electronic notices are in addition to the posting requirements of the Guidelines and the Public Resources Code.

Response 26.7

Please see Response to comment 26.3.

Comment 26.8

For purposes of sections 15062, 15075 and 15094, a "water project" means an activity undertaken pursuant to Sections 1011, subdivision (b), 1011.5, subdivision (d), and 1211 of, Chapter 2 (commencing with Section 1250), Chapter 6.6 (commencing with Section 1435), Chapter 10 (commencing with Section 1700), and Chapter 10.5 (commencing with Section 1725) of Part 2 of Division 2 of, the Water Code.

Response 26.8

Please see Response to comment 26.3.

Comment 27 – Metropolitan Water District of Southern California

Comment 27.1

Please see the attached comment letter regarding proposed updates to the CEQA Guidelines on behalf of the Metropolitan Water District of Southern California.

Response 27.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 27.2

The Metropolitan Water District of Southern California (Metropolitan) reviewed the Final Proposed Updates to the CEQA Guidelines (the Proposed Update) prepared by the Governor's Office of Planning and Research (OPR), and is pleased to submit comments for consideration by OPR during the public comment period for the Proposed Update.

Response 27.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 27.3

Metropolitan is a public agency and regional water wholesaler. It is comprised of 26 member public agencies serving approximately 19 million people in portions of six counties in Southern California, including Los Angeles, Ventura, Orange, Riverside, San Bernardino, and San Diego Counties. Metropolitan's primary sources of imported water come from the California State Water Project (SWP) and from the Colorado River via the Colorado River Aqueduct (CRA). Metropolitan's mission is to provide its 5,200 square mile service area with adequate and reliable supplies of high-quality water to meet present and future needs in an environmentally and economically responsible way. Consistent with this mission, Metropolitan provides the following comments on the Proposed Update.

Response 27.3

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 27.4

Metropolitan Comment: Metropolitan recommends adding language (double underlined) to support the proposed addition by OPR.

Metropolitan Proposal

(c) When adopting or using thresholds of significance, a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts, provided the decision of the lead agency to adopt such thresholds is supported by substantial evidence.

Response 27.4

The Agency is not making any changes in response to this comment. Adding “or using” to the clause at the beginning of the sentence makes sufficiently clear that the whole sentence applies to both “adopting” and “using” a threshold. No additional changes are necessary.

Comment 27.5

Metropolitan Comment: Proposed new CEQA Guidelines section 15125(a)(2) provides: "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. " Several subsections of Section 15125 are revised to incorporate case law including the California Supreme Court's holdings in Communities for a Better Environment v. South Coast Air Quality Management District (2010) 48 Cal.4th 310, allowing use of representative past conditions as the baseline when conditions fluctuate over time, and Neighbors for Smart Rail v. Exposition Metro Line Construction Authority (2013) 57 Cal.4th 439, allowing use of a future baseline where an existing conditions baseline would be misleading. However, the revised language stating that the heightened evidentiary showing, that using an existing conditions baseline would be "misleading or without informative value", applies when the baseline is "either a historic conditions baseline or a projected future conditions baseline. " That is inconsistent with the recent case Association of Irritated Residents v. Kern County (2017) 17 Cal.App.5th 708, which holds that the heightened evidentiary standard applies only to a future conditions baseline, not to a historic conditions baseline. On January 31, 2018, the California Supreme Court issued an order denying a petition for review and requests for republication of Association of Irritated Residents, so the case remains binding precedent. Metropolitan Proposal Consistent with Association of Irritated Residents, the Natural Resources Agency should delete the phrase ''either a historic conditions baseline from Guidelines 15125(a)(2).

Response 27.5

The Agency has made a change in response to this comment. Section 15125(a)(2) has been changed as follows:

"A lead agency may use ~~either a historic conditions baseline or a~~ a projected future condition (beyond the date of project operations) ~~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."

Comment 27.6

3. Consideration and Discussion of Mitigation Measures proposed to Minimize Significant Effects § 15126.4(a)(l)(B)

Metropolitan Comment: Proposed section 15126.4 (a)(1)(B) provides that mitigation may be deferred when the lead agency: "(1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) lists the potential actions to be considered, analyzed, and potentially incorporated in the mitigation measure ... ". However, requiring both criteria (2) and (3) to be met in each case is inconsistent with case law which provides that either performance standards (Rialto Citizens for Responsible Growth v. City of Rialto (2012) 208 Cal.App.4th 899) or a menu of mitigation options (Defend the Bay v. City of Irvine (2004) 119 Cal. App.4th 1261) can separately suffice to justify deferred mitigation. That these are alternative options is also correctly stated in the Natural Resources Agency's Initial Statement of Reasons accompanying the release of the proposed CEQA Guidelines amendments. Page 42 of the Initial Statement of Reasons reads: "these changes clarify that when deferring the specifics of mitigation, the lead agency should either provide a list of possible mitigation measures, or adopt specific performance standards". The first option is summarized in Defend the Bay v. City of Irvine, supra. In that case, the court stated that deferral may be appropriate where the lead agency "lists the alternatives to be considered, analyzed and possibly incorporated into the mitigation plan." (Defend the Bay, supra, at p. 1275; see also Laurel Heights Improvement Association v. Regents of the University of California (1988) 47 Cal.3d 376; Rialto Citizens for Responsible Growth, supra, 208 Cal.App.4th 899; ...

) Alternatively, the lead agency may adopt performance standards in the environmental document, as described by the court in Rialto Citizens for Responsible Growth v. City of Rialto, supra. There, the court ruled that where mitigation measures incorporated specific performance criteria and were not so open-ended that they allowed potential impacts to remain significant, deferral was proper." Additionally, the language that the lead agency would reduce an impact to a performance standard doesn't make sense. It should refer to reducing the impact to the "resource," in accordance with the performance standards that would result in an impact of less than significant. Suggested text on this section is double underlined.

Metropolitan Proposal

Revise section 15126.4(a)(1)(B) to the following:

Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should shall not be deferred until some future time. The specific details of a mitigation measure, however, may be deferred when it is impractical or infeasible to include those details during the environmental review and the agency (1) commits itself to the mitigation and adopts specific performance standards the mitigation will achieve, or (2) lists the potential actions to be considered, analyzed. and potentially incorporated in the mitigation measure. Compliance with a regulatory permit process may be identified as a future action in the proper deferral of mitigation details if compliance is mandatory and would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact in accordance with specified performance standards.

Response 27.6

The Agency is making changes partially in response to this comment. In response to comments regarding mitigation measure deferral, please also see Master Response 15.

Section 15126.4(a)(1)(B) is changed to read:

"(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures ~~should~~ shall not be deferred until some future time. ~~However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.~~ The specific details of a mitigation measure, however, may be ~~deferred~~ developed after project approval when it is impractical or infeasible to include those details during the project's environmental review, ~~and~~ provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) ~~lists~~ identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will ~~to~~ be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as ~~a future action in the proper deferral of~~ mitigation ~~details~~ if compliance ~~is mandatory and~~ would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specific performance standards."

Comment 27.7

4. Clarifying Rules on Tiering§ 1S152(h)

Metropolitan Comment: Metropolitan appreciates the revision proposed by OPR for clarity's sake on streamlining later reviews and how tiering is just one method among many. To be more comprehensive, this section should also be cross-referenced with the existing section on streamlining and tiering with respect to GHG. The addition of "methods" in the revised text allows for inclusion of GHG analysis here and not just a listing of documents or projects. Additional text on the GHG tiering section is double underlined.

Metropolitan Proposal

(h) The rules in this section govern tiering generally. Several other methods to streamline the environmental review process exist, which are governed by the more specific rules of those provisions. Where other methods have more specific provisions, those provisions shall apply, rather than the provisions in this section. Where multiple methods may apply, lead agencies have discretion regarding which to use. These other methods include, but are not limited to, the following:

(1) General plan EIR (Section 15166).

(2) Staged EIR (Section 15167).

(3) Program EIR (Section 15168).

(4) Master EIR (Section 15175).

(5) Multiple-family residential development/residential and commercial or retail mixed-use development (Section 15179 .5).

(6) Redevelopment project (Section 15180).

(7) Projects consistent with community plan, general plan, or zoning (Section 15183).

(8) Infill projects (Section 15183.3).

(9) Tiering and streamlining the analysis of greenhouse gas emissions (Section 15183 .5}.

Response 27.7

The Agency is not making any change in response to this comment. The commenter has proposed adding the streamlining of greenhouse gas emissions analyses. But the intent of this section is to list the methods of tiering and is not focused on specific resource areas which is governed by a more specific rule of that provision – specifically section 15183.5 of the CEQA Guidelines.

Comment 27.8

Metropolitan Comment: The last subdivision of this new section requires the court to find that the project activities "complied with CEQA" in order to proceed during pending litigation. If read broadly, opponents could object to an agency proceeding with any portion of a project on the theory that the whole project does not comply with CEQA where a court has ordered the lead agency to decertify an EIR. Suggested text is double underlined.

Metropolitan Proposal

Revise proposed text in new section 15234(b)(3) to the following:

(b) complied with CEOA as to the severable portions of the project.

Response 27.8

The Agency is not making any change in response to this comment. The proposed subdivision (b) is not written in the disjunctive. Language regarding severability is contained within subdivision (1). Therefore, it is unnecessary to qualify the language again at subdivision (3).

Comment 27.9

6.Conservation Easements as Mitigation§ 15370(e)

Metropolitan Comment: The proposed revision is to permit the use of conservation easements for mitigation purposes. The text (background and explanation on page 154) indicates that offsite easements are allowed per recent court case cited, however; it is not explicit in the new language. Suggested text is double underlined.

Metropolitan Proposal

(e)Compensating for the impact by replacing or providing substitute resources or environments including through permanent protection of such resources in the form of conservation easements either onsite or offsite. depending on the circumstances, availability, and goals of the mitigation).

Response 27.9

The Agency is not making any change in response to this comment. The revisions proposed in the comment are not necessary. The Agency's proposed addition to the definition of mitigation is a non-exclusive example. The proposed addition does not alter a lead agency's duty to find, based on substantial evidence, that a particular mitigation measure reduces or eliminates the impact of a project. (Pub. Resources Code § 21081.) If a lead agency relies on an off-site easement, and finds, based on substantial evidence, that those off-site easement compensates "for the impact by replacing or providing substitute resources or environments," nothing in the Agency's proposal would prevent a lead agency from doing so.

Comment 27.10

7.Updating the Environmental Checklist-Proposed Amendments to Appendix G

OPR proposes to reorganize and revise Appendix G to eliminate redundancy, reframe or delete certain questions more properly dealt with in the planning process, and add certain questions it contends are required by existing law but are often overlooked. Metropolitan believes most of the proposed revisions appear to be of a common sense and non-controversial nature however, some clarification regarding the relevant information is requested.

Response 27.10

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it merely introduces the following comments.

Comment 27.11

Metropolitan Comment: Regarding Aesthetics Item c), the statement addresses whether a project conflicts with zoning rather than physical environmental impacts. Also, the term "scenic quality" is subjective and ambiguous as it is not clear what it means to mitigate scenic quality, and Metropolitan suggests using "scenic resources," which is already in the regulations. Suggested text on this section is double underlined.

Metropolitan Proposal

Revise proposed text in the Aesthetics question of Appendix G§ I(c):

c)Substantially degrade the existing character or quality of public views of the site and its surroundings? If the project is in an urbanized area, would the project cause a significant impact due to conflict with applicable zoning and other regulations relating to scenic resources?

Response 27.11

The Agency appreciates the comment's concern about the analysis of aesthetic impacts, but declines to make the changes proposed in the comment. As noted in the Initial Statement of Reasons, analysis of aesthetics is inherently subjective. Both the courts and the Legislature have limited the requirement to analyze aesthetics in urbanized areas. (See, e.g., Pub. Resources Code 21099 (limiting the analysis of aesthetics within "transit priority areas").) The Agency disagrees that the phrase "scenic resource" is clearer than "scenic quality". The latter is used elsewhere within the same section, and has for many years. Also, please note, Appendix G is a voluntary form. Agencies may tailor the questions on the form as appropriate. Please see Master Response 18 regarding Appendix G.

Comment 27.12

Metropolitan Comment: Regarding the proposed language addition of state or federally protected wetlands, the term "protected" is not defined. Previously this section referenced Section 404 of the Clean Water Act, a federal regulation which "protects" and regulates impacts to wetlands. When using the term "protected" it is helpful to have a reference to which regulation specifically protects and regulates the resource. Suggested text on this section is double underlined.

Metropolitan Proposal

Revise proposed text in the Biological Resources question of Appendix G§ IV(c):

c) Have a substantial adverse effect on wetlands protected under state or federal regulations, (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

Response 27.12

The Agency is not making any change in response to this comment. The purpose of this proposed change is to clarify that lead agencies should consider impacts to wetlands that are protected by either state or the federal government. Additionally, Appendix G is a suggested form, and lead agencies can add references to specific regulations if helpful. Lead agencies should normally address the questions from the Appendix G checklist that are relevant to a project's environmental effects. However,

substantial evidence of potential impacts that are not listed on the form must also be considered. Please see Master Response 18 regarding Appendix G.

Comment 27.13

Energy Impacts - Proposed Revisions to§ 15064(b)(2) & Appendix G § VI (a) & (b)

Metropolitan Comment: The proposed inclusion of Appendix F regarding energy impacts into Appendix G § VI raises many questions. First, it is not clear what is meant by the term wasteful. inefficient, or an unnecessary consumption of energy located in question (a), and a definition or metrics should be provided for clarification. At a minimum, the threshold should be whether a project would cause "significant" energy impacts. See Tracy First v. City of Tracy, 177 Cal. App. 4th 912, 933 (2009) (holding that the city satisfied its Appendix F requirements to analyze energy impacts where the city found that a project would not have significant energy impacts).

Question (b) is also problematic. Whether the project conflicts with or obstructs a state or local plan for renewable energy or energy efficiency calls for a yes or no answer. A conflict between a project and a particular plan (even for renewable energy) may not necessarily lead to a significant environmental impact. The analysis should be whether such a conflict will result in significant effects. The suggested wording for item b) is double underlined.

Metropolitan Proposal

b) Would the project cause a significant environmental impact due to conflict with or obstruction of a state or local plan adopted for the purpose of avoiding or mitigating energy impacts through renewable energy or energy efficiency?

Response 27.13

The Agency is not making any changes in response to this comment. The term “wasteful, inefficient, or an unnecessary consumption of energy” is a term that was added in 1974 to Appendix F of the CEQA Guidelines. This term is also utilized at Section 21100, subd. (b)(3) of the Public Resources Code. Note, the Agency is simply reinstating the questions that had been included in Appendix G prior to the revisions in the late 1990s. Additionally, Appendix G is a suggested form. Lead agencies should normally address the questions from the Appendix G checklist that are relevant to a project’s environmental effects. However, substantial evidence of potential impacts that are not listed on the form must also be considered. Finally, please note the proposed new subdivision (b) in Section 15126.2 clarifies that analysis is only required where wasteful use of energy leads to significant adverse environmental impacts.

As to proposed question b) – Appendix F states that “[t]he goal of conserving energy implies the wise and efficient use of energy. The means of achieving this goal include: …(3) increasing reliance on renewable energy sources. If a project would conflict with or obstruct a state or local plan for renewable energy or energy efficiency, this may obstruct this goal. This type of question is similar to that found in Section X. Land Use and Planning, question b) which asks whether a project would “conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating and environmental effect.

Comment 27.14

Metropolitan Comment: "sustainable groundwater management" of the basin is undefined in this context. Is this term specifically in reference to the definition in the Sustainable Groundwater Management Act which defines it thusly: "Sustainable groundwater management means the management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results."

Metropolitan Proposal

Revise proposed text in the Hydrology and Water Quality question of Appendix G§ X (b) so that it references the legal definition of sustainable groundwater management.

Response 27.14

The Agency is not making any change in response to this comment. The Agency disagrees that the phrase “sustainable groundwater management” requires further elaboration. Also, please note, Appendix G is a sample form, and lead agencies may tailor the questions as appropriate. Please see Master Response 18 regarding Appendix G.

Comment 27.15

Hydrology and Water Quality- Proposed Revision to Appendix G § X(d)

Metropolitan Comment: The phrase "risk release of pollutants during an extreme flooding event is vague when using as a criterion for significance. Suggested text on this section is double underlined.

Metropolitan Proposal

Revise proposed text in the Hydrology and Water Quality question of Appendix G§ X(d):

d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project

inundation that could create a significant effect to the public or the environment?

Response 27.15

The Agency disagrees that the phrase “risk release of pollutants” requires further elaboration. Also, please note, Appendix G is a sample form, and lead agencies may tailor the questions as appropriate. Please see Master Response 18 regarding Appendix G.

Comment 27.16

Hydrology and Water Quality-Proposed Revision to Appendix G § X(e)

Metropolitan Comment: Conflicts with a plan (even for a water quality control plan or

sustainable groundwater management plan) may not necessarily lead to a significant impact. The analysis should be whether such a conflict will result in significant effects. Suggested text on this section is double underlined.

Metropolitan Proposal

Revise proposed text in the Hydrology and Water Quality question of Appendix G§ X(e):
e) Would the project cause a significant environmental impact due to conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?

Response 27.16

The Agency is not making any change in response to this comment. As clarified elsewhere in the Guidelines, a conflict with a plan is only relevant to the extent that an adverse environmental impact results from the conflict. Also, please note, Appendix G is a voluntary form. Agencies may tailor the questions on the form as appropriate. Please see Master Response 18 regarding Appendix G.

Comment 27.17

Population and Housing- Revisions to Appendix G § Xl(a)

Metropolitan Comment: The question is whether a project would induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure). This question is odd because the lead agency/applicant is writing a planning document. The example provided is ill-suited because while new homes are a direct impact and roads/infrastructure are an indirect impact, they are not unplanned. However, they can potentially lead to further development and urbanization. What is an example of unplanned growth? Metropolitan suggests adding a definition or alternative example. Suggested text is double underlined.

Metropolitan Proposal

Revise proposed text in the Population and Housing question of Appendix 0§ XI (a):

a) Induce substantial unplanned population growth in an area, either directly or indirectly? Planned population growth is defined as projections analyzed in connection: with an approved land use plan (e.g .. general or specific plan), regional plan (e.g, Council of Governments regional transportation plan), or certified state projections from the California Department of Finance.

Response 27.17

The Agency is not making any change in response to this comment. The proposed change to Population and Growth is to clarify that the question should focus on unplanned growth. Growth that is planned, and the environmental effects of which have been analyzed in connection with a land use plan or a regional plan, should not by itself be considered an impact. Appendix G is a suggested form. Please see Master Response 18 regarding Appendix G. Lead agencies should normally address the questions from the Appendix G checklist that are relevant to a project's environmental effects. However, substantial evidence of potential impacts that are not listed on the form must also be considered

Comment 27.18

Transportation -Revisions to Appendix G§ XVII

Metropolitan Comment: Metropolitan suggests rewording of items a, b, and c for clarity and consistency. Suggested text on this section is double underlined

Metropolitan Proposal

Revise proposed text in the Population and Housing question of Appendix 0§ XVII (a, b, c):

a) Cause a significant environmental impact due to conflict with an adopted plan, ordinance or policy addressing the circulation system, including transit, roadways, bicycle lanes and pedestrian paths?

b) For a land use project, would the project cause a significant environmental impact due to

conflict or inconsistency with CEOA Guidelines section 15064.3, subdivision (b)(l)?

c) For a transportation project, would the project cause a significant environmental impact due to conflict with or inconsistency with CEOA Guidelines section 15064.3, subdivision (b)(2)?

Response 27.18

The Agency is not making any change in response to this comment. Commenter's suggested language adds neither clarity nor consistency. The questions currently contained in Section XVII Transportation/Traffic ask whether the project would conflict with plans, ordinances, policies without commenter's proposed language. Additionally, Appendix G is a suggested form. Please see Master Response 18 regarding Appendix G. Lead agencies should normally address the questions from the Appendix G checklist that are relevant to a project's environmental effects. However, substantial evidence of potential impacts that are not listed on the form must also be considered.

Comment 27.19

Wildfire -Revisions to Appendix G§ XX

Metropolitan Comment: This question does not aid in actually determining the significant environmental impact.

Metropolitan Proposal

Revise proposed text in the Wildfire question of Appendix G§ XX(a). Suggested text on this section is double underlined.

a) Cause a significant environmental impact due to interference with an adopted emergency response plan or emergency evacuation plan?

Response 27.19

The Agency is not making any change in response to this comment. As clarified elsewhere in the Guidelines, a conflict with a plan is only relevant to the extent that an adverse environmental impact results from the conflict. Please see Master Response 19 regarding plan consistency. Also, please note, Appendix G is a voluntary form. Agencies may tailor the questions on the form as appropriate. Please see Master Response 18 regarding Appendix G.

Comment 27.20

In conclusion, Metropolitan supports OPR's intent to improve the CEQA guidelines and provide an environmental review process that is more efficient, effective, and meaningful for agencies, applicants, and the public. We appreciate the opportunity to work with OPR on these changes and are grateful for

the due diligence and outreach provided. If you have any comments or questions concerning the suggested revisions above, please do not hesitate to contact Michelle Morrison at 213-217-7906.

Response 27.20

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 28 - Orange County Council of Governments

Comment 28.1

Thank you very much for the opportunity to provide comments on the guidelines proposed bytheGovern or's office of Planning and research (OPR). On behalf of the Orange County Council of Governments I res pectfully submit these comments in the spirit of assisting the process to be successful while representi ng the concerns and interested of OCCOG's member agencies.

Response 28.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 28.2

On behalf of the Orange County Council of Governments, I am providing comments today on the November 2017 released OPR guidelines for implementing SB 743 statewide.

Response 28.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 28.3

While we support the State's goal of reducing greenhouse gas emissions and promoting sustainable growth, we believe there is a disconnect between policy goals. On the one hand the State is funding multimodal transportation improvements, including active transportation and transit through the gas tax, and alternatively a potential future Vehicle Miles Traveled (VMT) tax, both of which rely on roadway users to fund the needed infrastructure improvements. On the other hand, we are actively discouraging the mechanism by which we will fund those improvements, many of which are needed to enhance the multi-modal transportation network and increase walkability, connections to jobs, and economic vitality of our neighborhoods. We disagree with the sentiment that VMT in and of itself is inherently bad.

Response 28.3

The Agency is not making any change in response to this comment. The comment broadly asserts that various aspects of California transportation policy are inconsistent; however, the comment does not raise a specific concern regarding the CEQA Guidelines proposal under consideration. No further response is required.

Comment 28.4

We thank you for hosting six (6) meetings across California to discuss the policy implications of the changes being proposed by OPR. However, in a state of 37 million residents, who are served first and foremost by local jurisdictions, we have found a disturbing lack of awareness of the proposed changes and how these are likely to impact local planning efforts among city managers and planning staff. We urge you to expand the outreach already undertaken to ensure that you are fully engaging with the local jurisdictional stakeholders who will ultimately be responsible for implementing the mandates in these guidelines.

Response 28.4

The Agency is not making any change in response to this comment. The comment suggests conducting additional outreach. Appendix B of the Standardized Regulatory Impact Assessment, which was included in the Initial Statement of Reasons, provides a description of the hundreds of meetings that OPR and Agency staff conducted on this proposal since 2014. While the Agency continues to explore ways to improve its outreach effectiveness, we note the many comments from local and regional planning entities that specifically thanked the Agency for its diligent outreach. No further response is required.

Comment 28.5

Furthermore, we are disappointed to hear that there is intent to move up the implementation date. We have been working under the belief that jurisdictions would be given a minimum two full years for implementation, and it is now our understanding that it is in fact July 1, 2019, a little over a year away. While the legislation was signed in 2013, the Guidelines and their interpretation have changed more than four times in the intervening time. One cannot plan for an eventuality that is evolving regularly. Therefore, we strongly urge you to reconsider standing by the original two years after the final rule-making for local agency compliance.

Response 28.5

The Agency is making a change partially in response to this comment. In regard to comments regarding the applicability of the CEQA Guidelines, please see Master Response 7.

Comment 28.6

We have grave concerns that the “one size fits all” nature of OPR’s proposed guidelines will negatively impact the ability of our local jurisdictions to enter into development agreements that reflect the character and intent of their community. General Plans are meant to be an expression of the local community’s vision for its growth. Dictating the use of VMT analysis when Level of Service (LOS) would be more appropriate, seems to us to be a perversion of this purpose and takes away local control. We therefore respectfully request that VMT analysis requirement be applied only to land use projects in Transit Priority Areas (TPAs), defined as areas within ¼ mile of major transit stops and high-quality transit corridors, as authorized under SB 743 legislation. Outside of TPAs, local jurisdictions should have discretion in the use of VMT analysis, not as a state mandate as currently proposed.

Response 28.6

The Agency is not making any change in response to this comment. Please see Master Response 3 regarding the geographic application of the transportation guideline. Please also note that any

community that desires to address level of service and traffic congestion in their land use planning documents may do so. (Pub. Resources Code § 21099.) Please also see Master Response 9 regarding addressing congestion through planning.

Comment 28.7

In fact, we would argue that a huge impediment to economic prosperity throughout the State is traffic congestion. Our members tell us that the single greatest objection to new development heard at Planning Commission and City Council hearings is increasing traffic congestion. Yet these guidelines as currently proposed are removing traffic as a subject of significance in our environmental regulation, CEQA. This seems counterintuitive. Our belief is that replacing congestion and substituting VMT will result in greater congestion as congestion relief will not be an available tool in the CEQA project approval process. Greater congestion means more idling, poorer air quality and a general decline in quality of living in O.C. communities and others around the state.

Response 28.7

The Agency is not making any change in response to this comment. OPR's Preliminary Evaluation of Alternative Methods of Transportation Analysis describes the disadvantages of using auto delay as a metric of transportation impact, let alone environmental impact. Moreover, as explained in Response to Comment 28.6, nothing in the proposed guideline precludes a local government from addressing congestion as part of its planning and project approval process. Further, to the extent a project may degrade air quality, such impacts would be evaluated in the air quality section of an analysis.

Comment 28.8

While we believe the use of VMT analysis in high density transit corridors is appropriate, it is not an appropriate methodology for less transit-rich environments. Applied Statewide as opposed to being used primarily within Transit Priority Areas (TPAs) the use of VMT analysis over LOS could have more unintended consequences than community benefits. Because it removes traffic from consideration as an environmental impact we expect there will be more congestion, poorer air quality, diminished health, higher housing costs, and longer commutes. In fact, the very opposite of the goals we know you are attempting to achieve.

Response 28.8

The Agency is not making any change in response to this comment. Please see Master Response 3 regarding the geographic application of the transportation guideline. The comment asserts that various adverse impacts may result from the change, but provides no evidence to support the claim. On the other hand, the Agency's Standardized Regulatory Impact Assessment sets forth the benefits expected from the change, and the evidence that supports that analysis.

Comment 28.9

In Orange County for example, we have been seeing reductions in transit service across portions of our county consistently for the last several years. Studies have shown that transit riders will choose personal automobiles when their incomes increase to allow it. SCAG has just completed a study that shows TNC's like Uber and Lyft are further deteriorating transit usage. And more than 80% of all commute trips within our county and between Orange County and the adjacent counties are accomplished by passenger car. That statistic hasn't changed much over the past two decades, despite policy changes

emanating from Washington and Sacramento meant to deter drive-alone commuting. Like homeownership, owning a car is part of the American Dream, and something many Californians aspire to. We urge you to reconsider policy that punishes residents of the economic engine of our state, like Orange County, who exercise their choice to use personal automobiles to meet their mobility needs.

Response 28.9

The Agency is not making any change in response to this comment. The comment makes several broad observations about mobility choice, and suggests that the guideline punishes drivers. Please note, the Legislature directed the Agency to update the CEQA Guidelines to replace "level of service" with a different measure of transportation impacts. It specifically suggested vehicle miles traveled as a replacement. This rulemaking implements the legislature's policy choice. Please see Master Response 1 regarding implementation of the Public Resources Code Section 21099. Please also note that the CEQA Guidelines do not penalize drivers. Rather, they provide guidance to public agencies on how to evaluate the environmental impacts of their projects.

Comment 28.10

We dispute the accuracy of the claim that VMT analysis will be less costly than LOS analysis. We are being told by practitioners that the cost of VMT studies will not be $5,000 as reported in the OPR guidelines, but in all likelihood will be priced at closer to the $20,000 for LOS studies. The SB743 methodology is much different from and much more complex than the GHG analyses currently used in CEQA and cited in the NRA analysis. Factors that contribute to the increased cost include: the current GHG analyses don't have to use sophisticated traffic models; the SB743 method does to establish Regional Averages. The current GHG analyses use gross defaults for project factors; the SB743 methods use the outputs of the standard LOS traffic study methods for project factors.

Response 28.10

The Agency is not making any change in response to this comment. The comment suggests that an analysis of vehicle miles traveled may be more expensive than described in the Standardized Regulatory Impact Assessment. The SRIA acknowledged that the "cost to prepare environmental documents varies considerably" and further explained that "[f]actors affecting cost include the scope of the project, its location, and potential range of impacts." However, to provide some estimate of the cost difference between a study of vehicle miles traveled and level of service, the Agency contacted industry professionals.

The comment asserts that the methodology for estimating vehicle miles traveled is more complicated than what is required for a greenhouse gas emissions analysis. The basis for this claim is unclear, because the Guideline does not mandate any particular methodology. It merely identifies vehicle miles traveled as the appropriate measure of transportation impacts, and defers to lead agencies on methodological choices. Further, the standard of adequacy for both the analysis of transportation and greenhouse gas emissions is the same, so it is unclear why the comment asserts that the analysis would be more complicated for the former.

Comment 28.11

And in any case, VMT analysis will be an additional step, not a replacement of existing LOS analysis under CEQA. Local agencies will have to conduct both VMT and LOS studies to satisfy CEQA and ensure that congestion is addressed. This is a duplicative increase not a substituted reduction. CEQA traffic

studies, and the entire project development process will cost local agencies, project applicants and ultimately County residents, employees and taxpayers more.

Response 28.11

The Agency is not making any change in response to this comment. The comment suggests that the guideline change will require agencies to conduct analysis for both vehicle miles traveled and level of service. The guideline states the opposite, however. (CEQA Guidelines § 15064.4(a) ("a project's effect on automobile delay shall not constitute a significant environmental impact"); see also Transportation Sustainability Fee: Economic Feasibility Study, San Francisco Planning Department, 2015, at p. 4 (finding that San Francisco's similar change in transportation analysis would reduce costs between $25,000 and $95,000 per project).)

Comment 28.12

The lack of clarity around SB743 implementation will be force communities to continue to use delay and level of service to monitor congestion. This will be accomplished outside of CEQA, and will create internal inconsistencies, questions, and litigation liabilities surrounding development approval processes and organic growth in O.C. communities. One example is the roadway capacity requirements for General Plan consistency vs. CEQA impact of roadway widening. These issues will be litigated with the local agency as the plaintiff. This means additional costs to local agencies, project delays, and ultimately more gridlock and higher costs for residents.

Response 28.12

The Agency is not making any change in response to this comment. Please see Response to Comment 28.11. Please also note that subdivision (b)(2) provides additional discretion for the analysis of roadway capacity projects, and so it is unclear why the comment assumes that general plan inconsistency would result. Moreover, to the degree there are conflicts with planning documents, CEQA only requires analysis of the environmental impacts that would flow from such inconsistencies.

Comment 28.13

OCCOG respectfully requests the Natural Resources Agency's careful consideration of our comments and those of other local jurisdictions and regional MPO's prior to finalizing the rulemaking for SB 743 implementation. We have been actively engaged in the Southern California Stakeholders Working Group on SB 743 implementation and we believe that the ultimate success of SB743 rests on the local jurisdictions. We sincerely hope that our comments will help make the ultimate guidelines easier to implement and lead to more successful outcomes for our communities.

Response 28.13

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph

Comment 29 - San Diego Unified Port District

Comment 29.1

Please see attached comment letter per your agency's written comment period instructions.

Response 29.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 29.2

The mission of the San Diego Unified Port District (District) is to protect the Tidelands Trust resources by providing economic vitality and community benefit through a balanced approach to maritime industry, tourism, water and land recreation, environmental stewardship, and public safety. The District was created by the San Diego Unified Port District Act (Port Act) adopted by the California State Legislature in 1962, as amended, and holds the tidelands and certain submerged waters of San Diego Bay in public trust for all Californians. Accordingly, the Port Act recognizes the Public Trust Doctrine, and states that tidelands and submerged lands are only to be used for statewide purposes. To this end, the District is charged with management of the tidelands and diverse waterfront uses along San Diego Bay that promote commerce, navigation, fisheries, and recreation on granted lands. When issuing discretionary permits and/or project approvals for projects and activities located within tidelands, the District often serves as the lead agency under CEQA.

Response 29.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 29.3

The District has been coordinating with the California Governor's Office of Planning and Research (OPR) over the past four years and recently, the California Natural Resources Agency, and is supportive of the vast majority of the proposed changes reflected in the Notice of Proposed Rulemaking. However, the District respectfully requests clarifications to proposed Section 15370. Mitigation (e), which proposes to add language as follows:

(e) "Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements."

The District understands that the proposed addition of the language above is based on case law, Masonite Corporation v. County of Mendocino (2013) 218 Cal. App. 4th 230 which discusses the use of agricultural conservation easements as an appropriate and feasible way to reduce or lessen environmental impacts to agricultural resources. The District also acknowledges that offsite preservation of habitats for endangered species is an acceptable means of mitigating impacts on biological resources. However, the new language proposed for Section 15370(e) is unintentionally narrow and limits the application of feasible mitigation options for trustee agencies or agencies responsible for managing certain lands in trust and on behalf of the State of California.

As noted above, the District was created by the Port Act, Chapter 67, Statutes of 1962, to manage in trust certain tidelands and submerged lands within the San Diego Bay. Lands within and around the Bay that had been previously granted to the cities of San Diego, Chula Vista, Coronado, and National City were transferred to the District. In addition, land originally granted to the city of Imperial Beach along

the Pacific Ocean was transferred to the District. For over 50 years the District has managed these lands for a balance of benefits using leases and other time-limited mechanisms to allow a variety of uses on District managed tidelands and submerged lands, including industrial, commercial, visitor-serving, and environmental conservation uses. The lands are subject to the Public Trust doctrine and cannot be alienated. In fact, the Port Act restricts the District's ability to enter into agreements, franchises, leases or easements for more than sixty-six (66) years. Consequently, the District legally cannot approve or grant a permanent conservation easement within its jurisdiction as proposed under Section 15370 (e). Additionally, one constant feature associated with all uses on the lands the District manages is that they are non-permanent. The District agrees that permanent mitigation for permanent impacts is appropriate, but a regulatory provision requiring a permanent conservation easement as mitigation on public land held in trust is per se infeasible and would require, at least for the District, permanent mitigation for non-permanent uses and developments. Hence, as currently proposed, Section 15370 (e) artificially reduces options for providing feasible mitigation for the District and may in fact limit the use of these lands for the benefit of the State of California.

Response 29.3

The Agency appreciates the comment's support for most of the Guidelines proposal. The Agency is not making any change in response to this comment, however. The revisions proposed in the comment are not necessary. The Agency's proposed addition to the definition of mitigation is a non-exclusive example. The proposed addition does not alter a lead agency's duty to find, based on substantial evidence, that a particular mitigation measure reduces or eliminates the impact of a project. (Pub. Resources Code § 21081.) If a lead agency is unable to create a permanent conservation easement, but can find, based on substantial evidence, that other use restrictions will replace or provide substitute habitats, nothing in the Agency's proposal would prevent a lead agency from doing so.

Comment 29.4

The District has a responsibility to manage development and conservation of the public trust lands and waters within its jurisdiction for the benefit of the State of California. In alignment with this responsibility and as discussed above, there are no leases or other uses in perpetuity on the lands the District manages. However, the District often conserves biological resources to feasibly mitigate for impacts from development on lands the District manages and that conservation typically runs co-terminus with the duration of the lease for the proposed development. Under this structure, it often allows for biological resources of an in-kind or greater value to be maintained within or around San Diego Bay for the duration of the development's impact. Resources may be conserved through restrictive use easements or other means, such as a conservation use designation, to ensure habitats of equal or greater value are set aside for the duration of the development, since most leases require the development to return the lands to pre-development conditions (i.e., with habitat restoration, if applicable) at the termination of a lease.

A similar situation also may occur for other time-limited projects on private property, such as those subject to fixed-term use permits. For example, large scale solar energy projects are often proposed on fallow agricultural land. Such projects usually must obtain conditional use permits, with a limited duration, and are required to restore the project site to pre-project conditions at the end of the permit term in order to make the site available again for agricultural uses. In such cases, there is only a temporary loss of agricultural land which requires only temporary, not permanent, mitigation.

Therefore, the District requests the proposed language be broadened to allow for feasible, time-limited measures in situations where permanent mitigation, like a permanent conservation easement, is legally infeasible, as would be the case on public trust or granted lands.

These lands are considerably dissimilar from private lands where permanent conservation easements can be established. Suggested revisions to accommodate this request may include:

(e) "Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of permanent conservation easements on private lands or conservation easements other use restrictions on public trust lands."

Or

(e) "Compensating for the impact by replacing or providing substitute resources or environments, including through protection of such resources in the form of conservation easements commensurate with the permanent or temporary nature of the impact."

Response 29.4

Please see response to comment 29.3.

Comment 29.5

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking for Amendments and Additions to State CEQA Guidelines. Please contact me at (619) 686- 64 73 or at jgiffen@portofsandiego.org if you have any questions or need any further information.

Response 29.5

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 30 - San Diego Unified Port District (2)

Comment 30.1

Please note the highlighted “or” between the words “easements” and “other”.

Response 30.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 30.2

Please accept this letter as an amendment to the comment letter submitted by the San Diego Unified Port District (District) dated March 13, 2018 on the above referenced subject.

Response 30.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 30.3

The District would like to clarify the suggested revisions requested in paragraph three of page three with the following replacement language:

(e) "Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of permanent conservation easements on private lands or conservation easements or other use restrictions on public trust lands."

Response 30.3

The Agency is not making any change in response to this comment. Please see Response to Comment 29.3.

Comment 30.4

Thank you for your consideration of the District's comments on the Notice of Proposed Rulemaking for Amendments and Additions to State CEQA Guidelines. Please contact Jason Giffen at (619) 686-6473 or jgiffen@portofsandieog.org if you have any questions or need additional information.

Response 30.4

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 30.5

The mission of the San Diego Unified Port District (District) is to protect the Tidelands Trust resources by providing economic vitality and community benefit through a balanced approach to maritime industry, tourism, water and land recreation, environmental stewardship, and public safety. The District was created by the San Diego Unified Port District Act (Port Act) adopted by the California State Legislature in 1962, as amended, and holds the tidelands and certain submerged waters of San Diego Bay in public trust for all Californians. Accordingly, the Port Act recognizes the Public Trust Doctrine, and states that tidelands and submerged lands are only to be used for statewide purposes. To this end, the District is charged with management of the tidelands and diverse waterfront uses along San Diego Bay that promote commerce, navigation, fisheries, and recreation on granted lands. When issuing discretionary permits and/or project approvals for projects and activities located within tidelands, the District often serves as the lead agency under CEQA.

The District has been coordinating with the California Governor's Office of Planning and Research (OPR) over the past four years and recently, the California Natural Resources Agency, and is supportive of the vast majority of the proposed changes reflected in the Notice of Proposed Rulemaking. However, the District respectfully requests clarifications to proposed Section 15370. Mitigation (e), which proposes to add language as follows:

(e) "Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements."

The District understands that the proposed addition of the language above is based on case law, Masonite Corporation v. County of Mendocino (2013) 218 Cal. App. 4th 230 which discusses the use of agricultural conservation easements as an appropriate and feasible way to reduce or lessen environmental impacts to agricultural resources. The District also acknowledges that offsite preservation of habitats for endangered species is an acceptable means of mitigating impacts on biological resources. However, the new language proposed for Section 15370(e) is unintentionally narrow and limits the application of feasible mitigation options for trustee agencies or agencies responsible for managing certain lands in trust and on behalf of the State of California.

As noted above, the District was created by the Port Act, Chapter 67, Statutes of 1962, to manage in trust certain tidelands and submerged lands within the San Diego Bay. Lands within and around the Bay that had been previously granted to the cities of San Diego, Chula Vista, Coronado, and National City were transferred to the District. In addition, land originally granted to the city of Imperial Beach along the Pacific Ocean was transferred to the District. For over 50 years the District has managed these lands for a balance of benefits using leases and other time-limited mechanisms to allow a variety of uses on District managed tidelands and submerged lands, including industrial, commercial, visitor-serving, and environmental conservation uses. The lands are subject to the Public Trust doctrine and cannot be alienated. In fact, the Port Act restricts the District's ability to enter into agreements, franchises, leases or easements for more than sixty-six (66) years. Consequently, the District legally cannot approve or grant a permanent conservation easement within its jurisdiction as proposed under Section 15370 (e). Additionally, one constant feature associated with all uses on the lands the District manages is that they are non-permanent. The District agrees that permanent mitigation for permanent impacts is appropriate, but a regulatory provision requiring a permanent conservation easement as mitigation on public land held in trust is per se infeasible and would require, at least for the District, permanent mitigation for non-permanent uses and developments. Hence, as currently proposed, Section 15370 (e) artificially reduces options for providing feasible mitigation for the District and may in fact limit the use of these lands for the benefit of the State of California.

The District has a responsibility to manage development and conservation of the public trust lands and waters within its jurisdiction for the benefit of the State of California. In alignment with this responsibility and as discussed above, there are no leases or other uses in perpetuity on the lands the District manages. However, the District often conserves biological resources to feasibly mitigate for impacts from development on lands the District manages and that conservation typically runs co-terminus with the duration of the lease for the proposed development. Under this structure, it often allows for biological resources of an in-kind or greater value to be maintained within or around San Diego Bay for the duration of the development's impact. Resources may be conserved through restrictive use easements or other means, such as a conservation use designation, to ensure habitats of equal or greater value are set aside for the duration of the development, since most leases require the development to return the lands to pre-development conditions (i.e., with habitat restoration, if applicable) at the termination of a lease.

A similar situation also may occur for other time-limited projects on private property, such as those subject to fixed-term use permits. For example, large scale solar energy projects are often proposed on fallow agricultural land. Such projects usually must obtain conditional use permits, with a limited duration, and are required to restore the project site to pre-project conditions at the end of the permit

term in order to make the site available again for agricultural uses. In such cases, there is only a temporary loss of agricultural land which requires only temporary, not permanent, mitigation.

Therefore, the District requests the proposed language be broadened to allow for feasible, time-limited measures in situations where permanent mitigation, like a permanent conservation easement, is legally infeasible, as would be the case on public trust or granted lands.

These lands are considerably dissimilar from private lands where permanent conservation easements can be established. Suggested revisions to accommodate this request may include:

(e) "Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of permanent conservation easements on private lands or conservation easements other use restrictions on public trust lands."

Or

(e) "Compensating for the impact by replacing or providing substitute resources or environments, including through protection of such resources in the form of conservation easements commensurate with the permanent or temporary nature of the impact."

Response 30.5

The Agency is not making any change in response to this comment. The Agency is not making any changes in response to this comment. Please see response to comments to commenter's March 13, 2018 letter – Comment numbers 29.3 and 29.4.

Comment 30.6

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking for Amendments and Additions to State CEQA Guidelines. Please contact me at (619) 686-64 73 or at jgiffen@portofsandiego.org if you have any questions or need any further information.

Response 30.6

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 31 - Sacramento Metropolitan Air Quality Management District

Comment 31.1

Please accept the Sacramento Metropolitan Air Quality Management District's comments (attached).

Response 31.1

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 31.2

The Sacramento Metropolitan Air Quality Management District (SMAQMD) thanks the Governor's Office of Planning and Research (OPR) and the Natural Resources Agency (NRA) for the opportunity to review the November 2017 *Proposed Updates to the CEQA Guidelines* (Guidelines) and *Technical Advisory on Evaluating Transportation Impacts in CEQA* (Advisory). SMAQMD comments on these documents follow.

Response 31.2

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is an introductory paragraph.

Comment 31.3

Analyzing Impacts from Greenhouse Gas Emissions
We commend the use of "determining the significance" in the section on analyzing impacts from greenhouse gas (GHG) emissions (15064.4). In meeting California's GHG reduction goals, it is critical that lead agencies understand that CEQA documents must disclose a project's potential impacts on GHG emissions, climate change, and adaptation, and make a GHG significance determination. The inclusion of "determining the significance" in this section helps clarify the necessity of a GHG emissions significance determination.

Response 31.3

The Agency is not making any change in response to this comment. The Agency thanks the commenter for its support.

Comment 31.4

We also support this section's discussions on quantifying GHG emissions, analysis of a project's reasonably foreseeable incremental contribution to climate change, and consideration of the project's consistency with State's climate goals. While the Guidelines frame this information and analysis as options, we believe that quantifying GHG emissions and analyzing consistency with State climate goals are essential to the public disclosure required by CEQA. Likewise, we believe the Guidelines should include language that frames this information and analysis as essential to the public disclosure required by CEQA.

Response 31.4

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the support. The comment suggests that the Guidelines clarify that quantifying GHG emissions and analyzing consistency with state climate goals are essential to public disclosure. The Agency finds, however, that further clarification is not needed. Subdivision (a) states: "[a] lead agency **shall** make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project." (Emphasis added.) Additionally, subdivision (b) states: "The agency's analysis should consider a timeframe that is appropriate for the project," and "[t]he agency's analysis also must reasonably reflect evolving scientific

knowledge and **state regulatory schemes**." (Emphasis added.) Finally, the general standard of adequacy in Section 15151, which calls for a good faith effort at full disclosure, applies to this analysis. Thus, additional clarification is not needed.

Comment 31.5

Analyzing Transportation Impacts

SMAQMD commends the use of vehicle miles traveled (VMT) as a metric for significance in meeting the requirements of SB 743. We note, however, that for transportation projects, lead agencies have discretion to determine the appropriate measure of transportation impact, according to the Guidelines' section on analyzing transportation impacts (15064.3).

Transportation investments in California have substantial influence on the built environment and the VMT generated by those land uses. Mobile source emissions continue to impact local air basins and the climate; and an accurate assessment of VMT, including induced VMT, is necessary to determine reasonably foreseeable project air quality impacts for both land use and transportation projects. SMAQMD recommends that the Guidelines identify VMT assessment as important to an accurate, complete assessment of roadway project environmental impacts, ultimately including air quality impacts.

Response 31.5

The Agency is not making any change in response to this comment. The comment expresses concern that roadway capacity projects may affect air quality. Whether a roadway's transportation impacts are measured using vehicle miles traveled or level of service, the lead agency must analyze greenhouse gas and other pollution associated with the project. (See, Pub. Resources Code § 21099(b)(3) ("This subdivision does not relieve a public agency of the requirement to analyze a project's potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation"); see also proposed Section 15064.3(b)(2) ("For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact *consistent with CEQA and other applicable requirements*") (emphasis added).) To fully assess those impacts, induced travel resulting from roadway capacity expansion must also be analyzed. (See, e.g., California Department of Transportation, Guidance for Preparers of Growth-related, Indirect Impact Analyses (2006).) Please also see Master Response 5 regarding roadway capacity projects.

Comment 31.6

Appendix G / Air Quality

The updates to the Air Quality section of Appendix G include the following text: "d. Result in substantial emissions (such as odors or dust) adversely affecting a substantial number of people?" The first use of "substantial" does not adequately capture risk from localized impacts. We recommend changing the sentence to "d. Result in emissions (such as odor or dust) that result in localized adverse impacts to a substantial number of people?"

Response 31.6

The Agency is not making any change in response to this comment. The comment addresses the proposal that OPR sent to the Agency. The Agency's proposal removed the word "substantial" from the beginning of that question. That question was further revised in the 15-Day revisions to state:

"d~~e~~) ~~Create objectionable~~ Result in other emissions (such as those leading to odors ~~or dust~~) adversely affecting a substantial number of people?"

Comment 31.7

Thank you for your attention to our concerns. If you have additional questions or require further assistance, please contact Molly Wright at mwright@airquality.org or 916-874-4207.

Response 31.7

The Agency is not making any change in response to this comment. The Agency thanks the commenter for the comment. However, this comment does not require a response because it is a closing paragraph.

Comment 32 - San Diego Association of Governments

Comment 32.1

The San Diego Association of Governments (SANDAG) appreciates the opportunity to comment on the Proposed California Environmental Quality Act (CEQA) Guidelines Implementing Senate Bill 743 (Steinberg 2013) (SB 743) and the Technical Advisory on Evaluating Transportation Impacts in CEQA. SANDAG also appreciates the time and effort that staff from the Governor's Office of Planning and Research (OPR) has taken to conduct outreach regarding the updates pursuant to SB 743 and the proposed updates to CEQA.

SANDAG previously submitted comments to OPR in three separate letters. The first was dated February 14, 2014, and addressed the Preliminary Evaluation of Alternative Methods of Transportation Analysis. The second was dated November 20, 2014, and addressed the Preliminary Discussion Draft. The third was dated February 29, 2016, and addressed the Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA. While OPR staff has answered many of the questions and concerns SANDAG has had regarding implementation of SB 743, a few issues remain, which are outlined below.

Response 32.1

These are introductory sentences and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 32.2

On page 4, the Technical Advisory states that, "lead agencies should not truncate any [Vehicle Miles Traveled (VMT)] analysis because of jurisdictional or other boundaries." SANDAG suggests clarifying this language to apply to development projects and plans for cities and counties; currently, the language could be interpreted to apply to all CEQA projects. On page 18 of Section F of the Technical Advisory, the second bullet point discusses the addition of new or

enhanced bike or pedestrian facilities on existing streets/highways or within the existing public right-of-way (ROW). SANDAG suggests amending this bullet point so that the language applies to bike or pedestrian facilities within or adjacent to existing ROW. Whether or not a bike or pedestrian facility is located within existing ROW, it is not likely to result in a substantial or measurable increase in vehicle travel. *Mitigation and Alternatives* On page 21, the Technical Advisory refers to "tolling new lanes" and "converting existing general-purpose lanes to [high-occupancy vehicle] or [high-occupancy toll] lanes" as "appropriate" mitigation and alternatives for increased travel induced by capacity increases. This mitigation measure appears in contrast to previous State guidance and legislation (e.g., Senate Bill 1330[Committee on Judiciary, 2009], Assembly Bill 744 [Torrico, 2009], Assembly Bill 1023 [Wagner, 2011]). Furthermore, SANDAG currently has no legal authority to implement these types of road pricing policies. *Quantifying Induced Vehicle Travel Using Models* Pages 28 and 29 of the Technical Advisory characterize travel demand models as inadequate for performing analysis of induced vehicle travel. They assert that, generally, the "most accurate assessment" of induced vehicle travel involves "applying elasticities from academic literature," adding that "if a lead agency chooses to use a travel demand model, *additional analysis* would be needed to account for induced land use" (emphasis added). The Technical Advisory also states that "proper use of a travel demand model" captures some components of induced VMT, and then offers options for supplementing travel demand model analysis to incorporate VMT effects of "subsequent land use change," which are to "employ an expert panel…adjust model results to align with empirical research…[and] employ a land use model, running it iteratively with a travel demand model." Elasticities from academic literature must be applied carefully, as there often is a distribution of impacts from improved accessibility that a "one size fits all" approach does not capture. There are circumstances in which applying a generalized "rule of thumb" is inappropriate and would not accurately reflect the local socioeconomic outcomes of land use changes. For example, application of a generalized elasticity measure might overlook important local variations in household composition, employment patterns, student/military status of household members, or other non-family household behaviors. Induced demand forces many behavioral changes into the decision-making process for both transportation and land use development, as well as for home/work location choices. Activity based models capture a larger share of transportation decision-making changes that are characterized as "induced demand." Induced demand has different impacts depending on the geographic scale of analysis. New land use developments around a facility may have shifted from other locations in the region. What may be an increase in demand for a new facility could result in a decrease in demand around other locations in the area of analysis. Any application of elasticities would need to consider the geographic scale of analysis. SANDAG suggests clarifying this language to incorporate these aspects into the Technical Advisory's discussion of the analysis required when choosing a travel demand model. SANDAG appreciates the opportunity to comment and looks forward to working with OPR to implement the new CEQA Guidelines.

Response 32.2

The comment is about the Technical Advisory prepared by the Governor's Office of Planning and Research, which is a non-regulatory document and is not part of the Agency's proposed rulemaking for the CEQA Guidelines. Thus, this comment is not specifically directed at the Agency's proposed rulemaking or its procedures, and the Agency declines to comment further upon its merit and to make any changes in response. (Gov. Code, § 11346.9(a)(3).) The Agency has forwarded the comments on to OPR for its consideration. Please also see Master Response 11 regarding OPR's Technical Advisory.

Comment 33 - San Diego County Water Authority

Comment 33.1

The San Diego County Water Authority (Water Authority) has some concern about some of the proposed amendments regarding water supply analysis found in §15155. While the Water Authority supports the renewed emphasis on long term planning for water supplies, and the addition of language to accurately identify water supply sources into the future and the associated environmental impacts, we suggest the analysis of water supply be made consistent with Water Code §10910(c)(4) and local management plans, which require a 20- year threshold for supply forecasting. Our concern is the proposed revisions may be interpreted to imply forecasting may be required beyond this threshold (i.e., the life of all phases of a project), which is outside the mandated scope of Urban Water Management Plans, and therefore cannot be reasonably foreseeable.

Response 33.1

The Agency declines to revise section 15155 to require a 20-year threshold for water supply forecasting to be consistent with Water Code section 10910, subd. (c)(4) and urban water management plans. A water supply assessment's 20-year projection period was not meant to dictate or constrain the projection period for the water supply analysis in a CEQA document.

Comment 33.2

1. The degree of certainty regarding the availability of water supplies will vary depending on the stage of project approval. A lead agency should have greater confidence in the availability of water supplies for a specific project than might be required for a conceptual plan (i.e., general plan, specific plan). An analysis of water supply in an environmental document may incorporate by reference information in a water supply assessment, urban water management plan, or other publicly available sources. The analysis shall include the following:

• Sufficient information regarding the project's proposed water demand and proposed water supplies to allow the lead agency to evaluate the pros and cons of supplying the amount of water that the project will need during the 20-year projection under Water Code section 10910(c)(4).

2. An analysis of the reasonably foreseeable environmental impacts of supplying water thro1:1gho1:1 the life of all **phases** of for the project during the 20-year projection under Water Code section 10910(c)(4).

3. An analysis of circumstances affecting the likelihood of the water's availability during the 20-year projection under Water Code section 10910(c)(4). as well as the degree of uncertainty involved. Relevant factors may include but are not limited to, drought, saltwater intrusion, regulatory or contractual curtailments, and other reasonably foreseeable demands on the water supply.

4. If the lead agency cannot determine that a particular water supply will be available, it may consider alternative sources and an analysis of the environmental

consequences of using those alternative sources. We appreciate your attention to this matter. If you have any questions.

Response 33.2

The Agency declines to incorporate the precise language suggested in the comment. As noted previously, there is no indication in CEQA or the cases interpreting CEQA that a 20-year projection for a water supply assessment required by the Water Code was meant to dictate the projection period for the water supply analysis in a CEQA document.

Comment 34 - Santa Clara Valley Transportation Authority

Comment 34.1

As a Congestion Management Agency (CMA), transit provider, and CEQA Lead Agency for transit and highway capital projects, the Santa Clara Valley Transportation Authority (VTA) will play a critical role in Santa Clara County in implementing the changes to CEQA transportation analysis practices called for by Senate Bill (SB) 743. VTA would like to offer the following comments on the *Amendments and Additions to the State CEQA Guidelines* released for rule- making on January 26, 2018.

VTA supports the overall direction of the state's proposed updates to the Transportation sections of the CEQA Guidelines, including continuing to apply the new Vehicle Miles Traveled (VMT) criteria to land use/development projects statewide. VTA supports the objectives of SB 743 to "promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses" and also supports efforts to make CEQA practice clearer and more efficient.

VTA has specific comments on the proposed amendments and additions to the CEQA Guidelines in the following areas:

Response 34.1

These are introductory sentences and no change is required. The Agency thanks the commenter for providing a public comment and appreciates its support.

Comment 34.2

Timeline and Mandatory Date

VTA encourages the Natural Resources Agency to advance the rule-making process in a timely manner so that the implementation of new transportation analysis procedures under SB 743 can commence. VTA supports the provision of an opt-in period to allow Lead Agencies time to prepare for the switch to VMT analysis. However, we note that there are some inconsistencies in the rule-making materials regarding the date when VMT use will become mandatory. It is VTA's understanding from past presentations by the Governor's Office of Planning and Research (OPR) that this date will be January 1, 2020. VTA recommends that the state stick to this date to provide certainty to Lead Agencies as they prepare for this change.

Response 34.2

Please see Master Response 7 regarding Guidelines section 15064.3(c).

Comment 34.3

New Section 15064.3. Determining the Significance of Transportation Impacts
On page 11 of the Proposed Regulatory Text, the section Land Use Projects states:"...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." VTA recommends adding"... in relation to Vehicle Miles Traveled" to the end of both of these sentences. Having a presumed less-than-significant impact in relation to VMT does not necessarily mean that the project does not have the potential to result in impacts to other transportation topical areas such as transit, bicycle or pedestrian facilities, or emergency access.

As an example, a high-rise development project could be proposed directly adjacent to a transit station and in an area designated for growth by the city's General Plan and the Sustainable Communities Strategy, but it also might require conversion of a dedicated transit-only lane to general use due to circulation constraints. In this case, the Lead Agency should disclose an impact to transit, even while noting that the project would otherwise qualify for a presumption of less-than-significant impact in relation to VMT.

Response 34.3

The comment suggests that factors beyond proximity to transit may affect a project's transportation impacts. In particular, the comment notes that even a project with low vehicle miles traveled may cause impacts to transit. The Agency agrees; however, no change to the Guidelines is needed. The Guideline created a presumption, based on evidence, that projects located near transit will have a less than significant transportation impact. The presumption is rebuttable, however, as made clear by the modifier "generally." A lead agency would still need to consider project-specific facts, including among others, those indicating an impact on transit.

Comment 34.4

Changes to Appendix G: Analysis of Transit, Bicycle, and Pedestrian Facilities
On page 68 of the Proposed Regulatory Text, the proposed changes to the Transportation Appendix G, Section XVII would consolidate the existing items (a) and (f) into a single item regarding conflicts with a plan, ordinance, or policy addressing the circulation system. In this proposed consolidation, the language " ... or otherwise decrease the performance or safety of such facilities" (referring to public transit, bicycle, or pedestrian facilities) has been removed. As written, it appears that a change in performance or safety of the circulation system would only be considered an impact if there is a plan, ordinance, or policy in place.

VTA is concerned about the removal of the phrase " ... or otherwise decrease the performance or safety of such facilities." We believe that there are actions - such as the introduction of a new at-grade crossing of a rail line - that have the potential to cause significant environmental impacts (for instance, worsening travel times and schedule reliability of the rail service, which can reduce ridership, shift transit riders to driving, and increase VMT and greenhouse gas emissions) - which are not always accounted for in a plan, ordinance, or policy. VTA encourages the state to retain

the language " ... or otherwise decrease the performance or safety of such facilities" in the revised Appendix G to account for these potential impacts.

Response 34.4

The Agency is not making any change in response to this comment. Appendix G is a suggested form only, and so is written to be useful to a broad set of lead agencies. (*San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).) Agencies may customize the form to address impacts that are common in their jurisdiction. Please also see Master Response 18 regarding Appendix G. Also, specialized agencies, such as congestion management agencies, may consult with local governments to ensure that their particular issues are addressed in the environmental review process.

Comment 34.5

Changes to Appendix G: Link to Congestion Management Programs
Appendix G, Section XVII, existing item b) has been revised to remove "Conflict with an applicable congestion management program... " as one of the criteria for assessing the significance of transportation impacts. VTA recognizes that the state's intent in striking this item was to reduce potential conflicts between LOS policies in existing Congestion Management Programs (CMPs) and the intent of SB 743 to remove vehicle delay as an impact criterion.

However, VTA notes that most CMPs also include performance measures that assess other aspects of the transportation system including pedestrian, bicycle, and transit modes, as well as Vehicle Miles Traveled. In addition, pending CMP reform legislation is likely to further modernize CMPs and align them with SB 743, SB 375, and other recent state legislation. We believe that CMPs can reinforce the objectives of SB 743. VTA recommends retaining the tie to CMPs by including "program" in the start of Item (a): "Conflict with a plan, ordinance, policy, or program addressing the safety or performance of the circulation system... "

Response 34.5

The comment suggests retaining the word “program” in the Appendix G questions related to transportation. The Agency agrees, as reflected in the 15-Day changes. Additionally, while the Legislature directed that the CEQA Guidelines update the analysis of transportation impacts and made clear that auto delay is not an environmental impact that requires analysis under CEQA, the Guidelines still accommodate consideration of congestion management programs in other ways. For example, proposed question XVII(a) asks whether a project would conflict with a program addressing the circulation system, which would be one place to analyze non-LOS provisions of congestion management plans. Section 15125(d) also directs lead agencies to consider a project’s consistency with regional plans.

Comment 34.6

VTA also notes that CMAs can play an important role in promoting consistency in VMT analysis and threshold-setting among local agencies. Per state law, one of the elements of a CMP is "a program to analyze the impacts of land use decisions made by local jurisdictions on regional transportation systems" (Government Code 65089 (b)(4)). Many CMAs already have strong working relationships with local agencies and well-established guidelines for the transportation analysis of development projects. Under the updated CEQA Guidelines, CMAs can help work with local agencies to develop

consistent methods of VMT analysis that take into account local conditions and are responsive to goals established by state legislation and regional agencies. Furthermore, VTA believes that the updated CEQA Guidelines should allow local agencies the flexibility to base their VMT threshold on a countywide average developed by a CMA travel demand model, in addition to a citywide average or a region-wide average developed by a Metropolitan Planning Organization.

Response 34.6

The Agency is not making any change in response to this comment. The Agency agrees that congestion management agencies can play an important role in providing consistency in the evaluation of transportation impacts in a region. The Agency declines to state a specific threshold in the guideline because cases interpreting CEQA have found that lead agencies have discretion in setting their own thresholds of significance.

Comment 34.7

Changes to Section 15072: Consultation with Public Transit Agencies
VTA strongly supports the proposed language in Section 15072, and subsequent sections, that "The lead agency should also consult with public transit agencies with facilities within one-half mile of the proposed project." VTA recommends that the state consider changing this provision to "shall consult", consistent with the remainder of this section regarding projects of statewide, regional, or areawide significance.

Response 34.7

The Agency is not making any change in response to this comment. For projects of statewide, regional, or areawide significance, Public Resources Code section 21092.4(a) requires that lead agencies consult with transportation planning agencies and public agencies that have transportation facilities within their jurisdictions that could be affected by the project. The Public Resources Code does not expressly mandate that lead agencies “shall consult” with public transit agencies with facilities within one-half mile of the proposed project. The proposed revision to Section 15072(e) states that lead agencies “should also consult with public transit agencies with facilities within one-half mile of the proposed project.” The Agency believes that the proposed revision is consistent with the CEQA statute itself, found in the Public Resources Code. The Agency therefore declines the suggestion to modify CEQA Guidelines Section 15072(e) by changing “should consult” to “shall consult” in the context of certain facilities near transit.

Comment 34.8

Results of Standardized Regulatory Impact Analysis: Cost of Preparing Transportation Studies Page 24 of the Notice of Proposed Rulemaking states that "the primary quantifiable change that will result from the proposed regulations is a reduction in the cost of preparing transportation studies. A typical transportation study under the proposed regulations is expected to cost approximately one-fifth of studies under the status quo." While VIA supports the intent of the shift to VMT as a CEQA transportation metric and agrees that there will be some cost savings in transportation analysis, VTA notes that VMT is more difficult than trip generation for local agencies to monitor locally or on a project-by-project basis. VIA requests that the Resources Agency and OPR work with Caltrans to increase funding for state VMT research and monitoring and to provide assistance to local agencies to conduct such activities.

VTA looks forward to continuing to work with the Resources Agency and OPR to implement these updates to the CEQA Guidelines to align with SB 743. Please do not hesitate to contact me at (408) 321-7093 or Robert Swierk at (408) 321-5949 if you have any questions or would like to arrange a meeting.

Response 34.8

The comment agrees that VMT analysis will result in cost savings; however, the comment raises concern that monitoring may be more difficult and urges the Agency to work with Caltrans and OPR to increase funding for VMT research. The Agency agrees that additional research will be helpful to lead agencies. The Agency further notes that lead agencies have discretion in how they design both mitigation measures and how those measures will be monitored over time. (See, e.g., CEQA Guidelines § 15097.) This comment does not affect the analysis of the Guidelines in the Standardized Regulatory Impact Assessment.

Comment 35 - South Coast Air Quality Management District

Comment 35.1

The staff of the South Coast Air Quality Management District (SCAQMD) appreciates the opportunity to provide input on the final version of the Proposed Updates to the CEQA Guidelines ("2017 Updates"). The SCAQMD has primary responsibility under federal and state law for controlling air pollution in the South Coast Air Basin. We have extensive experience with CEQA as we work towards improving the region's air quality by providing comments on the air quality analysis of the CEQA documents prepared within our jurisdiction, in our role as a responsible agency, and as a lead agency for our own rule development process and for any discretionary permits we may issue. The 2017 Updates, particularly as they relate to air quality and related environmental topics, are important to our work.

We would like to thank OPR for addressing several of the concerns we raised in our 2015 comment letter on the preliminary draft changes to the CEQA Guidelines ("2015 Comments"). We note, however, that we maintain additional concerns with the air quality, energy, and environmental setting updates to the Guidelines. We hope that our specific expertise in air quality, and related impact areas, will provide constructive input on the development of the 2017 Updates.

Where appropriate, additional proposed language appear in underline, while deletions appear as strikeouts.

Response 35.1

These are introductory sentences and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 35.2

1) Appendix G Environmental Checklist-Threshold Question III. a):

Our 2015 Comments supported proposed changes to Air Quality section III a), which added "or exceed significance criteria established by the applicable air quality management or air pollution control district?" to the end of the threshold question. We note that this additional language has

been removed from the 2017 Updates. We continue to believe that the additional language promotes the use of consistent and verifiable standards in the respective air basins, and therefore, ask that OPR revert back to the 2015 threshold question III a).

Response 35.2

The Agency declines to make any revisions based on this comment regarding Appendix G Question III.a. In particular, the commenter requests that Question III.a. include the phrase "or exceed significance criteria established by the applicable air quality management or air pollution control district" to the end of that question. This change is not necessary because the introductory sentence of Section III, Air Quality, currently includes a consideration of relevant air quality districts' verifiable standards in determining the significance of air quality impacts: "Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations."

The Agency further notes that Appendix G is merely a sample initial study format that a lead agency can tailor to address local conditions and project characteristics. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).) It is not an exhaustive list of all potential impacts. For those reasons, it is not necessary that Appendix G includes every conceivable question. Nor would that be possible given the unique nature of each project. The current rulemaking package does not change the general requirement under CEQA that lead agencies must analyze a proposed project's significant environmental impacts. (See Pub. Resources Code, § 21100(b)(1).) Thus, even if Appendix G does not include express mention of specific topics, Appendix G advises that "[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered." Please also see Master Response 18 regarding Appendix G.

Comment 35.3

2) Appendix G Environmental Checklist-Threshold Question III. b):

We are concerned that the streamlining efforts for question III b) and the deletion of c), will lead to confusion and uncertainty. We propose the following change to question III b) to incorporate some of the certainty that is lost through the deletion of c).

Proposed Change: "Violate any air quality <u>standard, contribute to an existing or</u> <u>projected air quality violation,</u> or result in a cumulatively considerable net increase in <u>any criteria pollutant (including their precursors) for which there is an applicable</u> <u>federal or state ambient air quality standard and existing quality violation.</u>

Reasoning: Based on our experience, the response to question III b) typically involves analysis and comparison to emissions thresholds (i.e. per pound per day) set by air districts as well as a modeling analysis, where appropriate, to estimate pollutant concentrations from the project including background levels to compare to the ambient air quality standards (micrograms per cubic meter); while the response to question III c) typically involves analysis of the cumulative impacts of the project's emissions to a non-attainment area and recognizes that precursors to criteria pollutants are also important to attaining standards. Our proposed language preserves the need for the analyses described above and clarifies

that emissions of precursors are important to attaining standards, while allowing lead agencies to streamline their responses to remove duplicative analyses.

It is important to note that an impact should be significant if it contributes significantly to an existing or projected future violation of the NAAQS and does not need to make the violation actually worse. Thus, if an area is currently in nonattainment for PM2.5 annual standard 12 micrograms per cubic meter because it records 15 micrograms per cubic meter, and in the future it is expected to still violate, despite air quality improvement, say at 14 micrograms per cubic meter, a project that contributes significantly to that projected future violation of the NAAQS should still be significant. The OPR proposed language would instead require that the project have a cumulatively considerable contribution to an INCREASE of the violation, such as from the currently-projected 14 micrograms to 15 micrograms. It would take a very large amount of emissions to increase the level of violation from 14 to 15 micrograms, so it is unlikely that this trigger would ever be met. On the other hand, a significant contribution to a projected violation of 14 micrograms might be found with a smaller amount of emissions that still offers an opportunity for mitigation, e.g. by reductions of PM2.5 through electrification or reduction of PM2.5 precursors such as NOx through ultra-low NOx mobile equipment.

Response 35.3

The Agency declines to make any changes in response to this comment. In the Proposed Regulatory text and the 15-day language, the Agency did not propose to delete existing Question III.c. regarding criteria air pollutants. But as reflected in the Agency's proposed text, Question III.c. omits mention of ozone precursors and does not believe that their express mention is necessary in Appendix G. Further, the revised questions still ask about the effect of project emission on air quality standards, including the project's incremental contribution to cumulative air quality impacts.

The current rulemaking package does not change the general requirement under CEQA that lead agencies must analyze a proposed project's significant environmental impacts. (See Pub. Resources Code, § 21100(b)(1).) Thus, even if Appendix G does not include express mention of specific topics, Appendix G advises that "[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered." And as the Agency stated in the January 2018 Notice of Proposed Rulemaking and Initial Statement of Reasons, the Agency proposed revisions that would make the CEQA process more efficient and easier to navigate, and also acknowledged that Appendix G checklist cannot contain an exhaustive list of questions. (Notice, p. 4; Initial Statement of Reasons, p. 69.) Appendix G is only a sample checklist that can be tailored to address local conditions and project characteristics. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).) Please also see Master Response 18 regarding Appendix G.

Comment 35.4

1) <u>CEOA Guidelines Section 15126.2:</u>

We are very pleased that the Environmental Checklist in the 2017 Updates was changed to include "or wasteful use of energy resources" in the threshold question on Energy usage. This addition addresses our concern that CEQA should provide a clear threshold question to address the wasteful use of energy resources. But we note that similar updates were not made to CEQA Guidelines§

15126.2(b). We propose the following additions to CEQA Guidelines§ 15126.2(b) to align with the Environmental Checklist:

Proposed Change: "Energy Impacts. If the project may result in significant environmental effects due to wasteful, inefficient, or unnecessary consumption of energy, or wasteful use of energy resources, the EIR shall analyze and mitigate that energy use. This analysis should include the project's energy use, or wasteful use of energy resources, for all project phases and components, including transportation- related energy, during construction and operation....This analysis is subject to the rule of reason and shall focus on energy demand or generation that is caused by the project...."

Reasoning: Based on our permitting experience, energy resources can sometimes be produced as a by-product (gas by-product from oil production, refining, landfill operations), which can either be disposed (i.e. flaring) or converted into renewable energy. Flaring that produced gas, instead of making beneficial use of it is also a waste of an energy resource and undermines goals towards reducing GHG impacts.

Beneficial use includes activities such as the use of microturbines, gas re-injection and gas sales. CEQA should specifically address this type of energy wastage to facilitate efforts to make beneficial use of by-product gas, where possible.

Response 35.4

The Agency has revised Guidelines section 15126.2(b) related to energy impacts in response to comments. As the Agency's 15-day language reflects, the Agency proposed to add the consideration of "wasteful use of energy resources" to the analysis of a project's energy impacts. The Agency proposes to make this revision to be consistent with recent case law and existing Appendix F.

The Agency declines to adopt the commenter's suggestion to add "or generation" in the second to last sentence in section 15126.2(b). As the 15-day language reflects, the Agency has replaced "demand" to more broadly state that the energy analysis should focus on energy "use" that is caused by the project. This modification is also consistent with the focus in Appendix F on energy consumption and use.

Comment 35.5

Baseline (2017 Updates Pgs. 95-96):

We appreciate OPR's work to update the Guidelines to reflect recent case law regarding the baseline for environmental analysis. However, we seek clarification on l 5125(a)(2) and maintain an earlier concern on Section 15125(a)(3).

1) CEOA Guidelines Section 15125(a)(l) and (2):

The proposed changes to section 15125 are intended to align the section with general principles regarding who can generally demonstrate whether substantial evidence exists to support the use of a particular baseline.

Proposed Change:

Section 15125(a)(l): "Generally, the lead agency environmental setting 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 may be defined by referencing historic conditions, or conditions expected when the project becomes operational, that are supported with substantial evidence. In addition to existing conditions, a lead agency may also use baselines consisting of projected future conditions that are supported by reliable projections based on substantial evidence in the record may also be used."

Section 15125(a)(2): "A lead agency may use either a historic conditions baseline era projected future conditions baseline may be used as the sole baseline for analysis only if it demonstrates with substantial evidence demonstrates 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."

Reasoning: As Section 15125(a)(l) acknowledges, there may be reason to select more than one baseline for analysis. Section 15125(a)(2) acknowledges that there may be times where only a future conditions baseline is appropriate for analysis. The proposed revisions are intended to facilitate input from the public on the choice of baseline. A baseline depicting an accurate picture of the physical environmental conditions is an essential prerequisite to a legally adequate environmental review. Without it, "analysis of impacts, mitigation measures, and project alternatives becomes impossible" and informed decision-making and public participation cannot occur. *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 953-955. The public should not be left out of providing input on this very important issue.

Response 35.5

The commenter proposes changes to two subdivisions of Guidelines Section 15125. Regarding the commenter's proposed changes to Sections 15125(a)(1) and 15125(a)(2), the Agency declines to make any changes in response to this comment. The commenter states that its own proposed revisions are intended to facilitate public input on the choice of baseline.

In general, CEQA gives lead agencies discretion in determining the appropriate existing conditions baseline, subject to the court's review for substantial evidence. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 452-453; *Communities for a Better Environment v. South Coast Air Quality Management Dist*. (2010) 48 Cal.4th 310, 328.) The CEQA process already includes numerous opportunities for public input on both the substance and process of a project's environmental review, such as public comment periods and the scoping process. It is also not clear, nor does the commenter explain, how the proposed changes would facilitate additional public input. Thus, the Agency finds that the proposed changes are not necessary and declines to make them.

Additionally, the Agency notes that it has revised Section 15125(a)(2) to clarify that it applies only to the use of future conditions as a sole baseline. The Agency's 15-day language, which includes the revisions

to the originally proposed changes to the CEQA Guidelines, reflects this change. Please see Master Response 14 related to Section 15125 and the environmental setting for a further response.

Comment 35.6

2) <u>Clarification on CEOA Guidelines Section 15125(a)(2):</u>

The 2017 Update proposed to amend Section 15125(a)(2) to read as follows,

"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."

The inclusion of "historic conditions baseline" is unclear. Section 15125(a)(l) defines an existing conditions baseline as potentially including historic conditions ["a lead agency may define existing conditions by referencing historic conditions...."]. But, as drafted, section 15125(a)(2) implies that a historic conditions baseline is something other than an existing conditions baseline and creates another baseline (e.g., a historic conditions baseline, an existing conditions baseline, and a projected future condition baseline). This appears to be an inconsistency that should be clarified.

Response 35.6

The Agency has revised Section 15125(a)(2) in response to comments. The Agency's revision clarifies that it applies only to the use of future conditions as a sole baseline. The Agency's 15-day language, which includes the revisions to the originally proposed changes to the CEQA Guidelines, reflects this change. Where appropriate and supported by substantial evidence, the lead agency has the discretion to rely on historical conditions or conditions predating the filing of the notice of preparation as the environmental baseline. (See *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 218 [agency "did not abuse its discretion by adopting a baseline that accounted for mining conditions during the five-year period prior to the filing of the NOP."].) Please see Master Response 14 related to Section 15125 and the environmental setting for a further response.

Comment 35.7

The proposed change is to clarify that section (a)(3) applies to existing conditions baselines only because a future baseline relies on conditions that have not actually occurred yet. If this change is not made, then clarification on the term "hypothetical conditions" needs to be provided.

Proposed Change: *"An existing conditions baseline should not include* <u>A lead ageney</u> <u>may not rely on</u> hypothetical conditions, such as those that might be allowed, but have never actually occurred, under existing permits or plans, as the baseline."

Reasoning: The proposed addition to section 15125(a)(3) makes clear the prohibition against the use of hypothetical conditions that have not been achieved in practice, applies only when using the existing conditions baseline. The existing conditions baseline is the scenario that was discussed in

Communities for a Better Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal4th 310,
322. Otherwise, as currently drafted, section 15125(a)(3) renders the discussion on the use of future conditions in section 15125(a)(2) meaningless because the future conditions will never have actually been achieved in practice yet.

Response 35.7

The Agency has revised Section 15125(a)(3) in response to comments to clarify that the existing conditions baseline must not include hypothetical conditions. The Agency made this revision to be consistent with the California Supreme Court's decision in *Communities for a Better Environment v. South Coast Air Quality Management Dist*. (2010) 48 Cal.4th 310. In that case, the Court stated that using hypothetical conditions as the existing conditions baseline results in "'illusory' comparisons, and the lead agency abused its discretion "[b]y comparing the proposed project to what *could* happen, rather than to what was actually happening . . . ." (*Id.* at p. 322, italics in original.) The Agency's 15-day language, which includes the revisions to the originally proposed changes to the CEQA Guidelines, reflects this change. Please see Master Response 14 related to Section 15125 and the environmental setting for a further response.

Comment 35.8

Again, the SCAQMD staff thanks your agency for the opportunity to provide comments on 2017 Updates. If you have any questions or seek clarification on the suggestions raised in this letter, please contact me at (909) 396-2302 or bbaird@aqrnd.gov.

Response 35.8

The Agency declines to make any change in response to this comment. This paragraph concludes the comment letter and does not suggest any specific changes to the proposed text.

Comment 36 – Southern California Association of Governments

Comment 36.1

Thank you for the opportunity to review and comment on the proposed rulemaking for the "Amendments and Additions to the State CEQA Guidelines" including SB 743 Implementation Guidelines. We appreciate the extensive outreach efforts that have been made by the staff of the Governor's Office of Planning and Research (OPR) throughout the process. Specifically, throughout the SB 743 implementation development process, OPR staff have reached out to obtain input from stakeholders throughout the state. In collaboration with OPR staff, SCAG has hosted six stakeholder workshops during the guidelines development process to receive input. Most recently, these efforts included OPR staff participation in a Workshop devoted to this topic held at Caltrans District 7 offices in downtown Los Angeles on January 31, 2018. The CEQA Guidelines Update/SB743 Workshop, attended by approximately 120 participants, provided current information and answers to questions in regard to these significant proposed changes to CEQA practice for our regional stakeholders. SCAG is the largest metropolitan planning organization (MPO) in the nation, representing six counties, 191 cities, and more than 19 million residents in

Southern California. In April 2016, SCAG's Regional Council adopted the 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (2016 RTP/SCS), a transformational plan for Southern California, which provides intensive focus on the development of a sustainable transportation system and the promotion of land use practices and decision-making that is congruent with our vision for a sustainable, climate resilient future for our region. SCAG is generally supportive of the changes to the CEQA guidelines proposed by OPR as they provide needed clarity and promote implementation efficiency, which will benefit local jurisdictions throughout the state. Additionally, the development of an alternative metric to evaluate CEQA transportation impacts that serves to reduce greenhouse gas emissions, supports development of multimodal networks, and encourages mixed-use transit oriented development will also facilitate implementation of SCAG's 2016 RTP/SCS.
SCAG recognizes the importance of the proposed CEQA Guidelines update and the provisions of SB 743 for the effective implementation of the objectives of our 2016 RTP/SCS. Through its focus on infill development and greenhouse gas reduction, implementation of SB 743 will serve to facilitate achievement of many of the regional goals identified in our adopted 2016 RTP/SCS, specifically those pertaining to regional sustainability, improving transportation system efficiency, providing more and better mobility options including transit and active transportation, encouraging construction of more affordable housing, improved air quality, and promoting environmental preservation. These beneficial outcomes will improve economic, quality of life, and public health performance in the SCAG region and throughout the state while also supporting critical regional investments, particularly in active transportation and transit. *While SCAG is generally supportive of the proposed changes, we have assembled a set of comments discussing recommended revisions and requests for further clarification on particular topics (Attachments 1 and 2).* Our comments also seek to fine-tune the proposed implementation structure of the guidelines to ensure that any added administrative burden to our local implementing agencies is minimal. We look forward to our continued cooperative and constructive relationship with both the OPR and the Natural Resources Agency on the effective implementation of this rulemaking, and on other issues that promote sustainability in our region and in our state. Please contact me if you have any questions.

Response 36.1

The Agency acknowledges with appreciation the Southern California Associations of Governments' (SCAG) participation in this CEQA Guidelines effort. SCAG facilitated and hosted numerous workshops with local governments and stakeholders within the Southern California region. SCAG also lent its considerable technical expertise to this effort. The Agency need not make any change in response to this comment, however, as these paragraphs are introductory in nature.

Comment 36.2

1. Clarification on Environmental Baseline (Proposed Amendments to Section 15125)
The Governor's Office of Planning and Research (OPR) package proposes to amend subdivision (a) of section 15125 regarding the environmental setting. Specifically, OPR's package proposes to add a statement of purpose and three subdivisions to subdivision (a).
In the body of subdivision (a), OPR proposes to add a sentence stating that the purpose of defining the environmental setting is to give decision-makers and the public an accurate picture of the project's likely impacts, both near-term and long-term. The purpose of adding this sentence to subdivision (a) is to guide lead agencies in the choice between alternative baselines. When in doubt, lead agencies should choose the baseline that most meaningfully informs decision-makers and the public of the project's possible impacts (Page 98).

In the body of subdivision (a)(1), OPR's package sets forth a general rule: "normally, conditions existing at the time of the environmental review should be considered the baseline." However, it further states that, "the lead agency may describe both existing conditions as well as future conditions" (Page 99). In the body of subdivision (a)(2), OPR's package sets forth the exception to the general rule and the conditions allowing lead agencies to use an alternative baseline. Subdivision (a)(2) explains that existing conditions may be omitted in favor of an alternate baseline where "use of existing conditions would be either misleading or without informative value to decision-makers and the public" (Page 99). It further clarifies that if future conditions are to be used, "they must be based on reliable projections grounded in substantial evidence" (Page 100). In the body of subdivision (a)(3) OPR's package specifies that hypothetical conditions may not be used as a baseline. Specifically, the subdivision states that "lead agencies may not measure project impacts against conditions that are neither existing nor historic, such as those that might be allowed under permits or plans" (Page 100).
SCAG appreciates OPR's efforts on providing additional language with regard to baseline and base year existing conditions. There has been an on-going debate as to how agencies should properly evaluate long range plans. The updated guidelines appear to give the lead agency the freedom to choose either setting for assessing existing conditions, as appropriate.

Response 36.2

The Agency declines to make any change in response to this comment. The comment summarizes the proposed changes to Guidelines section 15125 and statements from OPR's proposed regulatory package. The comment does not suggest any specific changes to the proposed text.

Comment 36.3

However, further suggestions and questions are as follows:
- SCAG suggests that the pathway used to describe both existing and future conditions, be titled a "hybrid approach."

Response 36.3

The Agency declines to incorporate the precise language suggested in the comment. The terms "existing" and "future" conditions are commonly used by CEQA practitioners and the courts, including the California Supreme Court. (See, e.g., *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 451 ["Projected future conditions may be used as the sole baseline for impacts analysis if their use in place of measured existing conditions—a departure from the norm stated in Guidelines section 15125(a)—is justified by unusual aspects of the project or the surrounding conditions."].) Use of those terms in the CEQA Guidelines promotes consistency. Thus, the Agency declines to rebrand both the existing and future conditions as a "hybrid approach" per the commenter's suggestion.

Comment 36.4

- SCAG requests OPR to revise the guidelines to state that use of this hybrid approach is not common and that choosing one (either existing or future conditions) baseline period is the generally accepted approach.

Response 36.4

The Agency declines to revise proposed Guidelines section 15125 to state that use of both the existing and future conditions is not a common approach because doing so is not necessary. Proposed Section 15125(a)(1) states: "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." This statement signals the general rule, the remainder of subdivision (a) describes exceptions to the general rule. Please see Master Response 14 related to Section 15125 and the environmental setting for a further response.

Comment 36.5

- If the lead agency decides to describe both existing conditions as well as future conditions, does the project applicant have the option to determine the level of significance for one and not the other?
- If not, would the lead agency be required to determine the level of significance by comparing both existing and future conditions?

Response 36.5

The Agency is not making any change in response to this comment. The comment does not suggest any specific changes to the proposed text. The Agency notes in response to the questions posed, however, that CEQA gives lead agencies discretion in determining both the appropriate baseline and the threshold of significance. In exercising that discretion, the Agency notes the guidance from the case law, and added to Section 15125, that: "The purpose of [the] requirement [to identify the environmental baseline] 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." Please see Master Response 14 related to Section 15125 and the environmental setting for a further response.

Comment 36.6

2. Clarification on Tiering
OPR's package proposes to amend section 15152(h) to further assist lead agencies to determine if tiering is appropriate for a given project. OPR proposes to rewrite this section that tiering is only "one of several streamlining mechanisms that can simplify the environmental review process" (Page 25). The proposed amendment states: "The rules in this section govern tiering generally. Several other methods to streamline the environmental review process exist, which are governed by the more specific rules of those provisions. Where other methods have more specific provisions, those provisions shall apply, rather than the provisions in this section. Where multiple methods may apply, lead agencies have discretion regarding which to use" (Page 27). Additionally, proposed amendments under section 15152(h) now include "infill projects (Section 15183.3)" for potential projects qualified for tiering (Page 28). SCAG appreciates OPR including "infill projects" as potential projects qualified for tiering. Local jurisdictions who wish to tier off of their Specific Plan PEIRs or gain CEQA exemptions for Transit Oriented Development projects would highly benefit from this addition.

Response 36.6

The Agency is not making any change in response to this comment. The comment reiterates the proposed regulatory changes and statements from OPR's proposed regulatory package. The comment

does not suggest any specific changes to the proposed text. The Agency further notes that comment describes the section describing available streamlining mechanisms. The Agency separately updated Section 15182 to describe CEQA exemptions for transit oriented developments that are consistent with specific plans.

Comment 36.7

OPR's efforts on providing clarification for tiering and CEQA streamlining is much appreciated. Redundancy has become a major issue when conducting environmental analysis. However, it would be helpful if the CEQA guidelines were revised to describe all CEQA streamlining options under one unified section. Currently, CEQA streamlining and tiering is described under Section 15152, 15183, Appendix M and other sections throughout the CEQA guidelines. Streamlining the Guidelines itself would provide clarity to a project applicant.

Response 36.7

The Agency declines to make any change in response to this comment. The Agency understands that it would be helpful for all CEQA streamlining options to be in one unified section. Moving all tiering and streamlining provisions into one section is beyond the scope of this regulatory package, however. Nonetheless, there are numerous tiering and streamlining methods in CEQA, and the applicability of these provisions will vary depending on the project. Because of the broad scope of available streamlining methods, the existing Guidelines section 15152 includes a non-exhaustive list.

Comment 36.8

While not applicable to the CEQA guidelines itself, it would be helpful if OPR hosted workshops with respect to CEQA streamlining and providing materials (i.e., examples, flowcharts) to lead agencies. Educating lead agencies and CEQA practitioners would facilitate the environmental review process.

Response 36.8

This comment is not specifically directed at the Agency's proposed rulemaking or its procedures. Rather, the comment suggests that the Governor's Office of Planning and Research should host CEQA workshops related to tiering. The comment does not suggest any specific changes to the proposed text, and the comment is outside the scope of the proposed rulemaking package. (Gov. Code, § 11346.9(a)(3).) Thus, the Agency declines to make any change in response to this comment.

Comment 36.9

3. Promoting the use of existing regulatory standards in the CEQA process
OPR's package promotes the use of existing regulatory standards in the CEQA process. OPR proposes to update sections 15064 and 15064.7 to expressively provide that lead agencies may use thresholds of significance in determining significance, and that some regulatory standards may be appropriately used as thresholds of significance. SCAG has been a proponent of using existing regulatory standards in the CEQA process and has done so for the 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (2016 RTP/SCS) Programmatic Environmental Impact Report. We believe that using regulatory standards for determining significance would bring cohesiveness and consistency throughout the region. By doing so,

not only are we able to reach statewide goals together but are able appropriately assess statewide impacts from a macro (program level) to micro (project level) scale with ease. However, when using existing regulatory standards, it is not simply enough to state a standard and determine that a project would result in less than significant impacts, should it fall within or below the standard. The usage of regulatory standards to determine a level of significance should be fully explained and supported by adopted polices and scientific evidence within the CEQA document.

Response 36.9

The commenter does not specifically point to proposed revisions regarding significance thresholds and the use of regulatory standards as thresholds, as discussed in Guidelines sections 15064 and 15064.7. The Agency agrees that using regulatory standards may be appropriate in certain circumstances and is an effective way to promote consistency in significance determinations. The Agency also agrees that simply noting compliance with a threshold may not be sufficient. The proposed addition in Section 15064 states that: "When using a threshold, the lead agency should briefly explain how compliance with the threshold means that the project's impacts are less than significant." As reflected in the 15-day language, the Agency deleted the suggestion in section 15064(b)(2) that a lead agency should describe the substantial evidence supporting how compliance with a threshold means the impact is less than significant. The Agency removed that provision in response to comments because it was not necessary. The Guidelines already clarify that a lead agency's conclusions in environmental documents must be supported with substantial evidence. (See, e.g., CEQA Guidelines §§ 15074(b) (negative declarations), 15091(b) (findings following an EIR).) Also, the Guidelines also provide that environmental documents must contain enough detail and analysis to adequately inform decisionmakers and the public. (See CEQA Guidelines § 15151 (standard of adequacy).) The extent to which a lead agency must specifically describe the substantial evidence supporting a conclusion may vary with the project and the thresholds used. However, the existing requirements described above provide sufficient safeguards to ensure that agencies prepare informative documents.

Comment 36.10

4. Discussion of energy based impacts under Appendix G
OPR's package proposes to amend Section 15126.2 to discuss energy-based impacts under Appendix G. SCAG appreciates OPR's effort into integrating energy based impact discussion under Appendix G. Appendix F of the CEQA guidelines has contained guidance on energy analysis for decades but was often overlooked. Even though Appendix F was revised in 2009 to clarify that analysis is mandatory, the discussion of energy impacts was limited. SCAG believes that in order to reach our greenhouse gas emissions reduction targets for the future, it is important that we identify any wasteful energy use and identify appropriate mitigation measures to reduce emissions and to promote sustainable features for any given project.

Response 36.10

The Agency is not making any changes in response to this comment. The comment expresses support for the proposed revision to Guidelines section 15126.2 regarding the analysis of energy impacts. The Agency agrees that lead agencies identify and mitigate for the wasteful use of energy and energy resources, and that such actions are necessary to achieve the State's greenhouse gas emissions reduction targets. The Agency thanks the commenter for its support.

Comment 36.11

5. Updates to evaluating greenhouse gas impacts (Proposed Amendments to Section 15064.4)
OPR's package proposes to amend Section 15064.4. First, the proposed amendments clarifies that a project must make a good faith effort to estimate or describe a project's greenhouse gas emissions. More importantly, the focus of the lead agency's analysis should be on the project's effect on climate change (Page 87). This clarification is necessary to avoid an incorrect focus on the quantity of emissions, and in particular how that quantity of emissions compare to global emissions (Page 88). OPR's package further clarifies that lead agencies should consider the reasonably foreseeable incremental contribution of the project's emissions to the effects of climate change (Page 88). Second, the proposed amendments clarifies that lead agencies should consider a timeframe for the analysis that is appropriate for the project, due to the fact that in some cases, it would be appropriate for agencies to consider a project's long-term greenhouse gas impacts, such as for projects with long time horizons for implementations (Page 88). Third, the proposed amendments clarifies that an agency's analysis must reasonably reflect evolving scientific knowledge and state regulatory schemes (Page 88). Forth, the proposed amendments clarifies that an agency's analysis may consider a project's consistency with the State's long-term climate goals or strategies, provided that substantial evidence supports the agency's analysis of how those goals or strategies address the project's incremental contribution to climate change (Page 89). SCAG supports OPR's proposed amendments on evaluating greenhouse gas impacts. As mentioned previously, it is important that we work towards reducing emissions. In the past, when greenhouse gas emissions were evaluated, emissions were often analyzed with little or no mention of climate change. Proposed changes would ensure that we focus on a projects contribution (or no contribution) to climate change, thereby allowing us to quantify our distance to the region's greenhouse gas emissions target goals. SCAG agrees that an appropriate timeframe setting is important when evaluating greenhouse gas emissions. Projects that have significant development or operational periods and have potential to emit significant amount of greenhouse gas emissions, should have a level of analysis that captures a longer timeframe as it allows us to determine if we can achieve long term State targets in reducing greenhouse gas emissions. SCAG also agrees that an agency's analysis must reasonably reflect evolving scientific knowledge and state regulatory schemes. The purpose of a CEQA document is to fully inform the public and decision makers on a project's potential impacts. Therefore, it is important that when conducting CEQA documentation, agencies should make the best effort to use the best data and modeling tools available. This is highly critical as scientific research and knowledge is a dynamic process, which is continuously evolving rather than a static one. It is also important that discussion and analysis revolves around existing and new regulatory standards that are and were codified during the preparation of the environmental document. As referenced before, should an agency decide use regulatory standards as a threshold for significance, standards should be fully explained and supported by adopted polices and scientific evidence within the CEQA document.

Response 36.11

The Agency is not making any changes in response to this comment. The comment expresses support for the proposed revision to Guidelines section 15064.4 regarding the impacts analysis of greenhouse gas emissions. The Agency thanks the commenter for its support.

Comment 36.12

Since the enactment of Executive Order's B-16-2012, B-30-15, S-3-04, Assembly Bill 32 and the codification of Senate Bill 32, there has been an on-going debate as to how to appropriately analyze greenhouse gas emission impacts, particularly cumulative impacts. Greenhouse gas emissions by nature

are “global”, unlike “normal” (i.e. localized) with respect to cumulative impacts. To clarify, greenhouse gas emission impacts are not confined within the boundaries of a project area, a city or even a state, but contribute to a global inventory by nature, thus making it difficult to analyze within CEQA as it hard to bridge the gap of analysis for a local project (i.e. manufacturing factory, small refinery, or retail projects) and it’s impacts on the state or the entire world. SCAG requests that OPR work with MPOs and local jurisdictions to develop a sound roadmap as to how to properly analyze for cumulative greenhouse gas emission impacts, in an effort to facilitate the CEQA process, minimize litigation and to achieve statewide targets.

Response 36.12

The Agency is not making any changes in response to this comment. The commenter does not propose any revisions in its comment. The commenter requests, however, that the Governor’s Office of Planning and Research assist metropolitan planning organizations and local jurisdictions with properly analyzing greenhouse gas emission impacts. This comment is outside the scope of the current rulemaking package and the Agency declines to comment further. (Gov. Code, § 11346.9(a)(3).)

Comment 36.13

6. Discussion of Project Benefits (Proposed Amendments to Section 15124)
OPR’s package proposes to amend subdivision (b) of Section 15124. Currently, subdivision (b) states that a project description shall include a statement of objectives sought by the project. The proposed language has been revised to state: “The statement of objectives should include the underlying purpose of the project and may discuss the project benefits” (Page 152).
SCAG supports the proposed amendments to Section 15124. Allowing a discussion project benefits within the project description would be beneficial to lead agencies. Previously, project benefits have been discussed solely within the Findings of Facts and Statement of Overriding Considerations Section within the Final Environmental Impact Report. Unfortunately, this section is highly overlooked from the general public. As such, reader often do not understand as to why a certain project is being developed and will often focus on the environmental impacts, thus creating a negative bias. By describing the project benefits up front, the reader will be offered a balanced perspective, prior to making their decision.

Response 36.13

The Agency is not making any changes in response to this comment. The comment expresses support for the proposed revision to Guidelines section 15124 regarding project benefits. As the Initial Statement of Reasons explains, the project description may also discuss the project’s benefits to ensure that the description allows decision makers to balance, if needed, a project’s benefits against its environmental costs. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192; ISOR, pp. 30-31.) The proposed revision ensures that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA. The Agency further notes that Section 21082.4 was recently added to the Public Resources Code that expressly supports discussion of project benefits. (AB 2782 (Friedman, 2018.) The Agency thanks the commenter for its support.

Comment 36.14

7. Discussion of Wildfire Impacts under Appendix G

OPR's package proposes to amend Appendix G by adding the discussion of wildfires as one of its primary environmental topics. SCAG supports to proposed amendments to Appendix G, allowing for a discussion of wildfire impacts. Over the past decades, the State of California has experienced a multitude of wildfires. The wildfires of 2017 were considered the most destructive fire event in California's history. According to the California Department of Forestry and Fire Protection, a total of 9,133 fires burned through 1,381,405 acres, which resulted in an economic toll of at least $180 billion. More important, the fires resulted in the loss of precious lives and livelihoods and flora and fauna, which contribute to the vibrancy of the State. As such, it is clear that a discussion revolving around wildfire impacts is greatly needed. The discussion of wildfire impacts will beneficial, as it will potentially inform the general public about potential wildfire
risks. Additionally, should any potential risks or impacts be identified, appropriate mitigation measures to minimize such hazards would be developed.

Response 36.14

The Agency is not making any changes in response to this comment. The comment expresses support for the proposed addition of questions to Appendix G regarding wildfire impacts. Senate Bill 1241 (Kehoe, 2012) requires the Office of Planning and Research, the Natural Resources Agency, and CalFire to develop "amendments to the initial study checklist of the [CEQA Guidelines] for the inclusion of questions related to fire hazard impacts for projects located on lands classified as state responsibility areas, as defined in section 4102, and on lands classified as very high fire hazard severity zones, as defined in subdivision (i) of section 51177 of the Government Code." (Pub. Resources Code, § 21083.01 (emphasis added).) The Agency agrees that the consideration of wildfire impacts is greatly needed and will benefit the public by informing them about potential wildfire risks and impacts. The Agency thanks the commenter for its support. Please also see Master Response 12 regarding wildfire.

Comment 36.15

SCAG appreciates the efforts that the Governor's Office of Planning and Research (OPR) staff have made over the past four years to ensure that the process of guidelines development for the implementation of SB 743 are as inclusive and participatory as possible. On multiple occasions, OPR staff have reached out, in a meaningful manner, to obtain feedback and input from stakeholders throughout the state. In collaboration with OPR staff, SCAG has hosted six stakeholder workshops during the guidelines development process to receive input.

Response 36.15

The Agency is not making any changes in response to this comment. This comment expresses the commenter's appreciation for OPR's efforts to ensure that the Guidelines development process was inclusive and participatory. The Agency thanks the commenter for its support and participation in, and facilitation of, the dialogue throughout the development process of this proposed rulemaking package.

Comment 36.16

One major modification provided by OPR in its final proposal was to make VMT analysis for highway capacity projects optional rather than required. This significant accommodation was made in direct response to the expressed concerns of many regional stakeholders. Highway capacity improvement projects that are already included in the adopted SCAG RTP/SCS are critical to our region's long-term mobility objectives, and collectively contribute to the Plan's overall regional sustainability and climate goals.

Response 36.16

The comment supports the provision in the proposal allowing lead agencies discretion in the measure of transportation impacts for roadway capacity projects. The Agency thanks the commenter for its support. Please also see Master Response 5.

Comment 36.17

While LOS-based analysis is useful for evaluating how a development might impact traffic flow through a project area, it tends to penalize infill projects, including TOD, since these types of projects are typically located in areas that are already highly developed. Since LOS analysis focuses on minimizing motor vehicle delay and maximizing vehicle throughput, it also tends to discourage projects that feature amenities supportive of active transportation.

Response 36.17

The comment notes that "level of service," as a measure of transportation impacts, tends to treat infill and active transportation projects as having adverse impacts. The Agency is not making any changes in response to this comment. This comment does not propose specific revisions or recommendations to the proposed rulemaking. This comment expresses SCAG's opinion that use of the level of service metric in CEQA discourages projects that feature amenities supportive of active transportation. The Agency appreciates the comment and believes that the new vehicle miles traveled metric will streamline infill development and active transportation projects.

Comment 36.18

Through its focus on infill development and greenhouse gas reduction, implementation of SB 743 will serve to facilitate achievement of many of the regional goals identified in SCAG's adopted 2016 RTP/SCS, specifically those pertaining to regional sustainability, improved transportation system efficiency, providing more and better mobility options including transit and active transportation, encouraging construction of more affordable housing, improved air quality and promoting environmental preservation.

Response 36.18

The comment notes that proposal will assist the commenter in achieving goals set forth in its regional transportation plan and sustainable communities strategy, including "providing more and better mobility options including transit and active transportation, encouraging construction of more affordable housing, improved air quality and promoting environmental preservation." The Agency is not making any changes in response to this comment. This comment does not propose specific revisions or recommendations to the proposed rulemaking. This comment expresses SCAG's opinion that the shift from the level of service to a vehicle miles traveled metric will facilitate of many of the regional goals identified in SCAG's adopted 2016 Regional Transportation Plan/Sustainable Communities Strategy. The Agency appreciates the comment and anticipates that SB 743 implementation will help facilitate achievement of SCAG's regional goals.

Comment 36.19

By seeking to reduce VMT per capita rather than optimizing Level of Service (LOS), SB 743 will provide benefits to the SCAG region, including improved economic, quality of life, and public health outcomes

Response 36.19

The comment notes that analyzing vehicle miles traveled instead of level of service will benefit the Southern California Association of Governments region. The Agency is not making any changes in response to this comment. This comment does not propose specific revisions or recommendations to the proposed rulemaking. This comment expresses SCAG's opinion that by seeking to reduce VMT per capita rather than optimizing LOS, SB 743 will provide benefits to the SCAG region, including improved economic, quality of life, and public health outcomes. The Agency appreciates the comment and anticipates that projects with reduced VMT will benefit the SCAG region.

Comment 36.20

SCAG is confident that the proposed methodological change, from the previously used 'Level of Service' (LOS) analysis, will ultimately serve to enhance the ability of our state and our region to achieve our GHG reduction goals, while still preserving our critically needed regional mobility investments.

Response 36.20

The comment expresses confidence that the proposal will assist the state and region in meeting greenhouse gas reduction goals. The Agency is not making any changes in response to this comment. This comment does not propose specific revisions or recommendations to the proposed rulemaking. This comment expresses SCAG's opinion that the shift from LOS to VMT in CEQA will ultimately serve to enhance the ability of our state and our region to achieve our greenhouse gas reduction goals, while still preserving our critically needed regional mobility investments. The Agency appreciates and agrees with the comment.

Comment 36.21

It is critical that lead agencies be provided sufficient time to adequately prepare for the methodological changes that will be required through implementation of SB 743. The currently targeted implementation date of January 1, 2020, as prescribed in the proposed new Guidelines Section 15064.3 (c) entitled 'Applicability', should be revised to allow for a full two-year implementation opt-in period from the effective date of the final rule-making. (Note: In addition, the proposed regulatory text provided on the California Natural Resources website indicates a statewide implementation effective date of July 1, 2019 (page 11, Section (c) entitled, 'Applicability'). This inconsistency should be corrected.

Response 36.21

The comment suggests allowing lead agencies a full two years to update their own procedures to implement this rulemaking. The Agency has updated the date of statewide implementation to July 1, 2020. Please also see Master Response 7.

Comment 36.22

Since these regulations represent a substantial change in methodology from previously used CEQA transportation impact analysis processes, it is critical that, after rule adoption, the state provide additional implementation assistance and guidance opportunities to our local jurisdictions for enacting the new procedures at the local level. The establishment of a set of best practices for implementation of

the new methodology over a variety of settings and project types will assist lead agencies to evaluate and anticipate potential impacts of their planned projects. SCAG has already engaged with other MPOs in this direction and looks forward to assisting OPR in this effort.

Response 36.22

This comment requests implementation assistance and guidance opportunities to local jurisdictions for enacting the new procedures at the local level. The Agency is not making any changes in response to this comment. The Agency appreciates the commenter's efforts to provide technical assistance to its member agencies. OPR has also provided technical assistance to the public on implementing the CEQA Guidelines. The Agency will pass this comment on to OPR for their consideration in the future.

Comment 36.23

On page 3 of the Technical Advisory, the paragraph addressing 'Vehicle Types' specifically defines the term "automobile" as referring to "on-road passenger vehicles, specifically cars and light trucks." For purposes of clarity, SCAG requests that this defining language also be included in the SB 743 implementation regulatory text. The exemption of freight VMT analysis should be made explicit in the regulatory text.

Response 36.23

SCAG requests clarification in the guidelines of the types of vehicles to be considered by the VMT metric. The Agency is not making any changes in response to this comment. The Agency disagrees that the words "automobile" and "vehicle" require further definition in the Guidelines. How precisely one defines any given vehicle for analysis is primarily a methodological question, and subdivision (b)(4) defers to the professional judgment of the agency. Notably, the guideline uses the terms automobile and vehicle both because those terms are commonly understood and they are used in the statute. (Pub. Resources Code § 21099(b)(1) ("In developing the criteria, the office shall recommend potential metrics to measure transportation impacts that may include, but are not limited to, vehicle miles traveled, vehicle miles traveled per capita, automobile trip generation rates, or automobile trips generated").) Also note, elsewhere in a related provision of CEQA, the statute refers to "cars and light duty trucks." (See, e.g., Public Resources Code § 21155.) OPR's Technical Advisory includes an advisory discussion of accounting for freight.

Comment 36.24

The word "existing" should be replaced with "baseline" in the regulatory text when referring to projects within 1/2 mile of a major transit stop or high quality transit corridor since the baseline for determination of this exemption may be something different than the existing condition.

Response 36.24

The comment suggests replacing the word "existing" with the word "baseline" in the section on transportation impacts. The Agency is not making any changes in response to this comment. The word "existing" in the second sentence of Guidelines section 15064.3(b)(1) is not meant to refer to the environmental baseline requirement in section 15125. Use of the word "existing" in this sentence is appropriate and refers to whether a major transit stop or stop along a high quality transit corridor

currently exists that would be available to serve a project, and thereby support a conclusion of a less than significant transportation impact.

Comment 36.25

The Technical Advisory states that if a local jurisdiction uses city VMT per capita, the "Proposed development referencing city VMT per capita must not cumulatively exceed the number of units specified in the SCS for that city, and must be consistent with the SCS." (Technical Advisory, Page 12, 'Recommended Numeric Thresholds for Residential, Office, and Retail Projects', November, 2017). Since total number of housing units is not a variable in SCAG's growth forecasts, it is not included in the adopted SCS. SCAG uses the variable of "households", or occupied housing units, which is a slightly smaller subset of housing units, depending upon the vacancy factor. Therefore, there is no number of units inventory for a local jurisdiction in SCAG's SCS from which to make a determination as to whether or not a proposed project exceeds the number of units specified in the SCS. We request that OPR clarify this methodological ambiguity in the SB 743 guidelines.

Response 36.25

The comment notes that its regional transportation plan does not include an inventory of housing units; rather, it evaluates the number of households. The comment arises in the context of OPR's Technical Advisory, and suggests that clarification should be made in the guideline text.

The Agency is not making any change in response to this comment. The comment primarily concerns the Technical Advisory prepared by the Governor's Office of Planning and Research, which is a non-regulatory document and is not part of the Agency's proposed rulemaking. This comment is not specifically directed at the Agency's proposed rulemaking or its procedures. Thus, the Agency declines to comment further upon its merit and make any change in response. (Gov. Code, § 11346.9(a)(3).) The Agency also notes that the suggested clarification is not necessary. Section 15064.3(b)(4) states that lead agencies have discretion on methodological questions such as those raised in the comment.

Comment 37 - California Department of Transportation, Office of the Director

Comment 37.1

Thank you for the opportunity to review the comprehensive update of California Environmental Quality Act (CEQA) Guidelines. These guidelines are expected to streamline the environmental process for many types of transportation projects. We note the update gives discretion to Lead Agencies to determine the appropriate measure of transportation impact for roadway capacity projects.

Response 37.1

The comment states that many transportation projects are likely to be streamlined under the proposal, and notes discretion of lead agencies in evaluating roadway capacity projects. These are introductory sentences and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 37.2

The California Department of Transportation (Caltrans) is committed to SB 743 implementation and already evolved our Local Development-Intergovernmental Review (LD-IGR) Program to be consistent with future CEQA streamlining in transit priority areas. Education of our work force on SB743 will continue through and beyond the statewide implementation date. We will use the CEQA Guidelines and technical advisory when building transportation projects on the State Highway System, reviewing local development projects, and as a basis for determining significance.

Response 37.2

The comment notes that the department is updating its own procedures to be consistent with the new transportation guideline. The Agency declines to make any change in response to this comment. The comment does not suggest any specific changes to the proposed text.

Comment 37.3

SB 743' s intent is to balance more appropriately the needs of congestion management with statewide goals related to infill development, promotion of public health through active transportation, and reduction of greenhouse gas emissions. Caltrans Strategic Management Plan 2015-2020 is aligned with that intent and includes targets to reduce vehicle miles traveled, decrease GHG emissions, and increase bicycling, pedestrian, and transit trips.

Response 37.3

The comment notes that the new guideline on transportation is consistent with the department's Strategic Management Plan. The Agency declines to make any change in response to this comment. The comment does not suggest any specific changes to the proposed text.

Comment 37.4

We continue partnering with State, regional, and local agencies to implement SB 743. Please contact Alyssa Begley, SB 743 Program Implementation Manager, if you have any questions at (916) 651-6882 or by e-mail sent to alyssa.begley@dot.ca.gov.

Response 37.4

The comment notes that the department will continue to partner with other state, regional and local agencies on implementation of the new transportation guideline. The Agency declines to make any change in response to this comment. The comment does not suggest any specific changes to the proposed text. The Agency acknowledges with gratitude the Caltrans' assistance in this Guidelines update, and appreciates the commenter's support.

Comment 38 – California Department of Transportation, Division of Aeronautics

Comment 38.1

Thank you for the opportunity to comment on the document referenced above. The California Department of Transportation, Division of Aeronautics (Division) appreciates all of the efforts and outreach to update the California Environmental Quality Act (CEQA) Guidelines. The following comments are offered for your consideration.

Response 38.1

The comment appreciates the outreach efforts of the Office of Planning and Research in developing the Guidelines update. These are introductory sentences and no change is required. The Agency thanks the commenter for providing a comment.

Comment 38.2

The Division's comments that were sent to the Office of Planning and Research (OPR) in response to the *Proposed Updates to the CEQA Guidelines, August 11, 2015, Preliminary Discussion Draft,* are attached for your review because they are applicable to the proposed updates in the 2017 Final. Our requests and recommendations from 2015 remain the same today; that is, to not edit or move the checklist noise question as it relates to airports, over to the hazards section of the checklist.

Response 38.2

The commenter states that it has attached its previous comments to the draft CEQA Guidelines proposal for the Agency's review. These comments will be addressed in subsequent responses.

Comment 38.3

Such a move would be a technical error because noise, even aircraft noise that is considered excessive, is not a hazard or a hazardous material and it could steer environmental analysis for some projects in the wrong direction.

Response 38.3

The comment objects to consolidating initial study checklist questions.

The Agency has further modified the noise section in Appendix G in response to comments. Appendix G now retains renumbered Question XIII.c. related to projects within an airport land use plan or near a public airport. The Agency now proposes to consolidate the two noise questions related airports into one question. This change is reflected in the 15-day language, which includes the revisions to the originally proposed changes to the CEQA Guidelines.

Notwithstanding of the revision, the Agency notes that Appendix G contains a sample initial study format. Appendix G's questions are not an exhaustive list of all potential impacts that may result from a proposed project. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f); *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 689.) Thus, even if Appendix G does not include express mention of specific topics, Appendix G advises that "[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered." Additionally, a lead agency has the discretion to establish the thresholds of significance for use in reviewing a project's environmental impacts. (See CEQA Guidelines, § 15064(b) ["The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved . . . ."].) Please also see Master Response 18 regarding Appendix G.

Comment 38.4

Noise from aviation sources is not analyzed for its potential as a hazard so it would be misleading to decision makers and the public to have it discussed as a hazard in environmental documents. Likewise, the National Environmental Policy Act environmental analysis treats noise differently than hazards and safety. The aviation noise question as it is currently written and within the section of other noise questions in the checklist, should remain as it is today.

Response 38.4

The primary concern raised in the comment relates to format. Please see response 38.3.

Comment 38.5

The California Supreme Court's decision in *California Building Industry Assn. v. Bay Area Air Quality Management Dist. (CEJA v. BAAQMD), D. Exceptions to the General Rule,* contains several specific exceptions to CEQA's general rule. Public Resources Code Section 21096 is one of those exceptions. It requires lead agencies to consider airport-related safety hazards and/or noise problems. When lead agencies analyze proposed projects near airports for safety and noise, they reference different sets of technical criteria and resources for determining potential environmental impacts.

Response 38.5

The Agency is not making any change in response to this comment. The comment does not suggest any specific changes to the proposed text. Please see response 38.3.

Comment 38.6

OPR did not provide written responses or feedback to our 2015 comments in the 2017 Final Updates package in either the thematic responses to comments, or the section titled "Updating the Environmental Checklist" (pages 31-36), where explanations for proposed deletions, consolidation or updating are stated.

Response 38.6

The comment does not suggest any specific changes to the proposed text. The Agency declines to make any change in response to this comment.

Comment 38.7

The proposed updates note that the Appendix G, environmental checklist is in a sample format to guide planners, provoke thought and alert interested parties to issues that might be overlooked in the environmental review process. The proposed updates also state that the checklist is not a binding mandate. This approach to providing non-regulatory guidance is helpful and has become an essential tool for lead agencies as they prepare CEQA documents. The sample format and questions are used in nearly all of the CEQA documents we receive and review from the State Clearinghouse (nearly 600) every year. The checklist is especially valuable to the many lead agencies that choose to prepare their CEQA documents in-house. We are concerned that if too many deletions or consolidations are made to the checklist it will be streamlined into a less useful form for lead agencies.

Response 38.7

The Agency agrees with the commenter that Appendix G is not a binding mandate, as discussed in response 38.3. Also, as noted in response 38.3, the Agency has modified Appendix G's noise section to consolidate the two questions related to airports. The Agency appreciates the comment's concern that the checklist should contain enough detail to prompt appropriate inquiry while not being overly burdensome. As explained in Master Response 18 regarding Appendix G, the Agency attempted to strike a balance, but ultimately lead agencies will have to develop forms that work for them.

Comment 38.8

The 2017 Final proposed updates have now eliminated all references to private airstrips. In order to prompt lead agencies to consider safety and noise issues for proposed projects near existing, as well as new private airstrips, we request that a private airstrip reference remain in the checklist language.

Response 38.8

Please see response to 38.3.

Comment 38.9

Thank you for the opportunity to review and comment on the proposed CEQA Guidelines updates.

If you have any questions, please contact me at (916) 654-6223, or by email at philip.crimmins@dot.ca.gov.

Response 38.9

The Agency is not making a change based on this comment. This comment merely concludes the commenter's letter. The Agency thanks the commenter for providing a comment.

Comment 38.10

The California Department of Transportation, Division of Aeronautics (Division), reviewed the above-referenced document with respect to airport and aviation-related noise and safety issues pursuant to the California Environmental Quality Act Guidelines (Guidelines). The Division has technical expertise in the area of airport operation safety, noise and airport land use compatibility. We are a funding agency for airport projects and have permit authority for public use and special-use airport and heliports. According to Appendix Bin the Guidelines the Division itself has state department statutory authorities to review and comment on environmental documents. The Division appreciates the effort the Office of Planning and Research (OPR) has undertaken to update and improve the Guidelines. We are interested in this update process because final changes to the Guidelines could affect our day-to-day responsibilities and workload. We focused on the proposed updates to Appendix G because it is the foundation of environmental analysis and document structure. The following comments are offered for your consideration.

Response 38.10

These are introductory sentences to the commenter's letter, which the commenter submitted to the Governor's Office of Planning and Research (OPR) on October 12, 2015. No change in response to the comment is required.

Comment 38.11

Appendix G; Moving Aviation Noise to Hazards

We believe that OPR should not transfer *Section XI(e)-Noise* over to *Section VIII(e)-Hazards and Hazardous Materials* because noise, as an environmental factor itself, is not defined as a potentially hazardous situation or material, or a hazard to the environment. Primarily, it would not be technically accurate to consider noise as a hazardous environmental factor and then analyze it as such in any environmental document. There is no logical fit for noise to be situated amongst the other true hazards in *Section VIII* such as flooding, unstable soils, and harmful materials. Practitioners of CEQA might also mistakenly conclude that noise as a hazardous environmental factor would not be worth studying unless the potential exists for it to reach hazardous levels.

Response 38.11

Please see response to 38.3.

Comment 38.12

When the Division is a Responsible Agency for the approval of state airport and heliport permits, and airport improvement grants and loans, it becomes even more critical to have airport noise and hazards completely analyzed by lead agencies as we are dependent on their environmental analysis to carry out our approval of the project. We would like to continue to see aviation noise in the noise *Section XI* instead of burying it in hazards *Section VIII* so there is no doubt about the importance of analyzing each of these distinct environmental factors separately.

Response 38.12

Please see response to 38.3.

Comment 38.13

The aviation noise question that currently resides in *Section XI(e)-Noise* lost much of its meaning and focus in the proposed move over to *Section VIII-Hazards.* The question as currently written is succinct and accurate as it is informed by statutory references in the Public Utilities Code section 21002(g), 21670, 21674.7 and 21669; Public Resources Code 21096, and the California Airport Land Use Planning Handbook which is published by the Division. Striking *section XI(e)* also leaves out a significant part of a project's cumulative noise environmental analysis. We urge OPR to keep the text of *Section XI(e)* intact and in its current location.

Response 38.13

Please see response to 38.3.

Comment 38.14

Appendix G; Change in Air Traffic Pattern

Rather than strike *Section XV(c)-Transportation/Traffic* from the Guidelines we would prefer that OPR clarify and add text to this important question. While the Division agrees that it would be a rare project proposal that would cause an airport to change its traffic pattern, the environmental impacts would likely be significant and unavoidable. We believe that decision

makers and the public would be well served to know when such a project could affect their environment. Changing an airport's traffic pattern would place aircraft flying at lower altitudes over areas near airpo1is where they have not flown before which, literally overnight, would substantially increase aircraft noise and safety concerns in those areas. Projects which could lead to these impacts include very tall structures built close to airports such as wind energy turbines, communications towers, new and taller power-line support structures, and residential/office buildings. Closing, shifting or realigning an airport runway could also alter the prescribed flight pattern of aircraft.

Response 38.14

The Agency declines to make a change in response to this comment about the transportation questions in Appendix G. The Agency finds that including Question XVII.c. regarding air traffic patterns is not necessary to include in Appendix G because it is not likely to be an issue that commonly arises. As discussed in response 38.3, Appendix G is not meant to provide an exhaustive list. For that reason, the Agency believes that Appendix G should contain questions that, among other things, highlight environmental issues commonly associated with most types of new development. (Initial Statement of Reasons, p. 69.) That said, even if Appendix G does not include express mention of specific topics, Appendix G advises that "[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered." Additionally, a lead agency has the discretion to establish the thresholds of significance for use in reviewing a project's environmental impacts. (See CEQA Guidelines, § 15064(b) ["The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved . . . ."].) Lead agencies may decide to use the question currently in Question XVIII.c. regarding air traffic patterns in its impacts analyses.

Comment 38.15

Thank you for the opportunity to review and comment on these proposed Guidelines updates and please keep us up-to-date on future proposed changes.

Response 38.15

The Agency will not be making any changes in response to this comment. The comment does not suggest any specific changes to the proposed text. The comment merely concludes its comment letter.

Comment 39 - Transportation Corridor Agencies

Comment 39.1

This letter provides the comments of the Foothill/Eastern Transportation Corridor Agency and the San Joaquin Hills Transportation Corridor Agency (collectively, "TCAs") regarding the above-referenced proposed amendments to the California Environmental Quality Act ("CEQA") Guidelines ("Amendments"). The TCAs are public joint powers authorities formed by the County of Orange and fifteen cities. The TCA planned, designed, financed and built 51 miles of new regional toll highways that are part of the State Highway System. Over 300,000 drivers use the TCAs' projects every day.

The TCAs submitted comments on earlier drafts of the Amendments. Those comments are incorporated by reference herein.

Response 39.1

These are introductory sentences and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 39.2

Proposed Section 15064.3. Determining the Significance of Transportation Impacts.

The TCAs welcome the recognition by the Resources Agency that prior drafts of the Amendments would have created significant additional regulatory barriers to the timely and cost-effective delivery of mobility improvements to the people of the State of California. In particular, we appreciate the Resources Agency's recognition that the geographic and demographic diversity of California makes it not feasible or prudent to establish a "one size fits all" approach to evaluation of transportation impacts under CEQA. We applaud the decision of the Resources Agency to delete the "road diet" from the Amendments and from the Technical Advisory, and to leave discretion to agencies conducting CEQA review of road and highway projects to select the appropriate measure of transportation impact." As described in our prior comments and those of many other transportation agencies, the "road diet" and other provisions of the Technical Advisory would have a devastating impact on the delivery of mobility improvements to support the State's vibrant economy and growing population. For the reasons described in the Petition to the Office of Administrative Law by the Building Industry Legal Defense Foundation, the Technical Advisory is a regulation subject to the Administrative Procedure Act. We request that the Technical Advisory be withdrawn and that the Resources Agency comply with the California Administrative Procedure Act ("APA") requirements regarding regulation.

Response 39.2

The Agency is not making any change in response to this comment. The Agency appreciates the comments supporting aspects of the proposal; however, the Agency does not concur with the characterization of the proposal as a “road diet.” The comment is about the Technical Advisory prepared by the Governor’s Office of Planning and Research, which is a non-regulatory document and is not part of the Agency’s proposed rulemaking. This comment is not specifically directed at the Agency’s proposed rulemaking or its procedures. Thus, the Agency declines to comment further upon its merit and make any change in response. (Gov. Code, § 11346.9(a)(3).)

Comment 39.3

We understand that the intent of section 15064.3 is to make it clear that agencies evaluating roadway capacity projects are not required to use vehicle miles traveled as a measure of transportation impacts of capacity projects, and transportation agencies will have continued discretion to select a methodology such as the Level of Service, average daily trips, and other similar measures of use of a road or highway project that are well-established in transportation planning and engineering. This approach will allow transportation agencies to utilize these methods for evaluating the transportation impacts of roads and highways and, as required by CEQA, to analyze impacts of transportation on local general plans that establish traffic delay as a measure of transportation impact. (See, e.g., CEQA Guidelines, § 15125, subd. (d).)

Response 39.3

The Agency is not making any change in response to this comment. This comment merely states the commenter's understanding of Guidelines section 15064.3. As the commenter notes, section 15064.3(b)(2) provides that lead agencies have discretion in which measure to use to evaluate roadway capacity projects, provided that any such analysis is consistent with the requirements of CEQA and any other applicable requirements such as local planning rules.

Comment 39.4

Unfortunately, the proposed amendment to section 15064.3(b) creates unnecessary confusion and ambiguity by adding the language **"consistent with CEQA and other applicable requirements"** to the language of the amendment. **We request that the Natural Resources Agency delete the text "consistent with CEQA and other applicable requirements".**

Response 39.4

The Agency declines to remove the phrase "consistent with CEQA and other applicable requirements" in Guidelines section 15064.3(b) in response to this comment. The Agency disagrees that the phrase creates confusion. During the pre-rulemaking process, some stakeholders had suggested that additional flexibility may be appropriate for roadway capacity projects, in part because of evolving metrics for impact evaluation and new and revised legal requirements. While the proposal recognizes lead agency discretion, that discretion is not boundless. The Agency cannot relieve lead agencies of any requirements found in CEQA or other laws and regulations. Additionally, the Agency notes that phrase is consistent with Public Resources Code section 21099(b)(3), which states that the guidelines adopted pursuant to SB 743 do "not relieve a public agency of the requirement to analyze a project's potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation." The Agency further believes that Guidelines section 15064.3(b)(2) should reflect and acknowledge that regulations and statutes continue to evolve and be updated. The Agency also notes that some comments received during this rulemaking interpreted the discretion in (b)(2) as an exemption from the requirement to analyze impacts from capacity projects. Particularly in light of such comments, the phrase "consistent with CEQA and other applicable requirements" is necessary to signal that agencies proposing such projects must still analyze air quality, energy and other related impacts.

Comment 39.5

The Amendments are required to comply with the standards of the APA (Gov't Code, § 11340 et seq.). Among other requirements, the APA requires a rule "in plain, straightforward language avoiding technical terms as much as possible using coherent and easily readable language." (Office of Administrative Law, Guide to Public Participation in the Regulatory Process ("OAL Guide"), p. 25.) "Clarity" as defined in the APA means "written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them." (Gov't Code,§ 11349(c).) A regulation is presumed to be unclear if, among others:

1. The regulation has more than one meaning;

2. The language of the regulation conflicts with the description of its effect,

3. The regulation uses an undefined term which does not have a meaning generally familiar to those who are "directly affected", and

(5) The regulation presents information in a format not readily understandable....

(OAL Guide, p. 26-26.) The text quoted above **("consistent with CEQA and other applicable requirements")** violates the above clarity standards of the APA. The regulation does not describe what is meant by "consistent with CEQA and other applicable requirements." CEQA is a complex statute. The California courts have issued hundreds of opinions interpreting CEQA. Many of the courts' CEQA decisions conflict or leave considerable ambiguity regarding what is required to comply with CEQA. Similarly, there are dozens of state and federal laws governing the planning and approval of transportation projects. Without additional clarification, it is not possible for transportation agencies and the public to understand the meaning of "consistent with CEQA and other applicable requirements" of proposed section 15064.3.

Response 39.5

The Agency declines make a change based on the comment regarding Guidelines section 15064.3(b). The Agency disagrees with the comment that the phrase "consistent with CEQA and other applicable requirements" in Guidelines section 15064.3(b) violates the clarity standards of the APA. The phrase "consistent with" is not uncommon in the Public Resources Code. (See, e.g., Pub. Resources Code, §§ 21083.3 [limited analysis required for development project consistent with general or community plan that was subject of earlier EIR], 21094, subd. (b) [governing the use of a tiered EIR to examine a later project].) Similar to other sections where "consistent with" is also used, "consistent with CEQA and other applicable requirements" means that a lead agency's decision to use a particular measure of transportation impact must be consistent with the governing law – here, CEQA and other applicable requirements that may apply in the specific instance. Agencies proposing roadway capacity projects will be in the best position to know which specific laws govern them. Because each project is different, the Agency finds that it is appropriate to be flexible in Guidelines section 15064.3(b), rather than attempt to list out the entire universe of applicable requirements. Such flexibility is particularly important because statutes and regulations may change over time. Thus, the Agency declines to make a change based on this comment, and finds that Guidelines section 15064.3(b) is consistent with the APA.

Comment 39.6

The ambiguous language of proposed section 15064.3 will only confound further the material confusion and complexity of state law requirements applicable to greenhouse gas emission ("GHG") impacts of transportation improvements. Other provisions of the Amendments (e.g., § 15064.4) address the evaluation of impact of GHG emissions. California law (S.B. 375) address the evaluation of GHG emissions from transportation projects and land use included in regional transportation plans/sustainable communities strategies. As the explanatory sections of the Amendments notes several California courts have addressed the evaluation of GHG emissions impacts under CEQA, and that the law governing evaluation of GHG impacts is evolving along with state statutory requirements. The Amendments should not be adding to the complexity and confusion surrounding the ever-evolving standards regarding GHG emissions by suggesting that the discretion afforded transportation agencies in section 15064.3(c) to evaluate transportation impacts of capacity-enhancing projects is somehow constrained by state law requirements applicable to GHG emissions.

Response 39.6

The Agency declines make a change based on the comment regarding Guidelines section 15064.3(b). As that section makes clear, for roadway capacity projects, the lead agency retains the discretion to determine the appropriate transportation impact metric. Please also see Responses to Comments 39.4-39.5.

Comment 39.7

As has been well documented, CEQA compliance for major transportation projects is extremely complex, expensive and time-consuming. It is common for the compliance process for CEQA and other state and federal environmental laws applicable to major infrastructure improvements to extend for several decades with processing and escalation of costs increasing by many tens of millions of dollars. As evidence of the above statement, one need not look any further than the delays in the approval of Governor Brown's signature infrastructure projects - the High Speed Rail Project and the California Water Fix. Both projects are the subject of many years of extensive and ongoing CEQA litigation.

Response 39.7

The Agency is not making any change in response to this comment. The comment does not suggest any specific changes to the proposed text. Additionally, this comment is not specifically directed at the Agency's proposed rulemaking or its procedures. Thus, the Agency declines to comment further upon its merit and to make any change in response. (Gov. Code, § 11346.9(a)(3).)

Comment 39.8

Finally, we request that the Resources Agency provide that the Amendments will not take effect until two years after the final approval of the Amendments under the APA.

Response 39.8

Please see Master Response 7 regarding CEQA Guidelines section 15064.3(c).

Comment 40 - Tuolumne County Transportation Council

Comment 40.1

Thank you for the opportunity to comment on the Natural Resources Agency's Proposed Rulemaking for Amendments and Additions to the State CEQA Guidelines. There is a major inconsistency in the proposed rules for when the statewide start date for when Lead Agencies must switch from using Level of Service (LOS) to Vehicle Miles Traveled (VMT) for CEQA transportation impacts. The *Proposed Regulatory Text* is inconsistent with what the statewide start date with what is stated in the *Initial Statement of Reasons* and the *Notice of Proposed Rulemaking* for the New Section 15064.3 - Determining the Significance of Transportation Impacts.

Response 40.1

As the 15-day language reflects, the Agency has further refined section 15064.3 in response to comments. Please see Master Response 7 regarding CEQA Guidelines section 15064.3(c).

Comment 40.2

The Proposed Regulatory Text on page 11 section (c) Applicability states, "The provisions of this section shall apply prospectively as described in section 15007. A lead agency may elect to be governed by the provisions of this section immediately. **Beginning on July 1, 2019, the provisions of this section shall apply statewide."** The **July 1st 2019** statewide start date in the *Proposed Regulatory Text* is not consistent with the language in the *Initial Statement of Reasons* and *the Notice of Proposed Rulemaking* for the New Section 15064.3 - Determining the Significance of Transportation Impacts. On Page 8 of the *Notice of Proposed Rulemaking* states, **"a two-year grace period for those agencies that need time to update their own procedures."** Also a period for local jurisdictions will **"have until 2020 to switch to VMT if they so choose"** Page 16 - Initial Statement of Reasons. Assuming six months before the adoption of these proposed rules by the Office of Administration Law on October 2017, the proposed July 1st 2019 statewide adoption date is only nine months away which is significantly less than the 2 year grace period and the 2020 start date proposed in the other Natural Resource Agency Proposed Rulemaking documents.

OPR's Final Proposed Updates to the CEQA Guidelines from November 2017 page 80, 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 January 1, 2020, the provisions of this section shall apply statewide."**

Response 40.2

As the 15-day language reflects, the Agency has further refined section 15064.3 in response to comments. Please see Master Response 7 regarding CEQA Guidelines section 15064.3(c).

Comment 40.3

As a rural Regional Transportation Planning Agency, the start date of this section by July 1st 2019 does not allow enough time for local and regional agencies to adopt new thresholds of significance for the new VMT transportation metric.

Response 40.3

As the 15-day language reflects, the Agency has further refined section 15064.3 in response to comments. Please see Master Response 7 regarding CEQA Guidelines section 15064.3(c).

Comment 40.4

The OPR's Final SB 743 Recommendations does not include any recommendations for a VMT methodology, thresholds of significance, and mitigation measures for rural regions. The OPR's Final CEQA Guidelines recommendations are exclusively for urbanized regions.

Response 40.4

The Agency declines to make any change in response to this comment. Public Resources Code section 20199 directed OPR to propose criteria for determining the significance of transportation impacts. But the Legislature did not direct OPR to propose a particular VMT methodology, significance thresholds or mitigation measures for any types of projects. Nor did the Legislature give the Agency the authority to do so. Generally, lead agencies (rather than OPR or the Agency) have the discretion to select the

methodology, significance thresholds, and mitigation measures that are appropriate for their projects. (CEQA Guidelines, § 15064; *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 371-373)
As to the commenter's second point, the Agency disagrees that Guidelines section 15064.3 is exclusively for urbanized regions. Section 15064.3 applies to all projects regardless of their location. Lead agencies, including those reviewing rural projects, may select the appropriate significance threshold for the particular project.

Comment 40.5

From Page 15 of OPR's Technical Advisory Document, "In rural areas of non-MPO counties (i.e., areas not near established or incorporated cities or towns), fewer options may be available for reducing VMT, and **significance thresholds may be best determined on a case-by-case basis."**

Response 40.5

The Agency is not making any change in response to this comment. The commenter refers to the Governor's Office of Planning and Research's Technical Advisory, which is not part of the Agency's proposed rulemaking. The comment does not suggest any specific changes to the proposed text of the current rulemaking package, and this comment is outside the scope of this rulemaking. Thus, the Agency declines to comment further upon its merit and make any change in response. (Gov. Code, § 11346.9(a)(3).)

Comment 40.6

We are planning to establish a VMT methodology, thresholds of significance, and mitigation measures as part of comprehensive Vehicles Miles Traveled (VMT) Study for our region. This will help to avoid issues with having to use VMT thresholds on case by case basis.

Response 40.6

Please see response to 40.4. The Agency supports the commenting agency's plan to exercise its discretion to establish its own methodology for analyzing vehicle miles traveled, significance thresholds, and mitigation measures as part of its comprehensive study of vehicle miles traveled for the region.

Comment 40.7

In order to establish our VMT thresholds, we need a least a two year transition period which was recommended by OPR to allow local and regional agencies time to transition from LOS to VM T. A rush to implement these new rules for local and regional agencies will severely impact the development entitlement process which would include approving housing projects. Local and regional agencies want to be consistent with State laws including SB 743 and the new rules proposed by the Natural Resources Agency . However, rushing implementation could have unintended consequences such as: legal, economic, social equity, and environmental impacts throughout the State.

We recommend to the Natural Resource's Agency to change the proposed July 1st 2019 statewide start date in Proposed Regulatory Text to a two year transition period from the date of the

adoption of these proposed rules by the Office of Administration Law for the provision of 15064.3 Determining the Significance of Transportation Impacts to apply Statewide **on January 1st 2021.**

Response 40.7

As the 15-day language reflects, the Agency has further refined section 15064.3 in response to comments. Please see Master Response 7 regarding CEQA Guidelines section 15064.3(c).

Comment 41 – Jere H. Lipps, Ph.D.

Comment 41.1

I am pleased to comment on the proposed updates to the CEQA review. My concern is three-fold, focusing on how the proposed changes affect the treatment and protection of California's Paleontological Resources under CEQA. Those resources document California's wonderful fossil record going back at least a billion years, and that document the history of life on the eastern Pacific border.

Response 41.1

The Agency is not making any change in response to this comment. These are introductory sentences and no change is required.

Comment 41.2

Paleontological Resources should be treated separately in the CEQA checklist. They were included in Appendix G as part of Cultural Resources and are proposed to be placed in Geology and Soils. But Paleontological Resources are quite unlike either of these, so that agency personnel and citizens alike may be confused. Each is a distinct subject with different materials, requiring their own collection, curation and interpretive techniques. This change would improve the treatment of each of these Resources. Putting Paleontological Resources in its own category will improve their understanding, making their treatment better and more efficient.

Response 41.2

The Agency declines to place the Appendix G question related to paleontology into a separate, stand-alone section. The Agency does not dispute that paleontological resources are unique resources. The Agency finds that creating a distinct section for paleontological resources is not necessary in Appendix G. Agency notes that three key points remain unchanged by this proposed rulemaking package and would not change even if paleontological resources were moved into a separate section. First, a lead agency must adequately analyze and mitigate all of a project's potentially significant impacts, including impacts to paleontological resources. Second, a lead agency also has the discretion to establish the thresholds of significance for use in reviewing a project's environmental impacts. (See CEQA Guidelines, § 15064(b).) Finally, Appendix G is merely a sample initial study format that a lead agency can tailor to address local conditions and project characteristics. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).) Thus, the Agency finds that it is not necessary to create a stand-alone section in Appendix G for paleontological resources. Creating a stand-along section does not

expressly achieve the Agency's stated goals of making the CEQA process more efficient and resulting in better environmental outcomes.

Comment 41.3

"Paleontological resources" needs clear definition for proper evaluation. Vertebrate, invertebrate, plant, and microfossil should be included to provide guidance on what constitutes such a resource.

Response 41.3

The Agency declines to define "paleontological resources" in response to the comment. The Agency's proposed change is to move the Appendix G question regarding paleontological resources from the cultural resources section to the geology and soils section. As part of the proposed rulemaking, the Agency does not propose to change this specific Appendix G question. (Gov. Code, § 11346.9(a)(3).) Thus, the commenter's request that the Agency define "paleontological resources" is outside the scope of the current rulemaking package.

Comment 41.4

Evaluation of the uniqueness of paleontological resources cannot be easily determined in the field while construction projects are underway. This evaluation requires the preparation, curation and, commonly, the study of the fossils, even in cases where the EIR has provided a preliminary assessment of a site. For this reason and to protect those unique finds that might get overlooked, "paleontological resources" should be used instead of "unique paleontological resources".

Response 41.4

The Agency declines to delete "unique" from the Appendix G question related to "unique paleontological resources." The Agency's proposed change is to move the Appendix G question regarding paleontological resources from the cultural resources section to the geology and soils section. The commenter's suggestion to modify the existing language is outside the scope of the current rulemaking package. (Gov. Code, § 11346.9(a)(3).) See also Response to Comment 41.2.

Comment 41.5

One goal of the CEQA updates is to streamline the review process, but another goal is to clarify the environmental issues under consideration and to recognize the changes in our understanding of these issues since the passage of CEQA in 1970. I hope these recommendations will help do that. Thank you for the opportunity to comment on the proposed updates to the CEQA review process.

Response 41.5

The comment does not suggest any changes to the proposed text. The Agency thanks the commenter for providing a public comment.

Comment 42 - Patricia A. Holroyd, Ph.D., *et al.*

Comment 42.1

We are writing your office to comment on the proposed updates to the CEQA review process.

Our primary concern is how the proposed changes affect the treatment and protection of California's Paleontological Resources under CEQA, and we would like to recommend that they be treated separately as a standalone issue in the CEQA checklist of Appendix G. Here are the key changes that we recommend based on our experiences in working with land managers, regulatory agencies, and mitigation professionals under the current CEQA guidelines.
Separate Paleontological Resources into a new, standalone environmental issue in Appendix G. There has long been confusion in treating fossils within cultural resources and the proposed change to treat them as geologic resources will not resolve that confusion. At the federal level, fossils are now recognized with separate legislation (Subtitle D of the Omnibus Public Lands Management Act of 2009, PL111-011). Recognizing paleontological resources as a distinct category in CEQA would improve the alignment of CEQA with federal legislation.

Response 42.1

The Agency declines to place Appendix G question related to paleontology into a separate, stand-alone section. The Agency does not dispute that paleontological resources are unique resources. The Agency's proposed change is to move the Appendix G question regarding paleontological resources from the cultural resources section to the geology and soils section. The commenter's suggestion to create a new section to address only paleontological resources is outside the scope of the current rulemaking package. (Gov. Code, § 11346.9(a)(3).) See also Response to Comment 41.2.

Comment 42.2

We recommend adding a definition of paleontological resources to comprise vertebrate, plant, invertebrate and echo fossils. There currently is a lack of clarity in CEQA as to which fossil resources are covered, and inclusion of a definition would provide clearer guidance.

Response 42.2

The Agency declines to define "paleontological resources" in response to the comment. The Agency's proposed change is to move the Appendix G question regarding paleontological resources from the cultural resources section to the geology and soils section. The commenter's request that the Agency define "paleontological resources" is outside the scope of the current rulemaking package. (Gov. Code, § 11346.9(a)(3).

Comment 42.3

Within the Paleontological Resources environmental issue checklist, we recommend the following language: "directly or indirectly cause a substantial adverse affect on a paleontological resource or site?"

The current proposed language of destruction of a "unique paleontological resource" cannot be evaluated a priori or in the field. Paleontological uniqueness or scientific value can only be determined after recovery, accession to a museum, and comparative study of fossils. Determination of uniqueness as part of the environmental impact assessment would place an undue burden on paleontological mitigation professionals.

Response 42.3

The Agency declines to adopt the commenter's suggested modification to the Appendix G question related to paleontological resources. Appendix G is merely a sample initial study format that a lead agency can tailor to address local conditions and project characteristics. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).) It is not an exhaustive list of all potential impacts. For those reasons, it is not necessary that Appendix G includes every conceivable question. Nor would that be possible given the unique nature of each project. The current rulemaking package does not change the general requirement under CEQA that lead agencies must analyze a proposed project's significant environmental impacts. (See Pub. Resources Code, § 21100(b)(1).) Thus, even if Appendix G does not include express mention of specific topics, Appendix G advises that "[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered." Additionally, a lead agency has the discretion to establish the thresholds of significance for use in reviewing a project's environmental impacts. (See CEQA Guidelines, § 15064(b) ["The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved . . . ."].)

Comment 42.4

Thank you for the opportunity to comment on the proposed updates to the CEQA review process. CEQA has had a very positive impact to date on ensuring that California's fossil resources are recovered and conserved in museums as part of the public trust. Treating paleontological resources as a distinct resource category with specific guidance in the updated CEQA can ensure that these important resources will continue to be recovered and conserved without confusion that might result from combining them with geologic resources.

Response 42.4

Please see responses 42.1 and 42.2. The Agency thanks the commenters for providing their public comments.

Comment 43 - Association of Environmental Professionals

Comment 43.1

On behalf of the Association of Environmental Professionals (AEP), I appreciate the opportunity to provide comments on the proposed *Amendments and Additions to the State CEQA Guidelines* ("Proposed Amendments") by the California Natural Resources Agency ("Agency"). AEP recognizes the tremendous efforts required by the Agency and the California Office of Planning and Research's (OPR) in drafting the Proposed Amendments, and we commend both the Agency and OPR for their collective leadership on this important issue. AEP is a non-profit organization of California's environmental professionals. AEP members are involved in every stage of the evaluation, analysis, assessment, and litigation of projects subject to the California Environmental Quality Act (CEQA). For over thirty years, AEP has dedicated itself to improving the technical expertise and professional qualifications of its membership, as well as educating the public on the value of California's laws protecting the environment, managing our natural resources, and promoting responsible land use and urban growth. AEP's membership is broad and diverse, incorporating environmental and legal professionals from public agencies, the private sector and non-governmental organizations. Generally, AEP supports the amendments proposed. There are certain issues AEP believes warrants renewed consideration and

further edit. To that end, AEP's comments on the Proposed Amendments is included as Attachment 1 hereto. The first column of Attachment 1 contains OPR's proposed changes. The second column contains AEP's suggested edits to those proposed changes (with blue underscore indicating suggested additional text and red strikethrough indicating suggested deletions). AEP's rationales for any suggest edits are contained in the third column. Thank you for the continued opportunity to play an active role in this process. Should you have any questions or need additional information regarding our comments, please do not hesitate to contact me or our Capital lobbyist, Matt Klopfenstein at (916) 930 – 0796 matt@caladvisorsllc.com.

Response 43.1

The Agency declines to make any revisions in response to this comment. This comment is introductory and general in nature. Specific responses are provided below for the more specific comments that follow. The Agency acknowledges with gratitude AEP's support and assistance throughout this CEQA Guidelines update process. Many of the updates in this package were originally suggested by the commenter.

Comment 43.2

§ 15061. Review for Exemption
…
(b) A project is exempt from CEQA if:
(1) The project is exempt by statute (see, e.g. Article 18, commencing with Section 15260).
(2) The project is exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.
(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.
(4) The project will be rejected or disapproved by a public agency. (See Section 15270(b)).
(5) The project is exempt pursuant to the provisions of Article 12.5 of this Chapter.

Response 43.2

The Agency declines to make any revisions in response to this comment. As reflected in the Proposed Regulatory Text document, the language in section 15061(b)(3) proposes to replace the phrase "general" with the phrase "common sense exemption," consistent with *Muzzy Ranch Co. v. Solano County Airport Land Use Com*. (2007) 41 Cal.4th 372, 389. (Proposed Regulatory Text, p. 3.)

Comment 43.3

Consistent with OPR's guidance on evaluating transportation impacts under SB 743, AEP suggests the addition of a new Section (b)(2) to include the ability of a Lead Agency to use an adopted VMT Reduction Plan, compliance with which would demonstrate less than significant transportation impacts.

Response 43.3

The Agency declines to include a new subdivision (b)(2) to Guidelines section 15064.3. The commenter proposed the concept of a "VMT Reduction Plan." The Agency is unaware of whether such plans currently exist in practice, and the Agency finds that inserting it in section 15064.3 with further

definition may create ambiguity. Additionally, the Agency finds that the commenter's proposed revision is not necessary. The CEQA Guidelines already describe how a project's consistency with plans may be used in the determination of significance. (See, e.g., CEQA Guidelines § 15064(h)(3) (a "lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program…").) Further, a lead agency may also be able to rely on the environmental analysis prepared for any such plan. (See, e.g., CEQA Guidelines § 15152.)

Comment 43.4

AEP also suggests that the current Section (b)(4) (Methodology) add reference to "service population" as an appropriate basis to express change in VMT, as specified in the updated SB 743 Guidelines.

Response 43.4

The Agency declines to include reference to "service population" in section 15064.3(b)(4). In general, a lead has discretion in selecting the appropriate methodology to evaluate environmental impacts. (See, e.g., *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 371-373.) It is not necessary to expressly include "service population" because section 15064(b)(3) states that a lead agency may use "any other measure" for its methodology. The proposed Guidelines revisions are not intended to limit a lead agency's discretion to choose the most appropriate methodology in light of a project's conditions or circumstances.

Comment 43.5

Under the current Section (c) (Applicability), AEP suggests that the grace period for mandatory application of the proposed VMT thresholds remain January 1, 2020 as proposed by OPR.

Response 43.5

As reflected in the 15-day language, the Agency has further refined section 15064.3(d) in response to comments. Please see Master Response 7.

Comment 43.6

AEP supports the changes made in Sections (a) and (b). Specifically, changing "should" to "shall" in Section (a) and the edits in Section (b) noting the determination of significance should be based on the evolving state of scientific knowledge and state regulatory schemes.

Response 43.6

No revisions are required in response to this comment, which expresses support for the proposed changes to Guidelines section 15064.4(a) and (b) related to the impacts analysis of greenhouse gas emissions. The Agency appreciates the commenter's support.

Comment 43.7

AEP suggests that Section 15064.4(b)(3) clarify that the lead agency may consider a project's consistency with the State's long-term climate change goals, but is only required to consider *legislatively* adopted target years (*e.g.*, 2030 targets adopted under Senate Bill 32, but not 2050 targets described in Executive Order S-03-05).

Response 43.7

The Agency declines to adopt the commenter's proposed addition to Guidelines section 15064.4(b)(3). Lead agencies have discretion to determine the appropriate scope of analysis and thresholds of significance. The commenter's proposed revision may constrain a lead agency's discretion by suggesting that a lead agency should be focused only on legislatively adopted long-term climate goals or strategies. Additionally, the Supreme Court in *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 3 Cal.5th 497 did not prohibit a lead agency from looking at non-legislatively adopted targets, including Executive Order S-3-05, which established an emission reduction target for year 2050. In fact, the Court pointed out that while "lead agencies have discretion in designing an EIR, the exercise of that discretion must be 'based to the extent possible on scientific and factual data.'" (*Id.* at p. 515.) The Court stated that the Executive Order expresses the "reduction efforts that the scientific community believes necessary to stabilize the climate[,]" and this information has important value to the public in considering long-term greenhouse emission impacts. (*Ibid*.)

Comment 43.8

AEP suggests the edits of Section (a) as we feel it is unnecessary and could create inadvertent conflicts with existing CEQA standards. AEP also suggests the changes to Section (a)(1) to clarify that using multiple baselines is acceptable, based on any of the methods listed in this section.

Response 43.8

The Agency declines to incorporate the commenter's suggestion to omit the last sentence in Guidelines section 15125(a). The comment suggests that language in this section may create conflicts with existing CEQA standards, but does not identify any standard or explain how the language would create any conflict. The Agency developed the changes in this section by drawing from cases interpreting CEQA. Specifically, the proposed revision of section 15125(a) reflects the California Supreme Court's description of the role of the environmental setting: "The fundamental goal of an EIR is to inform decision makers and the public of any significant adverse effects a project is likely to have on the physical environment. [Citations.] To make such an assessment, an EIR must delineate environmental conditions prevailing absent the project, defining a 'baseline' against which predicted effects can be described and quantified." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447, citing *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 315.)

Regarding Guidelines section 15125(a)(1), the Agency does not believe that the commenter's proposed revision is necessary since the sentence already reflects that a lead agency has the discretion to use multiple baselines. Additionally, as reflected in the 15-day language, the Agency revised Guidelines section 15125(a)(1) to clarify that a lead agency may define existing conditions by referencing historic conditions, future conditions, or both, in appropriate circumstances. Please see Master Response 14 regarding the Guidelines section 15125 for a further response.

Comment 43.9

Further, AEP strongly requests deleting the reference to a "historic conditions baseline" from proposed Section (a)(2). *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439 ("NSFR") addressed the heightened evidentiary standard required in support the *sole* use of hypothetical future conditions. *See NSFR*, 57 Cal.4th at 457 ("while an agency preparing an EIR does

have discretion to omit an analysis of the project's significant impacts on existing environmental conditions and substitute a baseline consisting of environmental conditions projected to exist in the future, the agency must justify its decision by showing an existing conditions analysis would be misleading or without informational value"). This is appropriately captured by the proposed text in Section (a)(2). However, the use of a "historic conditions baseline" was not at issue in *NSFR* and, as clearly articulated by *Association of Irritated Residents v. Kern County* (2017) 17 Cal.App.5th 708 ("AIR"), the heightened evidentiary standards applicable to hypothetical future conditions are *not* applicable to the use of historic baseline conditions. *See* AIR, 17 Cal.App.5th at 731 (noting NSFR's principles as applicable for the sole use of hypothetical future conditions as baseline, and *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310 ("CBE") principles as applicable to the use of historic baseline conditions). AEP also understands that the California Supreme Court denied a petition for *AIR*'s review, as well as requests for depublication. AEP suggests that *AIR* be added to the list of Authority cited. AEP is also concerned that Section (a)(2)'s reference to "historic conditions baseline" may be argued to require the use of a historic conditions baseline where the existing conditions are the alleged product of unlawful prior development. Under this interpretation, the use of a historic conditions baseline would be arguably necessary as the use of the "existing conditions" baseline would be "misleading" in light of the allegedly unlawful development. As such, Section (a)(2)'s reference to "historic conditions baseline" is contrary to the long-standing and established principle under CEQA that prior development and activity, even if unlawful, is properly included within the baseline for the evaluation of proposed projects. *See Riverwatch v. County of San Diego* (1999), 76 Cal.App.4th 1428 (baseline properly included illegal development at mining operation seeking use permit); *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270 (baseline properly included approximately 30 years of local airport development without County authorization); *Citizens for East Shore Parks v. California State Lands Com.* (2011) 202 Cal.App.4th 549 (baseline properly included current conditions). This interpretation would allow for CEQA's abuse as, based on a mere accusation of unlawful prior development, Section (a)(1)'s general presumption that the existing physical conditions at the time of the notice of preparation ("NOP") would be gutted. Further, the creation of a "historic conditions baseline" would be exceedingly difficult to implement in practice: it would be highly speculative, subject to inaccuracies and bias, and plagued by a lack of sound, substantial evidence establishing historical environmental conditions. Lastly, it is unnecessary and unwise, for all the reasons cited by the *Riverwatch, Fat,* and *East Shore Parks* cases, among others. For the foregoing reasons, AEP strongly requests deleting the reference to a "historic conditions baseline"

Response 43.9

The Agency has further refined CEQA Guidelines section 15125(a)(2) in response to comments. Specifically, the Agency has deleted reference to a "historic conditions baseline" in section 15125(a)(2). The Agency's 15-day language, which includes the revisions to the originally proposed changes to the CEQA Guidelines, reflects this change. Please see Master Response 14 for an additional response.

The commenter also asks the Agency to include reference to *Association of Irritated Residents v. Kern County Board of Supervisors* (2017) 17 Cal.App.5th 708 (*AIR*). The Agency declines to make any revisions in response to this comment. The *AIR* case carries forth the principles articulated by the California Supreme Court in *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310. (See *AIR*, *supra*, 17 Cal.App.5th at p. 718.) Thus, the Agency finds that the addition of the *AIR* case is not necessary because the primary case, *Communities for a Better Environment v. South Coast Air Quality Management District,* has already been cited in the proposed rulemaking.

Comment 43.10

§ 15234. Remand

…

(d) As to those portions of an environmental document that a court finds to comply with CEQA, additional environmental review shall only be required as required by the court consistent with principles of res judicata.

Response 43.10

The Agency has further refined Guidelines section 15234 regarding remand in response to comments. As the 15-day language reflects, the Agency has revised Guidelines section 15234(d) to clarify that, generally, additional environmental review is limited to what the court might require. This revision would provide consistency with the provision governing remedies in CEQA cases, Public Resources Code section 21168.9, as well as case law interpreting that statute. Please see Master Response 13 for a further discussion about the proposed revisions to CEQA Guidelines section 15234.

Comment 43.11

AEP suggests the deletion of the sentence beginning with "The key question…." The addition of the words "or other fixed standards" is sufficient to generally distinguish between discretionary or ministerial projects. Further, various terms in the sentence beginning with "The key question…" are vague and may inadvertently create uncertainties and foster litigation. For example, AEP is concerned with the term "shape the project" as it is vague and does not necessarily help to distinguish between ministerial and discretionary actions, as both may be interpreted as helping to "shape the project." Further, it may inadvertently invite disputes over what constitutes a project for purposes of CEQA – disputes which currently do not take place. Moreover, the phrase "which might be raised in an environmental impact report" may create confusion in that discretionary projects do not require EIRs *per se* and may, of course, be approved by way of negative declaration or exemption.

Response 43.11

As reflected in the 15-day language, the Agency has further modified Guidelines section 15357 in response to comments. The Agency proposes to revise the sentence that starts with "The key question . . . ." The proposed revision now reads: "The key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project." This revision would address commenters' concerns that the originally proposed sentence was unclear and would spur litigation. The Agency believes that the revised language is consistent with the definition of "ministerial," non-discretionary actions: "A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out." (CEQA Guidelines, § 15369; see *Friends of Westwood v. City of Los Angeles* (1987) [lead agency's employees were "empowered by ordinance to use largely subjective criteria to create individualized standards as to a vast array of important issues"].) Note also, the language at issue was drawn from the cases that interpret CEQA.

Comment 43.12

AEP also suggests the granting of a variance as a further example of a discretionary action.

Response 43.12

The Agency declines to incorporate the commenter's suggestion to add a variance as another example of a discretionary action. There are numerous examples of what constitutes a "discretionary project" and adding every conceivable project type is not possible. Additionally, expanding the list to add other examples would not achieve the Agency's goals for this rulemaking, including proposing changes that would make the CEQA process easier to navigate and more efficient, and would result in better environmental outcomes, consistent with other adopted state policies.

Comment 43.13

AEP suggests the additional language in question (a) to clarify that the project should evaluate impacts to *designated* scenic vistas and resources. AEP believes these edits resolve the ambiguous and highly subjective language which leaves open whether a project should look at impacts to scenic vistas and resources *only* if they are designated as such, or just in general.

Response 43.13

The Agency declines to include "designated" in the Appendix G Question I.a. related to scenic vistas. Appendix G is merely a sample initial study format that a lead agency can tailor to address local conditions and project characteristics. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).) It is not an exhaustive list of all potential impacts. The current rulemaking package does not change the general requirement under CEQA that lead agencies must analyze a proposed project's significant environmental impacts, even if the consideration is not listed in Appendix G. (See Pub. Resources Code, § 21100(b)(1).) Additionally, a lead agency has the discretion to establish the thresholds of significance for use in reviewing a project's environmental impacts. (See CEQA Guidelines, § 15064(b) ["The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved . . . ."].) Thus, the Agency finds that the suggested change is not necessary.

Comment 43.14

AEP notes that question (b) has been deleted and combined with question (c). However, both volatile organic compounds (VOCs) and reactive organic compounds (ROGs) would need to be considered for their contribution to the ozone standard, despite the fact that these pollutants are not considered criteria air pollutants. AEP suggests additional language be added to question (b) clarifying that the evaluation of a project's ozone precursor emissions is an acceptable manner to evaluate a project's potential impacts on the cumulative concentration of ozone.

Response 43.14

The Agency declines to make any changes in response to this comment regarding Appendix G Question III.b. Please note, none of the changes proposed in Appendix G are intended to limit the scope of analysis that CEQA might otherwise require. The Agency finds that the commenter's proposed addition regarding ozone precursors is not necessary to include in Appendix G. The current rulemaking package does not change the general requirement under CEQA that lead agencies must analyze a proposed project's significant environmental impacts. (See Pub. Resources Code, § 21100(b)(1).) Thus, even if Appendix G does not include express mention of specific topics, Appendix G advises that "[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered." And as the

Agency stated in the January 2018 Notice of Proposed Rulemaking and Initial Statement of Reasons, the Agency proposed revisions that would make the CEQA process more efficient and easier to navigate, and also acknowledged that Appendix G checklist cannot contain an exhaustive list of questions. (Notice, p. 4; Initial Statement of Reasons, p. 69.) Appendix G is only a sample checklist that can be tailored to address local conditions and project characteristics. Please also note, the leading sentence in the section of Appendix G addressing air quality recommends use of air district thresholds of significance where available. Many air districts have developed thresholds for ozone precursors. Therefore, a separate question addressing such pollutants is not necessary.

Comment 43.15

Regarding new question (c), AEP recommends additional language consistent with the California Supreme Court's "CEQA-in-reverse" decision in *California Building Industry Association v. Bay Area Air Quality Management District* (1st Dist., Div. 5, 2016) 2 Cal.App.5th 1067.

Response 43.15

The Agency declines to make any change in response to this comment regarding Appendix G Question III.c. The commenter states that the proposed language is consistent with *California Building Industry Association v. Bay Area Air Quality Management District* (2016) 2 Cal.App.5th 1067. The Agency finds that the proposed language is not necessary here because the proposed rulemaking package also includes a revision to Guidelines section 15126.2. That section would include language that incorporates the court's holding in *California Building Industry Association* and would require EIRs to analyze significant environmental impacts that a project may risk exacerbating by bringing development or people into the project area.

Comment 43.16

For new question (d), AEP notes that the evaluation of a project's odors is a substantially different undertaking than the evaluation of fugitive dust. Fugitive dust (particulate matter 10 (PM10) and particulate matter 2.5 (PM2.5)) should be analyzed under the criteria pollutant inquiry in new section (b). Therefore, AEP recommends striking the term "or dust."

Response 43.16

The Agency has further modified Appendix G Question III.d in response to comments by deleting "or dust." This change is reflected in the Agency's 15-day language, which includes the revisions to the originally proposed changes to the CEQA Guidelines. The Agency deleted the phrase "or dust" because dust is considered in the context of the other Appendix G air quality questions, including the consideration of criteria pollutants and particulate matter. Thus, to further the goal of streamlining Appendix G and omitting redundancies, the Agency has adopted this suggestion.

Comment 43.17

AEP recommends that questions b) and c) in this section are combined into one threshold question referencing CEQA Guidelines § 15064.3. AEP believes this phrasing improves clarity and is more efficient.

Response 43.17

As the Agency's 15-day language reflects, the Agency has further modified Appendix G Questions XVII.b and XVII.c in response to comments. The Agency has combined subdivisions (b) and (c) into one question. Subdivision (b) now references section 15064.3(b) rather than separating section 15064.3(b)(1) and section 15064.3(b)(2) into different Appendix G questions. The Agency has made this change to make the consideration of the Appendix G questions easier to navigate and clearer to users.

Comment 44 - California Building Industry Association, *et al.*

Comment 44.1

On behalf of the above-mentioned organizations (Coalition), thank you for providing us with the opportunity to comment on the Proposed Updates to the CEQA Guidelines (Updates). These Updates address a myriad of complex topics and we appreciate the substantial time and energy that was put into drafting the Updates and soliciting feedback from the Coalition and other stakeholders. In this letter, we approach our comments with fundamental purpose of the CEQA Guidelines in mind: to make the CEQA process comprehensible to those who administer it, to those subject to it, and to those for whose benefit it exists. To that end, we focus our comments only on provisions that we believe could use some further clarification, strengthening or redaction, as born out of the nearly 45 years of experience that members of the Coalition have with respect to CEQA compliance. On the provisions on which we are silent, we both appreciate and commend the Agency's work done there and look forward to engaging with you and other stakeholders as the iterative process of finalizing the Updates continues. In this letter, our comments are divided into three parts: (1) Comments on the text of the Guidelines; (2) Comments on the Standardized Regulatory Impact Assessment; and (3) Comments regarding the *Technical Advisory on Evaluating Transportation Impacts in CEQA* (November 2017) (TA).

Response 44.1

The Agency is not making any change in response to this comment. This comment is introductory and general in nature. Specific responses are provided below for the more specific comments that follow. The Agency thanks the commenter for its letter and for its participation in the CEQA Guidelines update process. The Agency notes that many of the updates in this package were originally suggested by the commenter.

Comment 44.2

Guideline sections 15064 and 15064.7: Using Regulatory Standards in CEQA
As drafted, it appears that the Updates will substantially complicate the use of adopted thresholds. The updates do this by taking evidentiary requirements that apply to the *adoption* of thresholds and extending those same standards to the *use* of thresholds, even when there is no fair argument or evidence presented contrary to the threshold. Specifically, as applied, the Updates to section 15064 would require every use of a threshold in an initial study to be explained. That substantially expands the work required to complete initial studies. For example, in addition to determining whether a project meets an adopted air quality threshold (such thresholds often are adopted by regional air districts with subject matter expertise), the initial study would need to provide substantial evidence supporting use of an air quality threshold in the first instance – in effect, a short form re-do of what the air district did when it adopted the threshold. This goes well beyond the case law cited as the basis of the amendment, which said that, notwithstanding a threshold, an agency must consider any fair argument of impact.

(See, *Amador* at 1109.) Therefore, we request that the second sentence of section 15064(b)(2) be deleted.

Response 44.2

The Agency has further revised Section 15064(b) in response to this comment. The intent is not to require lead agencies to re-do their process and evaluation each time a threshold is used. Rather, the intent is to encourage the use of thresholds while ensuring that the public understands the basis for an agency's conclusion regarding significance. Stating that an agency should explain the basis of its conclusions is consistent with other portions of the Guidelines. For example, an initial study must include sufficient information to support its conclusions. (CEQA Guidelines, § 15063(d)(3).) Notably, however, section 15128 provides that explanation that an impact is determined to be less than significant and therefore was not analyzed in an EIR, need only be brief.

The Agency has deleted the statement that agencies should "describe the substantial evidence supporting that conclusion." While the Agency does not find the description of evidence supporting a conclusion to be overly burdensome, the statement is not necessary in this subdivision. Section 15064(f) already expressly states: "The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency."

Comment 44.3

The Updates to section 15064.7 raise the same issue as they again apply the same standards that agencies must meet when they adopt thresholds to the subsequent use of those thresholds. There is no reason to require agencies to re-do their process and evaluation each time a threshold is used. That is contrary to the purpose of thresholds. Therefore, we request that the references in section 15064.7 to making these standards apply when an agency is "using" a threshold be deleted.

Response 44.3

Please see response 44.3. Nothing in Section 15064.7 requires an agency to readopt thresholds every time it uses a threshold. The Agency added "or uses" to this section at the request of stakeholders that correctly noted that many agencies do not formally adopt thresholds.

Comment 44.4

Also, with respect to the third sentence of subsection (d) in section 15064.7, we request that "reduce" be used in lieu of "avoid" (i.e., "… reduce project impacts…to a less-than-significant level….") in order to improve clarity.

Response 44.4

The Agency has revised CEQA Guidelines section 15064.7 in response to this comment. As reflected in the 15-day language, the Agency has modified section 15064.7(d) to improve clarity by replacing "avoid" for "reduce."

Comment 44.5

As to subsection (d)(1) of section 15064.7, we request that the list of qualifying requirements also include standards that are set in statute or guidance documents of agencies with subject matter expertise.

Response 44.5

The Agency declines to make any changes based on this comment. New subdivision (d)(1) in section 15064.7 states that an environmental standard includes, among other things, "a quantitative, qualitative or performance requirement found in an ordinance, resolution, rule, regulation, order, plan or other environmental requirement . . . ." The Agency believes that the list in subdivision (d)(1) is sufficiently broad to include applicable statutes or guidance documents that meet the requirements in subdivision (d).

Comment 44.6

Finally, as to subsection (d)(2) of section 15064.7, we note that some standards, such as building codes, are adopted principally for health and safety purposes, not for the purpose of environmental protection. However, building codes address an environmental effect caused by projects; e.g., energy consumption and corresponding emissions. (See, *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912.) Inclusion of the subsection (d)(2) requirement would arguably eliminate the use of building codes as relevant environmental standards, even though such codes have resulted in an almost 70% increase in the stringency of energy efficiency since 2002. We think it is better to focus on environmental effects, rather than the ostensible purpose or intent of a particular regulatory standard. Because the criteria of subsection (d)(2) would be adequately covered by subsection (d)(3), we request that subsection (d)(2) be deleted.

Response 44.6

The Agency declines to make a change based on this comment. Proposed Guideline section 15064.7 would not preclude a lead agency's use of building codes as a significance threshold in appropriate circumstances. The court in *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 933-934, held that under the facts of that case, the lead agency did not err in relying on state building standards to determine whether an energy impact was significant. The court noted that "[t]he California Building Energy Efficiency Standards are meant to promote energy efficiency, as the name implies. In other words, they 'reduce the wasteful, inefficient, and unnecessary consumption of energy.' (Citation.)." (*Ibid.*) Thus, the codes in that case were adopted for the purpose of environmental protection. The Agency's proposed revision of section 15064.7(d) is not intended to change existing case law, and a lead agency may use its discretion to rely on building codes as relevant significance thresholds as provided in both Section 15064.7 and Section 15064(b)(2).

Comment 44.7

Guideline 15152. Clarifying Rules on Tiering
We are concerned that the Updates in subsection (h) constrain the options and flexibility currently built into CEQA with respect to the use of tiering. The proposed third sentence of subsection (h) states that, where other methods for streamlining environmental review are more specific, those more specific provisions *shall* apply, thereby seemingly eliminating other tiering tools as an option. However, as recognized in the proposed fourth sentence of subsection (h), where multiple streamlining methods are applicable, lead agencies have the discretion to select the preferred streamlining method(s). Therefore, in order to avoid internal tension within subsection (h), we recommend that the third sentence of subsection (h) – beginning, "Where other methods …" – be deleted.

Response 44.7

The Agency has further modified Guidelines section 15152(h) in response to comments. As the Agency's 15-day language reflects, the Agency has deleted the third sentence of subdivision (h), which stated that where other streamlining methods have more specific provision, those provisions shall apply. The Agency deleted this sentence to avoid any inconsistency with the last sentence in subdivision (h) and to make it clear that lead agencies have the discretion to determine the applicable streamlining method.

Comment 44.8

Guideline 15301. Existing Facilities We recommend that *North County Advocates v. City of Carlsbad* (2015) 241 Cal.App.4th 94 be added to the authority citations for this section, as this case further supports the language in the Guideline.

Response 44.8

In response to comments, the Agency has further modified the "Authority" portion of section 15301 to add *North County Advocates v. City of Carlsbad* (2015) 241 Cal.App.4th 94. This case provides helpful authority to support CEQA Guidelines section 15301. The Agency's 15-day language, which includes the revisions to the originally proposed changes to the CEQA Guidelines, reflects this change.

Comment 44.9

Aesthetics
In order to minimize potential ambiguity, we recommend that question c) be revised as follows to improve clarity: c) In non-urbanized areas, sSubstantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from a publicly accessible vantage point.) If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?

Response 44.9

The Agency has proposed further revisions to Appendix G question, Section I(c) related to aesthetics in response to comments. As reflected in the 15-day language, the Agency further clarified that certain aesthetic considerations apply differently in urban and non-urban setting, and also added provided guidance on "public views."

Comment 44.10

Air Quality
With respect to the proposed Updates to question d), we request that the reference to "or dust" be removed as the term "dust" – in the air quality setting – largely is redundant of the regulated criteria pollutant referred to as "particulate matter." The impacts of a project's particulate matter emissions already are covered by questions a), b), and c) of the Appendix G checklist. As such, it does not seem appropriate to characterize it again as some "other" emission in question d).

Response 44.10

The Agency has further modified Appendix G Question III.d in response to comments by deleting "or dust." This change is reflected in the Agency's 15-day language, which includes the revisions to the originally proposed changes to the CEQA Guidelines. The Agency deleted the phrase "or dust" because

dust is considered in the context of the other Appendix G air quality questions, including the consideration of criteria pollutants and particulate matter. Thus, to further the goal of streamlining Appendix G and omitting redundancies, the Agency has adopted this suggestion.

Comment 44.11

Biological Resources With respect to question c), project proponents, practitioners and lead agencies are familiar with the definition of wetlands, as contained in Section 404 of the Clean Water Act, and know how to apply it in the CEQA context. We believe that it would cause confusion, uncertainty and litigation to delete the reference to that statute. In addition, it would be helpful to specify that the definition in state law of wetlands is contained in the Porter Cologne Water Quality Act. Therefore, we request that question c) be revised as follows:
c) Have a substantial adverse effect on state wetlands as defined in the Porter Cologne Water Quality Act or federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

Response 44.11

The Agency declines to make any changes in response to this comment. The Agency revised Appendix G Question IV.c. to broaden the language and to focus on the environmental resource instead of federal or state jurisdiction. Appendix G is a suggested form only, and so is written to be useful to a broad set of agencies. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).) Agencies may customize the form to address impacts that are common in their jurisdiction.

Comment 44.12

Hydrology and Water Quality
We request that question b) be revised to track more closely the actual language contained in the Sustainable Groundwater Management Act, as follows:
4b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that the project would impede the sustainable yield of the local groundwater basin may impede sustainable groundwater management of the basin (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?

Response 44.12

The Agency declines to make any changes in response to this comment related to Appendix G Question IX.b. The Agency's proposed revision reflects that the California Sustainable Groundwater Management Act (SGMA) does not apply to all groundwater basins, and the law did not expressly direct the Agency to revise Appendix G to be consistent with SGMA. Appendix G is a suggested form only, and so is written to be useful to a broad set of agencies. Agencies may customize the form to address impacts that are common in their jurisdiction.

As to the example listed in Question IX.b., the Agency is not making any changes in response to this comment, and continues to propose that it be removed. There are many other potential impacts that could result from lowering groundwater levels, including subsidence, altering surface stream hydrology,

causing migration of contaminants, etc. Therefore, the Agency proposed to delete the example from the question to encourage agencies to consider the full suite of potential impacts.

Comment 44.13

In question (c)(iii), we also request that the "or provide substantial additional sources of polluted runoff" verbiage be deleted because that potential impact is already captured in the new addition to question a), which asks whether the project would "otherwise substantially degrade surface or ground water quality".

Response 44.13

The Agency declines to make any changes in response to this comment and finds that the commenter's proposed change is not necessary. The Agency finds that Question IX.c.iii. would be helpful to lead agencies in their consideration of hydrology and water quality impacts. Please note, the question at issue is not new to the checklist; rather, it has simply been moved from former question (e). Additionally, Appendix G is a suggested form only, and so is written to be useful to a broad set of agencies. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).) Agencies may customize the form to address impacts that are common in their jurisdiction.

Comment 44.14

Land Use and Planning
We object to the elimination of "applicable" from question b). It is well established in case law that inapplicable plans, such as draft plans, are not relevant to project-specific CEQA analysis. (See, e.g., *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134.) And, the proposed deletion of that verbiage is likely to result in a flurry of litigation over a universe of inapplicable plans that is large and undefined. We relatedly request that the verbiage specifying that applicable plans are those "of an agency with jurisdiction over the project" be retained because deleting it will be interpreted to mean that, in addition to those agencies with jurisdiction over the project, the plans, policies or regulations of even foreign governments, among others, would need to be considered. This would expand the scope of CEQA analysis beyond the bounds of practicality and common sense. For example, the proposed change would facilitate arguments from project opponents that the general plan policies of a completely different jurisdiction in a completely different part of California are relevant to the environmental analysis of a project before a lead agency. This is an absurd result. The CEQA Guidelines must continue to recognize and require that there be some nexus between the planning framework considered in CEQA and the project undergoing environmental review.

Response 44.14

The Agency declines to make any changes based on this comment. The comment objects to the Agency's proposal to delete "applicable" from Appendix G Question XI.b. regarding conflicts with a land use plan, policy, or regulation. The Agency's proposal would not require a lead agency to follow a plan that it is not required by law to implement. However, if a project's inconsistency with a plan could lead to a significant adverse environmental impact, that environmental impact (not the plan inconsistency) would need to be analyzed. Therefore, removal of "applicable" is necessary to avoid confusion regarding analysis is required. Please also see Master Response 19.

Comment 44.15

Transportation
With respect to question a), we request that the "applicable" qualifier be retained. (See related discussion in "Land Use and Planning" immediately above.) This maintains some predictability and rationality to the environmental review and planning processes.

Response 44.15

The Agency declines to make any changes in response to this comment. The comment objects to the Agency's proposal to delete "applicable" from Appendix G Question XVII.a. regarding conflicts with a program, plan, ordinance or policy addressing the circulation system. The Agency's proposal would not require a lead agency to follow a plan that it is not required by law to implement. However, if a project's inconsistency with a plan could lead to a significant adverse environmental impact, that environmental impact (not the plan inconsistency) would need to be analyzed. Therefore, removal of "applicable" is necessary to avoid confusion regarding analysis is required.

Comment 44.16

Utilities and Service Systems
With respect to question b), this provision imports and extends the requirements of the water supply assessment and verification statutes to all CEQA analysis, including that associated with initial studies. (See, Wat. Code § 10910; Gov. Code § 66473.7.) However, those laws only apply to projects of a certain size – projects defined in Water Code section 10912. We relatedly did not find a water supply requirement that includes normal, dry and multiple dry years in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412. While it is mentioned in some cases, those cases address urban water management plan law, not CEQA.

Response 44.16

The Agency declines to make any changes in response to this comment. Appendix G is a suggested form only, and so is written to be useful to a broad set of agencies. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).) Agencies may customize the form to address impacts that are common in their jurisdiction. For several reasons, the Agency finds that the environmental checklist should include a question asking whether a project has "sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years." First, the environmental impacts resulting from high water demand projects are well-documented, and discussed in the Initial Statement of Reasons. (*See* pages 45-47.) Second, it is also well documented that California's water supply is highly variable. (*Ibid*.) Third, the question as phrased encourages agencies to draw from analyses that may appear in other water supply planning documents, including water supply assessments prepared pursuant to the Water Code. Thus, the Agency finds that it is reasonable to propose sample language in Appendix G referring to the analysis of the project and reasonably foreseeable future development in normal, dry and multiple dry years.

Comment 44.17

Adding "reasonably foreseeable future development" to question b) also is confusing and is inconsistent with the proposed amendments to section 15155. "Future development" to the project applicant community means all future projects in the jurisdiction of the lead agency (and potentially other agencies) – a universe far beyond the project that is the subject of the application. Historically, what is "reasonably foreseeable" only applies to a cumulative impacts analysis, which comes into play after a lead agency has determined to prepare an EIR. (See, Guideline section 15130.) Therefore, we believe that this level of detail is inappropriate at the initial study checklist stage and request that it be deleted.

Response 44.17

The Agency declines to make a change in response to this comment regarding Appendix G Question XIX.c. The commenter states the level of detail proposed in Appendix G is unnecessary and therefore requests that reference to "reasonably foreseeable future development" be deleted. The Agency notes that Appendix G is merely a sample initial study format that a lead agency can tailor to address local conditions and project characteristics. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).) The comment suggests that the phrase "reasonably foreseeable future development" is unclear. The Agency disagrees. Agencies implementing CEQA have decades of experience in analyzing cumulative impacts, which is the "change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects." (CEQA Guidelines § 15355(b).)

Comment 44.18

Additionally, the language of question b) focuses on future development rather than impacts. In *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 434, the California Supreme Court stated that the "ultimate question under CEQA is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable *impacts* of water supply to the project." (Emphasis added.) A focus on impacts rather than development projects is also consistent with section 15155. For these reasons, we believe the Updates to question b) are inappropriate for the initial study checklist since the information could only be known after a water supply analysis was produced for the project. Therefore, we request that the proposed Updates to question b) be eliminated.

Response 44.18

Please see response 44.16.

Comment 44.19

Wildfire
To begin, SB 1241 is limited to projects located *on* lands classified as state responsibility areas or very high fire severity zones. (See, Public Resources Code section 21083.01.) Therefore, we request that the use of "or near" verbiage in the introductory clause be eliminated.

Response 44.19

The Agency declines to make any changes in response to this comment. Consistent with Senate Bill 1241 (Kehoe, 2012), the Agency proposes questions in Appendix G related to fire hazard impacts for projects located on lands classified as state responsibility areas and very high fire hazard severity zones. SB 1241 in no way limited the consideration of wildfire hazards to such areas, however. Indeed, the increasing destructiveness of wildfires in recent years demonstrates that those hazards do not respect jurisdictional lines. Therefore, the Agency's proposal also acknowledges that fire hazards may occur near those areas. Note further, Appendix G is a suggested form only, and so is written to be useful to a broad set of agencies. The consideration of fire hazards near state responsibility areas and very high fire hazard severity zones may or may not be appropriate in the consideration of particular projects. Agencies may customize the form to address impacts that are common in their jurisdiction. The Agency's proposal does not constrain lead agencies' discretion to select appropriate significance thresholds.

Comment 44.20

Additionally, with respect to question a), a standard of "substantially" impair should be set forth, so that insignificant impairments (e.g., hairline cracks in road pavement, etc.) that do not affect a response or evacuation would not trigger a significant impact.
Therefore, we request the following: a) Substantially impair Impair an adopted emergency response plan or emergency evacuation plan?

Response 44.20

The Agency has proposed further revisions in response to comments. As reflected in the 15-day language, the Agency amended Appendix G Question XX.a. by adding "substantially impair" at the beginning of that question to improve clarity. The Agency notes, however, that Appendix G is a suggested form only, and so is written to be useful to a broad set of agencies. Agencies may customize the form to address impacts that are common in their jurisdiction.

Comment 44.21

Of note, new development has a track record of *preventing* the spread of wildfires. This is due largely to new fire safe building codes, defensible space requirements, and indoor fire sprinklers, among others things. Some of the fire prevention measures used by new development may be found at: http://www.fire.ca.gov/fire_prevention/fire_prevention_wildland_codes.php
As noted above, the prevention of wildfires – and the prevention of the greenhouse gas emissions they cause - is a beneficial impact on the environment, not an adverse impact. Indeed, new housing being built in California is the model to follow for protecting against wildfires. Numerous examples of the success of this kind of fire protection were featured in every major newspaper in the state including the LA Times, the San Diego Union Tribune, the Sacramento Bee, and the Orange County Register. Copies of these particles were previously submitted to OPR and attached to our Coalition's comment letter on the previous version of the Proposed Preliminary Draft of these Guidelines and are incorporated herein by this reference. The recent case of *Clews Land and Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161(*Clews*), validated the approach of defensible space (brush management), incorporated fire-resistant materials, interior sprinklers and tempered glass – all part of applicable fire codes – and found that as a result, the project would not "expose people or structures to a significant risk of loss, injury or death involving wildland fires." (*Clews,* at 174.)

Response 44.21

The Agency is not making any change in response to this comment. The comment does not suggest any specific changes to the proposed text. Moreover, the assertion that development does not increase fire hazards is incorrect. Certainly, adherence to fire safe codes and guidelines may reduce the risk, but the evidence is clear that bringing more people to areas of higher wildfire risk exacerbates those risks. (See, e.g., OPR, General Plan Guidelines (2017), pp. 160-162; see also Radeloff, et al., "Rapid growth of the US wildland-urban interface raises wildfire risk," PROC NATL ACAD SCI USA (March 27, 2018) 115 (13) 3314-3319.) "The close proximity of houses and wildland vegetation does more than increase fire risk." (*Id*. at 3314 [citations omitted].) "As houses are built in the WUI, native vegetation is lost and fragmented; landscaping introduces nonnative species and soils are disturbed, causing nonnatives to spread; pets kill large quantities of wildlife; and zoonotic disease, such as Lyme disease, are transmitted." (*Id*. [citations omitted].) Not all development types are likely to create the same risks, however. As Alexandra D. Syphard, et al., explain:

> The recognition that homes are vulnerable to wildfire in the wildland-urban interface (WUI) has been established for decades… Analysis of hundreds of homes that burned in southern California the last decade showed that housing arrangement and location strongly influence fire risk, particularly through housing density and spacing, location along the perimeter of development, slope, and fire history. Although high-density structure-to-structure loss can occur, structures in areas with low- to intermediate-housing density were most likely to burn, potentially due to intermingling with wildland vegetation or difficulty of firefighter access. Fire frequency also tends to be highest at low to intermediate housing density, at least in regions where humans are the primary cause of ignitions.

(Syphard AD, Bar Massada A, Butsic V, Keeley JE (2013) "Land Use Planning and Wildfire: Development Policies Influence Future Probability of Housing Loss." PLoS ONE 8(8): e71708. https://doi.org/10.1371/journal.pone.0071708 [citations omitted].) In other words, low-density, leapfrog development may create higher fire risk than high-density infill development.

Comment 44.22

With respect to question c), roads, fuel breaks and emergency water sources are measures to mitigate the impacts of wildfires and should not be considered as potential significant impacts of a project that may cause fires. In, *Clews*, the Court upheld the following finding of mitigation measures that reduced the project's impacts to a less-than-significant level: "City staff identified several project design features that *reduced* the potential for fire hazard impacts, including fire-resistant building materials, brush removal, a *new water line and fire hydrant serving the project site*, and an annually reviewed evacuation plan." (*Clews*, at 175. Emphasis added.) Roads and fuel breaks (brush removal) are also used a defensible space. Fire prevention and management strategies/practices should not be an indicator of a significant impact. Therefore, we request the following revision: c) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?

Response 44.22

The Agency declines to make any changes in response to this comment regarding Appendix G Question XX.c. Appendix G is a suggested form only, and so is written to be useful to a broad set of agencies.

(*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).) Agencies may customize the form to address impacts that are common in their jurisdiction. Additionally, the commenter states that roads, fuel breaks and emergency water sources are mitigation measures and should not be considered as potential environmental impacts. Even so, a lead agency is required to analyze indirect effects of a project, including a mitigation measure that itself would cause significant environmental impacts separate from those that would result directly from the project. (CEQA Guidelines, § 15126.4(a)(1)(D).)

Comment 44.23

Guideline 15234. Remedies and Remand As an initial matter, we support the intent of adding guidance relating to remands. With some modification, this Guideline can bring much needed clarity to an area of CEQA often misunderstood or misapplied. With respect to subdivision (c), we believe the language at the end of the sentence goes beyond statutory and case law by suggesting that an agency may proceed with a project or activities during remand *only* in instances where the environment will ostensibly be given a greater level of protection if the project is allowed to remain operative. This language may improperly interfere with the judicial branch's exercise of its equitable powers and is considerably more restrictive on the judiciary's equitable powers than Public Resources Code section 21168.9. Although the circumstances identified may be a factor in a particular court's remedial order in a specific case, it is not a precondition for a court to remand a matter while leaving project approvals in place or practical effect. Therefore, we request that subdivision (c) be revised to read: (c) An agency may also proceed with a project, or individual project activities, during the remand period where the court has exercised its equitable discretion to leave project approvals in place or in practical effect during the period because the environment will be given a greater level of protection if the project is allowed to remain operative than if it were inoperative during that period**.**

Response 44.23

The Agency has further revised CEQA Guidelines section 15234(c) regarding remand in response to comments. As the 15-day language reflects, the Agency removed the last part of subdivision (c), which suggested that a court may only leave approvals in place if doing so would benefit the environment because that factor does not exist in the statute.

Comment 44.24

Subdivision (d) also is confusing. Res judicata is an important rule of law. Consideration of issues that were raised, or that could have been raised, in the litigation leading to the prior judgment would undermine the finality of that judgment and is barred by principles of res judicata or collateral estoppel. "Res judicata bars the litigation not only of issues that were actually litigated but also issues that could have been litigated." (*Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 324.) Yet, subdivision (d) and the Explanation of Proposed Section 15234 seems to conflict with res judicata principles by allowing additional environmental review of those portions of an environmental document that a court found complies with CEQA. While *Silverado Modjeska Recreation and Parks Dist. v. County of Orange* (2011) 197 Cal.App.4th 282 discusses res judicata, it does not appear to authorize a reopening of issues under the principles of prejudicated. To the extent that *Silverado* discusses new information, it is not a part of the analysis of res judicata but is instead a question of whether there is a need for a subsequent or supplemental EIR or re-notification. The

court in *Silverado* did not find that there was new information requiring any of these, whether pursuant to section 21166 or section 21092.1 of the Public Resources Code. We believe section 15234(d) would avoid this confusion if it was modified to read: (d) As to those portions of an environmental document that a court finds to comply with CEQA, additional environmental review shall only not be required as required by the court consistent with principles of res judicata.

Response 44.24

The Agency has further revised CEQA Guidelines section 15234(d) regarding remand in response to comments. As the 15-day language reflects, the Agency proposes to add this sentence at the end of subdivision (d): "In general, the agency need not expand the scope of analysis on remand beyond that specified by the court." The Agency proposes this revision to clarify that, generally, additional review is limited to what a court might require. The Agency further believes that the revision would preserve the court's discretion to fashion a remedy, as stated in proposed section 15234(a).

Comment 44.25

Guideline 15126.2. Analysis of Energy Impacts
We believe that it would be helpful – and consistent with the operation of CEQA – to slightly restructure the first full sentence of subdivision (b) in two ways.
First, the syntax of the sentence seems to require analysis of energy use *after* determining that the project may result in significant environmental effects. To enhance consistency with CEQA, we request that the organization of the sentence be re-structured to first require the analysis of energy use and, if there is a significant impact (due to wasteful, inefficient, or unnecessary energy use), then consider mitigation.

Response 44.25

The Agency has further revised CEQA Guidelines section 15126.2(b) in response to comments. As the 15-day language reflects, the Agency has revised the syntax of section 15126.2(b) to first require the analysis of a project's energy use, and then to require the agency to consider mitigation measures if the project may result in significant energy impacts.

Comment 44.26

Second, subdivision (b) provides that the EIR "shall…mitigate…" a project's energy use. CEQA, however, does not establish an absolute mitigation requirement but limits mitigation to what is feasible (among other limitations) – and, even if there remain significant impacts, a statement of overriding considerations may be made. Some acknowledgement of these limits should be made in subdivision (b).

Response 44.26

The Agency declines to make any changes in response to this comment regarding CEQA Guidelines section 15126.2(b). The Agency's proposed revision to section 15126.2(b) does not modify the applicability of the mitigation requirements in section 15126.4. Thus, lead agencies can reasonably assume that the general mitigation requirements in section 15126.4, as well as the statement of overriding considerations provision discussed in section 15094, would continue to apply with the Agency's proposed revisions. Thus, the addition of a reference to Guidelines section 15126.4 is not necessary.

Comment 44.27

Therefore, we request that the second sentence of subdivision (b) be modified as follows: If, after analyzing the project's energy use the project may result in significant environmental effects due to wasteful, inefficient, or unnecessary consumption of energy, the EIR shall analyze and mitigate that energy use consistent with Section 15126.4.

Response 44.27

The Agency declines to make any revisions in response to this comment. Please see responses 44.25 and 44.26.

Comment 44.28

Guideline 15064.3. Analyzing Transportation Impacts
It is now common for projects to take decades, rather than years, to get through the land use entitlement process in California. Therefore, in developing VMT-related mitigation, projects should be encouraged to use bike lanes, car-pooling, ride-sharing or community shuttles to and from existing *and* planned major transit stops. To encourage these VMT mitigation measures, the Guideline should include reference to *planned* major transit stops and *planned* high quality transit corridors. This is consistent with the definition of transit priority area in subsection (a)(7) of section 21099 of the Public Resources Code. Moreover, section 15125 proposes to include "conditions expected when the project becomes operational, that are supported by substantial evidence" in the definition of existing conditions. For these reasons, we believe proposed subsection (b)(1) should be revised to refer to "planned" major transit stops and high quality
transit corridors, rather than only existing transit facilities.

Response 44.28

The Agency is not making any change in response to this comment. The Legislature has specified instances where planned transit facilities should be the basis of an exemption or other special procedure. (See, e.g., Pub. Resources Code, Sections 21155 et seq.) Section 15064.3, however, describes the general rule for evaluating transportation impacts of projects. As a general rule, lead agencies should presume that projects located near existing transit stations will have a less than significant effect. The basis for that presumption is significant research indicating that projects located close to existing transit will enable lower vehicle use because of the availability of transit. (See, e.g., California Air Pollution Control Officers Association, "Quantifying Greenhouse Gas Mitigation Measures," (August 2010), at pp. 171-174 [describing results of literature review on the effectiveness of transit accessibility on reducing vehicle miles traveled].) If transit is only planned, it does not yet offer project users an alternative to driving, and so the same presumption would not apply.

The comment further suggests that relying on "planned" transit is appropriate because the section on baseline allows a lead agency to consider conditions likely to exist when a project becomes operational. This is not a compelling justification because the term "planned" in this context refers to facilities included in long-term infrastructure plans. (See, Pub. Resources Code 21099(a)(7).) Such facilities may not become operational until decades after a project would become operational.

Notably, transit is often planned in areas with sufficient density to support transit investments, and density is another factor shown to reduce vehicle use. Therefore, there may be other characteristics of the project location that would suggest a less-than-significant transportation impact.

Also, as provided in the changes in Section 15125, a lead agency may include both existing and future baselines in its analysis. This would allow a lead agency to describe the expected future effect of the planned transit facility once it becomes operational, provided that it also analyzes vehicle miles traveled under existing conditions.

Comment 44.29

Additionally, as to projects locating within one-half mile of such transit facilities, the modifier "generally" should be deleted from the presumption of a less than significant impact as it is duplicative of the very nature of a "presumption" and, therefore, unnecessary.

Response 44.29

The Agency declines to make any changes in response to this comment regarding CEQA Guidelines section 15064.3. The presumption in that section operates to allow a lead agency to find that transportation impacts are less than significant, unless evidence is presented that would rebut the presumption. The modifier "generally" is also necessary to clarify that lead agencies retain discretion to determine circumstances when the presumption should not apply.

Comment 44.30

Similarly, "existing conditions" in the third sentence of subsection (b)(1) should be replaced with "baseline conditions", in order to allow for consideration of projected future conditions that are supported by substantial evidence in the record. (See, Text of Proposed Amendments to Section 15125.)

Response 44.30

The Agency declines to make any changes in response to this comment. Replacing the word "existing" in the third sentence of Guidelines section 15064.3(b)(1) for the words "baseline conditions" is not necessary. The Agency acknowledges that "existing" conditions may be represented by historic or future conditions, and use of "existing" is consistent with the Agency's proposed addition of the following sentence to Guidelines section 15125(a)(1):

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, or both, that are supported with substantial evidence.

Comment 44.31

In light of the above, we request that subsection (b)(1) be modified as follows:

> Land Use Projects. Vehicle miles traveled exceeding an applicable threshold of significance may indicate a significant impact. ~~Generally, p~~ Projects within one-half mile of either an existing or planned major transit stop or a stop along an existing or planned 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~~ baseline should be considered to have a less than significant transportation impact.

These changes incentivize projects to pursue viable VMT-related mitigation, in lieu of simply making a statement of overriding considerations, which seems contrary to the purpose of this proposal.

Response 44.31

The Agency declines to make any revisions in response to this comment. Please see responses 44.28, 44. 29, and 44.30.

Comment 44.32

Additionally, subsection (b)(3), Qualitative Analysis, addresses the analysis of construction traffic and states that "For many projects, a qualitative analysis of construction traffic may be appropriate." This statement implies that a *quantitative* analysis of construction traffic is appropriate for all other projects. Preliminarily, this is the only reference to the analysis of construction-related VMT in the proposed Guideline or the TA – no further guidance on the subject is provided. Moreover, the requirement to include *any* VMT analysis of construction traffic beyond that analysis already required in connection with air quality and greenhouse gas emissions does not further SB 743, which required the Resources Agency to develop a different way to measure transportation impacts that would to lead to fewer GHG emissions,
more transportation alternatives, facilitate infill development, and result in a new method of transportation analysis that is simpler and less costly to perform.2 As noted, construction traffic-related GHG emissions are already considered in separate analyses, and, unlike the vehicle trips generated by land use projects, analysis of VMT associated with construction traffic would not lead to more transportation alternatives, would not facilitate infill development, and would not be simpler and less costly to perform. For these reasons, we recommend that the referenced sentence be deleted. Alternatively, we recommend that the sentence be revised as follows:

For ~~many~~ all projects, a qualitative analysis of construction traffic shall ~~may~~ be appropriate

Response 44.32

The Agency declines to make any changes in response to this comment regarding the assessment of construction vehicle VMT. Section 15064.3 includes a mention of construction traffic because that matter was raised in comments on OPR's initial drafts. Further, it would not be appropriate for the Guideline to preclude a quantitative analysis in all cases. While for many projects, a qualitative analysis of construction traffic may be appropriate, there may be some cases where a quantitative analysis is warranted. The proposed Guideline leaves this matter to the lead agency's discretion.

Comment 44.33

It is our understanding that the implementation deadline of July 1, 2019 included in subsection (c), Applicability, was a "typographical error" and that the correct date is January 1, 2020, as presented in the November 2017 text released by OPR. Please confirm the January 1, 2020 date is correct and, if not, we strongly recommend that the date be revised to January 1, 2020, consistent with OPR's recommendation.

Response 44.33

As reflected in the 15-day language, the Agency has further refined Guidelines section 15064.3. Please also see Master Response 7 regarding the effective date.

Comment 44.34

Finally, as set forth below, because this new Guideline will actually increase the cost of all housing which results in increased, not decreased VMT and greenhouse gas emissions, we believe the Guideline would be more effective and less costly by limiting the new Guideline to transit priority areas:

(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~~ January 1, 2020, the provisions of this section shall apply in transit priority areas only ~~statewide~~.

Response 44.34

The comment suggests, without any evidentiary basis, that analyzing vehicle miles traveled will increase the cost of housing. The Agency disagrees for the reasons set forth in the Standardized Regulatory Impact Assessment, and Master Response 8. Also, the suggested limitation will not achieve the purposes set forth in the statute and could actually lead to increased litigation, and so, as explained in the SRIA, the Agency has rejected that alternative. The Agency notes that comments submitted by the City of Los Angeles support the Agency's view on this point.

Comment 44.35

Guideline 15155. Water Supply Analysis in CEQA
As to proposed subsection (f)(2), we are concerned that the use of the term "life" in the proposed amendment will cause confusion and believe the term generally is ambiguous. Even amongst our Coalition, some viewed it as simply the time it takes to reach an approval or denial. While the Description of Proposed Amendments to Section 15155 sheds light on the meaning, lead agencies, environmental consultants and project applicants do not typically look to the legislative history of the Guidelines to apply the language. We would suggest that the language from the explanation be incorporated into section 15155 so that there is an understanding that the analysis should be looking to the time it takes to build and occupy all phases of the project. Therefore, we recommend the following:

(f)(2) An analysis of the reasonably foreseeable environmental impacts of supplying water ~~throughout the life~~ until all phases of the project are built and occupied.

Response 44.35

The Agency has further revised CEQA Guidelines section 15155(f) in response to comments. As the 15-day language reflects, the Agency proposes to remove from subdivision (f)(2) the phrase "the life" when stating the lead agency's requirement to analyze reasonably foreseeable environmental impacts of supplying water throughout all project phases. The Agency believes this clarifying change is consistent with the California Supreme Court's decision in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431, which stated that an adequate impacts analysis "cannot be limited to the water supply for the first stage or the first few years." The change is also consistent with the definition of a "project" in CEQA Guidelines section 15378(a), which means "the whole of an action[.]" It also is consistent with the requirement in Section 15063(a)(1) to analyze all phases of a project, including "planning, implementation, and operation."

The Agency declines to incorporate the commenter's suggestion to clarify that the water supply analysis must extend out to when all project phases are "built and occupied." Some projects are not ones that

will be “built and occupied” under the plain meaning of those words. Thus, the Agency rejects the suggestion to maintain clarity and consistent application.

Comment 44.36

We also request that the last sentence of the Description of the Proposed Amendments to Section 15155(f)(4) be deleted since it does not describe any language in subsection (f)(4).

Response 44.36

The commenter is correct in noting that the last sentence in the description for Guidelines section 15155(f)(4) does not describe the language in subdivision (f)(4). (Initial Statement of Reasons, p. 49.) The Agency has updated the description of section 15155(f)(4) in the Statement of Reasons.

Comment 44.37

Guideline 15064.4. Analyzing Impacts from Greenhouse Gas Emissions
Consistent with *Association of Irritated Residents v. Kern County Board of Supervisors* (2017) 17 Cal.App.5th 708, the following sentence should be added at the end of subsection (b)(3):
“Project-related greenhouse gas emissions resulting from sources subject to the cap-and-trade program shall not be considered when determining whether the project-related emissions are significant.”

Response 44.37

The Agency declines to make any changes in response to this comment. The decision in Association of Irritated Residents v. Kern County Board of Supervisors (2017) 17 Cal.App.5th 708 (“AIR v. Kern”) is from one state appellate court and has not been consistently applied by any other appellate courts. Moreover, the Agency finds that the case does not support the suggested addition. The holding in that case is limited to its facts. That court held only that the CEQA Guidelines may authorize a lead agency to determine that a project's greenhouse gas emissions will have a less than significant effect on the environment based on the project's compliance with the Cap-and-Trade program. The project in that case was directly regulated by the Cap-and-Trade program. The decision did not hold that all emissions from may be subject to the Cap-and-Trade regulation at any point in the supply chain are exempt from CEQA analysis, regardless of how those sources are used by the project.

The Agency notes that the California Air Resources Board (CARB) has prepared an extensive legal analysis setting forth why the Cap-and-Trade program does not excuse projects from CEQA’s analysis and mitigation requirements, including emissions from vehicular trips or energy consumption from development projects. (This analysis, prepared by CARB as CEQA comments regarding a major freight logistics facility, is available at https://www.arb.ca.gov/ toxics/ttdceqalist/logisticsfeir.pdf.) The Agency further notes that CARB’s analysis is consistent with this Agency’s discussion of how greenhouse gas regulations factor into a CEQA analysis of greenhouse gas emissions. (See Final Statement of Reasons (SB 97), December 2009, at p. 100 (“Lead agencies should note … that compliance with one requirement, affecting only one source of a project’s emissions, may not necessarily support a conclusion that all of the project‘s emissions are less than significant”).)

The effect of existing regulations is addressed further in the updates to Sections 15064(b) and 15064.7 of the CEQA Guidelines.

Comment 44.38

Guideline 15126.2. Consideration of Significant Effects and Hazards in the CEQA Guidelines
First, as the Background acknowledges and the California Supreme Court in *CBIA v. BAAQMD* (2015) 62 Cal.4th 369 (*CBIA*) held, "agencies subject to CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users or residents." (*CBIA* at 377.) This general rule should be included in the text of section 15126.2 to accurately capture the Court's decision. Inclusion of the general rule will also provide context to the exception that is currently contained in the Updates.

Response 44.38

The Agency declines to make any changes in response to this comment regarding CEQA Guidelines section 15126.2. The proposal includes a change to section 15126.2(a) clarifying in the first sentence that the focus of a CEQA analysis is the proposed project effect on the environment. The Agency believes that the proposed change to subdivision (a) adequately addresses and is inclusive of the California Supreme Court's holding in *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369. The Agency also proposes to include the words "or risks exacerbating" to the fifth sentence of section 15126.2(a) regarding the impacts a project may cause by bringing people or development to the affected area. This addition clarifies that an EIR must analyze not just impacts that a project might cause, but also existing hazards that the project might make worse. Thus, the Agency declines to make the commenter's proposed change because they are not necessary, and the Agency believes that its proposal appropriately and adequately implements the Court's holding.

Comment 44.39

Second, the Court in the *CBIA* decision upheld the following language currently contained in section 15126.2(a):

The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected.... Similarly, the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas.

The Court, in upholding these two sentences, qualified their validity by stating that they are only "valid to the extent they call for evaluating a project's potentially significant exacerbating effects on existing environmental hazards." *CBIA* at 388. Following *CBIA v. BAAQMD,* the court in *Clews Land and Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, found that even in wildfire risk areas, the general rule of CEQA that considers the project's impacts on the existing environment is applicable. (See, *Clews* at 193-194.) For these reasons, we believe that the statement of the general rule adopted by the Supreme Court in *CBIA v. BAAQMD* should also be incorporated into the text of section 15126.2.

Response 44.39

Please see response 44.38. Also, the Agency notes that the comment adopts an overly expansive view of *Clews Land and Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161. That case does not, as the comment seems to suggest, state that a project's location in a Very High Fire Hazard Severity Zone is irrelevant to a CEQA analysis. Rather, that court found, based on the facts in that case, that the

petitioner failed to identify evidence that the project at issue in that case would exacerbate the fire risk in that location.

Comment 44.40

Third, we believe that the reference to *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal. 4th 435, 455, in the Explanation of Proposed Amendments to Section 15126.2(a), ("so long as a land use restriction or regulation bears a reasonable relationship to the public welfare, the restriction or regulation is constitutionally permissible") should be removed. The reference creates the impression that any land use restriction or regulation is valid, provided it bears a reasonable relationship to the public welfare. The quotation ignores many other statutory provisions that restrict the police power. The citation to Section 7, Article XI of the California Constitution should be sufficient authority.

Response 44.40

The Agency declines to make any changes in response to this comment. The commenter requests that the Agency remove a case citation to the "Explanation of Proposed Amendments to Section 15126.2(a)." The Agency assumes the commenter is referring to the Initial Statement of Reasons. The Agency cited *California Building Industry Association v. City of San Jose* (2015) 61 Cal.4th 435, 455, as a general reference and to provide helpful background information. In providing that case citation the Agency is not providing legal advice and does suggest that the reader should ignore any other statutory provisions and case law related to local agency police power.

Comment 44.41

Finally, we think the Authority for the changes to this Guideline should reference *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal. 4th 369.

Response 44.41

The Agency is not making a change in response to this comment. Page 27 of the January 2018 Proposed Regulatory Text document included a citation to *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369.

Comment 44.42

Therefore, we believe the text of section 15126.2 should be modified as follows:

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. In general, CEQA does not require an analysis of the impact of existing environmental conditions on a project's future users or residents. However, if a project has potentially significant exacerbating effects on existing environmental hazards, the ~~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.

Response 44.42

The Agency declines to make any revisions in response to this comment. Please see responses 44.38, 44. 39, 44.40, and 44.41.

Comment 44.43

Guideline 15125. Baseline We are concerned that the second sentence of subsection (a)(1) may be interpreted to require a lead agency to choose a baseline comprised of *either* historic conditions or conditions expected when the project becomes operational, not both. This seems to run contrary to the assumption upon which subsection (a)(2) is based and may also be contrary to the principle that "[t]he public and decision makers are entitled to the most accurate information on project impacts practically possible, and the choice of a baseline must reflect that goal". (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 455.) We request, therefore, the following modification to subsection (a)(1): 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, or both, that are supported with substantial evidence.

Response 44.43

The Agency has further refined CEQA Guidelines section 15125 in response to comments. As reflected in the Agency's 15-day language, the Agency has added the phrase "or both" to section 15125(a)(1). Please see Master Response 14 for an additional discussion regarding Guidelines section 15125.

Comment 44.44

Additionally, *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 326, made a distinction that should be included in the Updates to maintain accuracy: CEQA's rules relating to the existing conditions baseline do not apply when agency action involves modification of a project previously evaluated under CEQA. Therefore, we request that subsection (a)(3) be modified as follows:
(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, unless the project was previously evaluated under CEQA and is undergoing

additional environmental review pursuant to sections 15162 or Public Resources Code section 21166.

Response 44.44

The Agency declines to make any revisions in response to this particular comment. The Agency, however, has made revisions to Guidelines section 15125(a)(3) as reflected in the 15-day language. The revised language makes it clear that, consistent with case law, the existing conditions baseline must not include hypothetical conditions. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 322.) For a proposed change to a project that has already undergone CEQA review, the already-approved project is assumed to be part of the environmental setting. Thus, the commenter's proposed change is not necessary.

Comment 44.45

Finally, we believe that *Association of Irritated Residents v. Kern County Bd. Of Supervisors* (2017) 17 Cal.App.5th 708, supports section 15125 and should be included in the authority cited.

Response 44.45

The commenter also asks the Agency to include reference to *Association of Irritated Residents v. Kern County Board of Supervisors* (2017) 17 Cal.App.5th 708 (*AIR*). The Agency declines to make any revisions in response to this comment. The *AIR* case carries forth the principles articulated by the California Supreme Court in *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310. (See *AIR*, *supra*, 17 Cal.App.5th at p. 718.) Thus, the Agency finds that the addition of the *AIR* case is not necessary because the primary case, *Communities for a Better Environment v. South Coast Air Quality Management District,* has already been cited in the proposed rulemaking.

Comment 44.46

Guideline 15126.4. Deferral of Mitigation Details The Explanation of Proposed Amendments acknowledges that the adoption of specific performance standards is an alternative to listing possible mitigation measures, i.e., that section 15126.4(a)(1)(B)(2) does not additionally require meeting the requirements of section 15126.4(a)(1)(B)(3). Further, OPR proposes to clarify that when deferring the specifics of mitigation, the lead agency should either provide a list of possible mitigation measures, or adopt specific performance standards. …Alternatively, the lead agency may adopt performance standards in the environmental document…. (Explanation of Proposed Amendments, p. 99). We agree with this analysis of the case law and request that the second sentence of subsection (a)(1)(B) be modified as follows to match the stated intent of the Updates: The specific details of a mitigation measure, however, may be deferred when it is
impractical or infeasible to include those details during the environmental review and the agency (1) commits itself to the mitigation, and (2) adopts specific performance standards the mitigation will achieve, and (3). Additionally, the agency may list lists the potential actions to be considered, analyzed, and potentially incorporated in the mitigation measure.

Response 44.46

Please see Master Response 15.

Comment 44.47

Immediately following the second sentence, we believe it would be helpful and consistent with case law (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275; and *Sacramento Old City Association v. City Council* (1991) 229 Cal.App.3d 1011, 1028-1030) to insert the following sentence: A lead agency may allow a project proponent to determine which mitigation measure should be satisfied when an environmental impact report or a mitigated negative
declaration has identified alternative feasible mitigation measures, each of which will
reduce an environmental impact to less than significant.

Response 44.47

The Agency declines to make any changes in response to this comment regarding Guidelines section 15126.4. The two cases cited by commenter do not expressly support the proposition that a lead agency may allow a project proponent to select which mitigation measure should be satisfied when an environmental document identifies alternative feasible mitigation measures. The lead agency ultimately has the discretion to determine the appropriateness, applicability, and feasibility of mitigation measures. Further, the Mitigation Monitoring and Reporting Program is a place where the lead agency may document any delegation of implementation. (CEQA Guidelines § 15097.) Thus, the suggested addition is not necessary.

Comment 44.48

Guideline 15087. Responses to Comments We suggest including a provision to make clear that a comment on the adequacy of a response to a comment is required to preserve the issue for judicial review. The Court in *Towards Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671, 682 stated: TRIP's comment to the EIR consisted of a letter submitted during the circulation of the first draft. City's response was contained in the first supplement to the EIR. As noted above, TRIP did not object to City's response to its comment at either the planning
commission meeting or the city council meeting where such questions were open for
discussion. Nor did it submit any written objections prior to these meetings. We are
inclined to agree with City that the time for complaining about the inadequacy of City's
responses was when the issue was before the agency and any alleged deficiency could be
explained or corrected. This may be accomplished by adding a new subdivision (j) to section 15087, as follows: (j) A comment on the adequacy of a response to a comment is required to preserve the issue for judicial review.

Response 44.48

The Agency finds that the proposed change regarding CEQA Guidelines section 15087 is not necessary and declines to make any changes in response to this comment. The commenter quotes from *Towards Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671, 682. The quote here appears to be dicta; the last sentence in the quoted paragraph states: “We do not decide on this basis, however, since we find that City's response was entirely adequate.” (*Id.* at p. 682.) Further, the quoted statement indicates that the facts leading to the decision are unique to that case. Not all lead agencies publish responses to comments in advance of public hearings on a project, and so the suggested addition may not accurately reflect exhaustion requirements in all circumstances.

Comment 44.49

Guideline 15004. Pre-Approval Agreements we request that the following two cases be listed in the cited authorities as they support the Updates: *City of Irvine v. County of Orange* (2013) 221 Cal. App. 4th 846; and *Cedar Fair, L.P. v. City of Santa Clara* (2011) 194 Cal.App.4th 1150.

Response 44.49

The Agency finds that the proposed addition of the specified CEQA cases are not necessary, and the Agency declines to make any changes in response to this comment. Both *City of Irvine v. County of Orange* (2013) 221 Cal.App.4th 846 and *Cedar Fair, L.P. v. City of Santa Clara* (2011) 194 Cal.App.4th 1150 implement the holding in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, which the Agency cited to in the proposed regulatory text. The Agency does not believe it is necessary to cite to every case that implements *Save Tara.*

Comment 44.50

Guideline 15082. Posting Notices with the County Clerk We believe that the timing of sending or posting the notice of preparation provided in section 15082(a) conflicts with subsection (b)(1) of section 21092 of the Public Resources Code, which provides: [T]he notice shall specify the *period* during which comments will be received…the *date, time and place* of any public meetings or hearings…where copies of the *draft environmental impact report … and all documents referenced* in the draft environmental impact report…*are available.* (Emphasis added.) Guideline section 15082(a) would require the notice to be sent and filed with the county clerk of each county in which the project will be located, "*immediately after deciding that an environmental impact report is required for a project….*" The public comment period, the date and time of any public meetings or hearings are not known immediately after deciding an environmental impact report is required. Moreover, the draft EIR or negative declaration does not exist at that time, so they cannot be available (the statute states "*are* available). The information required by subsection (b)(1) of section 21092 can only be known once the draft EIR or negative declaration are fully prepared. In order to make this workable, we request that the word "Immediately" be deleted from subdivision (a) of section 15082.

Response 44.50

The Agency is not making any changes in response to this comment. The commenter incorrectly states that CEQA Guidelines section 15082 is not consistent with the Public Resources Code, and confuses the notice requirements. Section 15082 generally requires the lead agency to prepare and send the notice of preparation of an environmental document to all relevant responsible, trustee and federal agencies. Section 15082 is tethered to Public Resources Code section 21080.4 and is consistent with that section. The commenter claims that Guidelines section 15082 is not consistent with Public Resources Code section 21092. Public Resources Code section 21092 governs the notice provisions for the public and all other agencies, and is distinct from the requirements in Public Resources Code section 21080.4. Also, the comment addresses provisions that have existed in the Guidelines for some time, not the provisions that the Agency proposes to add.

Comment 44.51

Guideline 15370. Conservation Easements as Mitigation We agree with the background explanation that conservation easements *may* be used as mitigation. However, there are a variety of resources that may be mitigated through conservation easements, some of which may be temporary, e.g., BDCP/California

WaterFix has a 30-year time period. Additionally, even with respect to agricultural land mitigation, climate change and climate adaptation may make some land currently used in agricultural production no longer suitable for that purpose. We believe that temporary conservation easements should also be an option. Therefore, we request that subdivision (e) be modified as follows:

(e) Compensating for the impact by replacing or providing substitute resources or environments, including through ~~permanent~~ protection of such resources in the form of conservation easements.

Response 44.51

The Agency declines to make any changes in response to this comment. Please see Master Response 17 regarding CEQA Guidelines section 15370. A lead agency is not precluded from considering a temporary easement as a form of mitigation measure.

Comment 44.52

Since a significant amount of the Standardized Regulatory Impact Assessment (SRIA) is devoted to the costs associated with the VMT Guideline, we address that portion of the SRIA here and will address the SRIA analysis of the cost of other proposed Guideline sections at the end of this comment letter. In our view, the SRIA significantly understates the cost of both preparing a VMT analysis and fails to analyze the costs of mitigation associated with VMT and associated litigation (see, below).

Response 44.52

The Agency is not making any changes in response to this comment. This comment is introductory and general in nature. The Agency addresses the commenter's specific comments in subsequent responses.

Comment 44.53

The cost to develop and build infill projects is considerably higher than greenfield projects. That is a function of higher land costs, increased costs associated with taller buildings, and higher litigation risk. For this reason, greenfield projects have been, and will continue to be, notwithstanding the proposed guideline, the preferred housing option of those struggling to afford a home in California. Those most highly burdened by housing costs are communities of color. (See, below.)

Response 44.53

The Agency declines to make any revisions in response to this comment. The commenter claims, without citation to any evidence, that infill housing is more expensive (and less affordable) than greenfield housing. The comment also claims, again without any citation to evidence, that Californians struggling with housing affordability prefer to live in greenfield projects. Please see Master Response 8 regarding housing affordability.

Comment 44.54

We tested the impact of the new guideline. We compared infill projects with greenfield projects and found that while greenfield projects would have to achieve greater reductions in VMT to meet the threshold suggested by the Technical Advisory, infill projects had very significant and expensive reductions in VMT that would be required. The infill project (which is detailed below) required a surprising 26% reduction in VMT and the greenfield project required a 35% reduction. To us, this does

not suggest that the new guideline will incentivize infill projects. Instead, we believe it will make all housing projects more expensive. That will push people into making longer commutes as they search for less expensive housing. We looked at an approved 240-unit multifamily project located in Orange County across the freeway from the John Wayne Airport. Here is what our analysis found: The project exceeds the established VMT per capita threshold by 30 percent. In order to reach the 20.98 VMT per capita threshold, the VMT will need to be reduced by approximately 26 percent. The project does contribute to improved traffic flow; however, no range of effectiveness is quantified in CAPCOA. The project also adds a sidewalk on the project frontage that connects to the existing sidewalks west of the project, which aligns with CAPCOA Mitigation Measure 3.2.1: Providing Pedestrian Network Improvements and the associated 1 percent reduction in VMT. The remaining 25 percent VMT reduction can come from a variety of combinations of mitigation measures. With the assumption that the location and land use of the project is inflexible, we recommend the following as a potential mitigation strategy: **3.3.1:** Limit Parking Supply (8.75 percent) **3.3.2:** Unbundle Parking Costs from Property Cost (7.8 percent) **3.4.4:** Implement Subsidized or Discounted Transit Program (10.15 percent) It should be noted that the City of Costa Mesa has been approving intensified residential developments with reduced parking requirements. Since then, the eastern portion of Costa Mesa has been experiencing an overflow of parking onto city streets. This impact has resulted in community backlash and the City reviewing parking needs. Ultimately, the exacerbation of parking is contrary to the context of the project and the community of Costa Mesa, which raises questions about the appropriateness and feasibility diminished parking as mitigation. This shows that not all mitigation measures listed in CAPCOA may be consistent with the goals of the jurisdiction. To implement a subsidized or discounted transit program and reach the 10.15 percent average VMT reduction, *100 percent of the residents must be eligible for a 10.15 percent discount on transit.* Again, it is difficult to determine compliance with these strategies to accurately anticipate the VMT reduction. (Emphasis added.) This will generate controversy over the project, making litigation almost certain. The cost and delay due to litigation (assuming the lead agency were to agree to it) is greater than the cost savings attributable to reduced parking. Like most of the recommendations in the CAPCOA document, this mitigation suggestion is futile. If this were an owner-occupied building where an endowment would be required, this measure would make the project profoundly more expensive or would be infeasible. See, Provide Transit Passes, below.

We believe the application of the new guideline to infill development will only (1) increase the costs to produce infill housing, (2) increase the likelihood of being denied approval, and (3) increase litigation risks for such projects. All of which will increase VMT.

Response 44.54

The Agency declines to make any revisions in response to this comment. The commenter purports to have analyzed vehicle miles traveled from a housing project and concludes that such analysis will make infill projects more expensive. The Agency cannot draw the same conclusion from the information provided in the comment, for several reasons.

First, the comment does not reveal data sources nor any information about the methodology used to construct its analysis.

Second, the mitigation strategy described in the comment's scenario includes only three potential measures from the many that would exist for such a project. That limitation is not explained.

Third, the comment further discusses challenges in implementing those particular measures without acknowledging that lead agencies may determine whether any particular measure is feasible.

Fourth, even taking the scenario at face value, there is no indication that the scenario described in the comment is representative of all, or even many, infill projects.

Fifth, the claims in the comment regarding cost, likelihood of approval, and litigation risk are all presented without any evidence to support the claims.

Notably, the comment is also at odds with the observations of jurisdictions that have actually analyzed projects using the vehicle miles traveled metric. See, e.g., Comment 5.2 ("Two years later, we are seeing the benefits of this change as numerous transportation projects and infill developments that previously would have gone through time-consuming, costly vehicular level of service analysis with no beneficial environmental outcomes, are on the ground, approved, or under construction.").) The assertion in the comment is also at odds with leading advocates for infill development, including a founder of the Council of Infill Builders. ("As leading developers and advocates of infill projects throughout California, we recognize that this proposed reform will remove one of the most common roadblocks used to stop smart city-centered development[.]") For these reasons, the Agency cannot find the comment's assertion to be credible.

Comment 44.55

Underestimating the cost of preparing a VMT analysis begins with the statement that, "[t]he update related to transportation, however, will replacement [sic] one study methodology with another" (See, SRIA p. 4). As the SRIA views the VMT Guideline, VMT entirely replaces LOS.
However, the Frequently Asked Questions Regarding the Proposed Updates to the CEQA Guidelines, November 2017 (FAQ), states the contrary: **If level of service can still be used for planning purposes, isn't the proposal related to transportation analysis just adding another layer of study?** Because SB 743 preserves local government authority to make planning decisions, LOS and congestion can still be measured for planning purposes. 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. (FAQ, p.2) We agree with the FAQ and highlight the statement that "LOS may also still be used to measure roadway, including highway, capacity projects". Thus, to the extent that the "Transportation Projects" component of the proposed guidelines (section (b)(2)) will require analysis of roadways to be constructed as part of a "Land Use Project," the analysis of "Land Use Projects" will often necessarily require an LOS analysis for the proposed roadways. Moreover, as the FAQ points out, LOS and congestion may still be considered by local governments as part of the planning process.
Therefore, the SRIA should not indicate a cost savings for no longer preparing an LOS analysis.

Response 44.55

The Agency is not making changes in response to this comment. The comment asserts that the new guideline on transportation will not result in cost savings because agencies will require analysis of both congestion and vehicle miles traveled. The Agency disagrees for several reasons.

First, the purpose of the Standardized Regulatory Impact Assessment is to analyze the impact of a proposed regulation. Here, the regulation would state that (1) congestion is not an environmental

impact, and (2) the primary measure of transportation impacts is vehicle miles traveled. Thus, the SRIA appropriately analyzed the impact of studying vehicle miles traveled instead of congestion as part of a CEQA analysis. The only time "level of service" would be used for a CEQA analysis is in the limited circumstance that a lead agency chooses to use that metric to study a roadway capacity project.

Second, to support its assertion that agencies will continue to require a "level of service" congestion analysis, the comment quotes, without context, from a "Frequently Asked Questions" document prepared by the Office of Planning and Research. That document explains, in response to concerns from local governments about local planning control, that nothing in the CEQA Guidelines will prohibit from considering congestion during the planning process. This reflects the provision in Public Resources Code section 21099(b)(4) stating that the requirement to analyze vehicle miles traveled: "does not preclude the application of local general plan policies, zoning codes, conditions of approval, thresholds, or any other planning requirements pursuant to the police power or any other authority." The portion of the OPR document that the comment omitted from its quotation explained that a "LOS analysis conducted for planning purposes is generally undertaken over a much smaller number of intersections than a LOS assessment under CEQA, saving substantial time and resources." (OPR, Frequently Asked Questions (November 2017), at p. 3.)

Third, those agencies that have already begun to use vehicle miles traveled as their primary metric of transportation impacts have reported time and cost savings. As explained in the Standardized Regulatory Impact Assessment, "[d]ue to the shift to VMT analysis, the City [of San Francisco] experienced direct time savings (including staff time) of between zero and five months, direct costs savings that varied by size and complexity of project, significant risk reduction to developers, and reduction in backlog in the City's processing of development permits. (Transportation Sustainability Fee: Economic Feasibility Study, San Francisco Planning Department, 2015, pp. 19-22)."

Fourth, the comment asserts that because agencies have discretion to analyze roadway capacity projects using level of service, "the analysis of "Land Use Projects" will often necessarily require an LOS analysis for the proposed roadways." The proposed guideline plainly does not require that result. Only if a roadway capacity project is a component of a larger land use project, and only if the lead agency chooses to analyze the roadway capacity component using level of service, could a transportation analysis conceivably include both metrics. The comment offers no explanation why an agency would be likely to make those choices.

Thus, for the reasons described above, the Agency sees no basis to alter the analysis in the Standardized Regulatory Impact Assessment.

Comment 44.56

Moreover, we anticipate that project opponents will maintain that Guideline section 15125(d), along with Appendix G section XI(b), requires projects to analyze potential inconsistencies with general plans, regional transportation plans and congestion management plans, where LOS is contained. They will argue that LOS does measure an environmental impact – air emissions caused by congestion and delay. Although section 21099(b)(2) of the Public Resources Code (SB743) tries to exclude these, they will argue that subsection (b)(3) brings them in because it states that, "This subdivision [(b)] does not relieve a public agency of the requirement to analyze a project's potentially significant transportation impacts related to air quality…." Additionally, subsection (4) states that "This subdivision does not preclude the application of local general plan policies…." Again, this brings LOS back into the *CEQA process*.

Response 44.56

The Agency declines to make any revisions in response to this comment. The commenter claims that analysis of plan consistency will bring LOS into the CEQA process. However, SB 743 is clear that automobile delay is not an environmental impact under CEQA, including where level of service is specified in a plan or policy. Please also see Master Response 19 regarding consistency with plans. The commenter also suggests that air quality analysis, which remains required in CEQA, will require a level of service analysis. The comment provides no evidence, nor have any other comments provided evidence, to suggest that a "level of service" analysis is required to perform an analysis of a project's air quality impacts. In the past, "level of service" was used as an input to carbon monoxide analysis, as part of some air quality analyses. Due to the State's rigorous vehicle emissions rules, however, the vehicle fleet in California has come to emit carbon monoxide at low enough rates that no possible amount of traffic, no matter what the level of congestion, could emit enough carbon dioxide to create a carbon monoxide hotspot. Meanwhile, assessment of other pollutants do not depend on level of service analyses. Therefore, level of service analysis is no longer needed as an input to air quality analyses.

Comment 44.57

The cost analysis ignores that CEQA lead agencies are political bodies, largely representing existing voters and they will respond to their concerns. Auto delay and congestion, and the need to mitigate them, will not magically go away just because a law is passed. As described above, these concerns will continue to be raised in the CEQA process and will continue to result in additional cost and litigation.

As the Resources Agency knows, mitigating congestion and delay are most frequently accomplished through measures that increase VMT, e.g., adding roadway capacity or other 16 measures that speed up traffic flows. This will compound the cost of mitigation for projects – particularly in infill areas that are already congested or experience high levels of auto delay. Therefore, we do not believe that these Updates will spur more infill.

Response 44.57

The Agency declines to make any revisions in response to this comment. The commenter asserts that congestion will continue to be a political issue that will be raised in CEQA. The commenter also suggests infill development will continue to be required to provide roadway capacity expansion, which will increase costs and decrease viability of that infill development. Evidence in the record, which includes observations from local governments that have stopped measuring congestion in the CEQA process, indicate the opposite. As explained in the Standardized Regulatory Impact Assessment, "[d]ue to the shift to VMT analysis, the City [of San Francisco] experienced direct time savings (including staff time) of between zero and five months, direct costs savings that varied by size and complexity of project, significant risk reduction to developers, and reduction in backlog in the City's processing of development permits. (Transportation Sustainability Fee: Economic Feasibility Study, San Francisco Planning Department, 2015, pp. 19-22)."

The SRIA clearly explained that the proposed changes will enable cost savings and other benefits. It also explained that the extent to which those benefits are realized will depend on how lead agencies implement the regulations. "Realization of those benefits will depend on the degree to which, pursuant to this CEQA Guidelines proposal, lead agencies use the streamlined approaches for analysis of low-VMT projects, mitigate high-VMT projects, or choose lower VMT project alternatives."

Comment 44.58

Our traffic engineers and consultants point out that none of the case studies in the SRIA provide a conclusion (beginning at p. 9). The analyses provided simply indicate what are the possible next steps. The analyses never show what the regional averages are, how they were derived and what is the project's VMT compared to the regional average. The greatest cost and uncertainty is in the definition of region and the methods to estimate that threshold. These regional estimates must use traffic models at present. These models are generally held by the metropolitan planning organization or regional transportation agency. These agencies charge fees for developing model output.

Response 44.58

The Agency declines to make any revisions in response to this comment. The description of analysis of potential projects using measures of congestion and vehicle miles traveled was included in the SRIA solely for the purposes of illustration. Moreover, the methodological variables the comment raises are all matters within a lead agency's discretion. Notably, early drafts of OPR's materials provide descriptions of how thresholds and analysis may be completed using publicly available information, and that information remains available on OPR's website.

Comment 44.59

Our traffic engineers and consultants also note that VMT studies are not less expensive than LOS studies. The estimate of $5,000 for a VMT study assumes that a VMT study for SB 743 purposes is no different than what is currently required to measure GHG emissions associated with project traffic impacts, where the direct output of CalEEMod or URBEMIS can be disclosed. But SB 743 asks for much more than a single CalEEMod or URBEMIS run. The practitioner must identify the project trip generation, project service population, and project trip length, then estimate the regional average using traffic models and ultimately compare the project VMT with the existing VMT. In effect, the actual practice is to conduct all the elements of an LOS analysis and add the VMT to the end. It is an additive, not reductive, process. Therefore, in discussing the new VMT Guideline or analyzing its costs, we believe it is inappropriate to characterize adding a VMT analysis as a cost savings.

Response 44.59

The Agency declines to make any revisions in response to this comment. The commenter claims $5000 is an underestimate for a typical VMT study. The comment provides no evidence to support its claim. The estimate in the SRIA, on the other hand, was provided by a practitioner who regularly undertakes such analyses. The estimates in the SRIA are consistent with evidence provided by local governments that analyze vehicle miles traveled in their environmental documents. The Agency finds that evidence to be more credible than the comment's unsupported assertion.

The comment further asserts "SB 743 asks for much more than a single CalEEMod or URBEMIS run." Again, the comment is at odds with the plain language of the proposed regulation:

> 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 [which states that good -faith effort and not perfection is required] shall apply to the analysis described in this section.

(Proposed Section 15064.3(b)(4).)

Finally, the commenter claims that, "(i)n effect, the actual practice is to conduct all the elements of an LOS analysis and add the VMT to the end." The Agency disagrees. While an analysis of vehicle miles traveled requires only an assessment of the total aggregate amount of vehicle travel produced by the project, which can in most cases be accomplished with a statistical (i.e., "sketch" or "spreadsheet") model, a level of service assessment requires trips to be assigned routes, requiring a travel demand model, and further for microsimulation modeling to be undertaken at each intersection and highway segment to assess delay or traffic density—processes that take significantly more time and resources than an analysis of vehicle miles traveled.

As explained above, substantial evidence supports the Agency's findings that the proposed regulation will result in cost savings.

Comment 44.60

Costs of VMT Mitigation

In addition to the extra costs associated with the VMT impacts analysis, mitigation in many cases will be required, which has yet to be demonstrated as a cost efficient or financially feasible practice. What may work in San Francisco, likely does not hold true in other areas around the state. The mitigation guidance to comply with the VMT Guideline is the 2010 CAPCOA report, *Quantifying Greenhouse Gas Mitigation Measures*, *A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures.* Both the SRIA and the *Technical Advisory on Evaluating Transportation Impacts in CEQA* (November 2017) (TA) refer to it. There are two fundamental problems with using the CAPCOA report: 1) it measures all VMT mitigation in terms of greenhouse gas reductions – not including the development of multimodal transportation networks and a diversity of land uses as required by section 21099(b)(1), and 2) many of the proposed mitigation measures would not be economically feasible and, if implemented, would increase community opposition to the project, which makes it substantially more likely the project would be denied. Both problems increase litigation risk. The second problem will also increase the number of hearings, consultant and staff time with their associated delay and cost.

Response 44.60

The Agency declines to make any revisions in response to this comment. The comment generally asserts that mitigation of vehicle miles traveled may be expensive or politically unpopular. The purpose of the SRIA is to analyze potential economic impacts of the proposed CEQA Guidelines updates. The SRIA quantified potential impacts where impacts were capable of quantification. The CEQA Guidelines do not require any particular type of mitigation. The SRIA refers to a guide for quantifying the effects of mitigation measures for the purpose of demonstrating that there are a variety of measures to reduce vehicle miles traveled. As explained in the SRIA, however, "lead agencies determine whether any particular mitigation measure is feasible in the context of the project under review. (See, e.g., CEQA Guidelines § 15091.)" Feasibility includes "economic" as well as "social" considerations. (Id at § 15364.)

Comment 44.61

The following discusses a few of the potential mitigation measures and project alternatives associated with VMT reduction included in the TA as examples and the cost implications, financial or otherwise, associated with each:

Incorporating affordable housing into the project. In a recent study, *Inclusionary Zoning – Good Intentions, Bad Results*, April 2016, Genest & Williams, analyzed the cost impact on market rate homes due to inclusionary requirements. On average, inclusionary zoning adds $66,562 to the average market priced home in California. At the time of the study, that represents a 10.6% tax on new home buyers or new home renters who are already struggling to afford a home in California. (A copy of the study is attached as Exhibit 1). In the Bay area, it added $97,614 or 11.7% to the cost of a new home. Moreover, the 2010 CAPCOA report limits the maximum reduction in VMT to 1.2% for incorporating inclusionary HOUSING into a project (*Quantifying Greenhouse Gas Mitigation Measures*, *A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measure, p. 176*), making reduction extremely disproportionate to the cost. Affordable housing is also strongly opposed by neighbors to the project. (See, e.g., A California for everyone, describing community opposition to a Habitat for Humanity project, https://vimeo.com/242696428).

Response 44.61

The Agency declines to make any revisions in response to this comment. Lead agencies have the discretion to select appropriate and applicable mitigation measures. Lead agencies would not be required to choose affordable housing as mitigation. See also, Response to Comment 44.60. The comment argues against inclusionary housing as a potential measure to reduce vehicle miles traveled. As explained above, a lead agency will determine whether any particular measure is feasible in the context of the project and the community.

Comment 44.62

The only way for inclusionary housing to work to satisfy the desire for affordable housing is if there is an ever-greater number of home buyers and renters who can subsidize affordable homes. Yet there is no evidence that this is the case. All the evidence is to the contrary. In 2016, a $1,000 increase in home cost prices out 15,328 households from being able to afford a roof over their head. See, NAHB Releases the 2016 "Priced Out" Estimates, http://eyeonhousing.org/2016/12/nahb-releases-the-2016-priced-outestimates/. Therefore, the greater the increase in the price of a home (whether to subsidize affordable housing or any other reason), the fewer number of qualified people there are available to purchase or rent. Public subsidies, where there is a political will to provide them, would come with a prevailing wage requirement, making all of the homes within the project even more expensive. A recent study indicated that prevailing wage requirements add $84,000 to the statewide average cost to construct a new home. (See, http://www.mychf.org/uploads/5/1/5/0/51506457/prevailing_wage_20170824.pdf.)The prevailing wage requirement would apply not only to the subsidized homes but also to the non-subsidized homes that are included in the project.

Response 44.62

The Agency declines to make any revisions in response to this comment. The commenter claims inclusionary housing requires an "ever-greater number of home buyers and renters who can subsidize" them. The commenter also makes claims about the cost of prevailing wage policies. Lead agencies have the discretion to select appropriate and feasible mitigation measures. Lead agencies would not be required to choose affordable housing as mitigation. See also, Response to Comment 44.61.

Comment 44.63

Limiting parking supply. As an example, the City of Costa Mesa has been approving intensified residential developments with reduced parking requirements. Since then, the eastern portion of Costa Mesa has been experiencing an overflow of parking onto city streets. This impact has resulted in community backlash. This too increases neighborhood opposition which makes it either litigation bait or unlikely to be adopted.

Response 44.63

The Agency declines to make any revisions in response to this comment. The commenter describes a city which "has been approving intensified residential developments with reduced parking requirements" and asserts that as a result parking occurred on nearby streets, resulting in a community backlash, increasing neighborhood opposition "which make it either litigation bait or unlikely to be adopted." Lead agencies have the discretion to select appropriate and applicable mitigation measures to reduce vehicle miles traveled. Also, overflow parking is routinely handled in jurisdictions across the state with the implementation of residential parking permit programs. See also, Response to Comment 44.60.

Comment 44.64

Provide transit passes. It is very expensive to accomplish this seemingly benign and potentially effective measure. In the past, transportation districts have attempted to require new home construction to pay a fee – calculated as an endowment – to mitigate VMT impacts. (See, e.g., AB 1627 (2011-Dickinson). (http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB1627).) This is based on a shared belief that there are no other means of financing transit subsidies for owner-occupied housing. Endowments require a high amount of principle to throw off enough income to cover the annual cost of a bus pass. Because there is inflation over time, the endowment must include enough to cover inflation. As of February 16, 2018, the 10-year Treasury Inflation Protected Securities (TIPS) are implying a 10-yr inflation rate of 2.11% which means that after inflation the real yield is .79%. (See, https://fred.stlouisfed.org/series/T10YIE and https://fred.stlouisfed.org/series/DFII10.) In the Sacramento Regional Transit District, a monthly bus pass costs $110. This means that for every passenger, an endowment of $167,088 would be required. Each home in the Sacramento area has an average of 2.76 people per household (2012-2016 are the latest numbers reported by the US Census Bureau). (See, https://www.census.gov/quickfacts/fact/table/sacramentocountycalifornia/HSD310216#viewtop.) This means that the cost of the bus pass per household is $461,165. If only 10% of the households are subsidized by bus passes or all residents receive a 10% discount that would represent an additional $46,116 added to the cost of a new home.

Response 44.64

The Agency declines to make any revisions in response to this comment. Transit passes purchased for a project's travel demand management are generally purchased at a deep discount. For example, Alameda-Contra Costa Transit District offers a deep discount of 93 to 97 percent; VTA a discount of 91 to 99 percent; Samtrans offers a discount of 85 to 94 percent. Therefore, the commenter's cost estimates appear to be inflated by approximately two orders of magnitude (i.e., approximately 10-100 times) (see Transform's Greentrip Traffic Reduction Strategies Discount Transit Passes information sheet, available at http://www.transformca.org/sites/default/files/discount-transit-passes.pdf). The lead agency has discretion to choose between the many VMT mitigation options. See also, Response to Comment 44.60.

Comment 44.65

Increasing density. Higher density means higher construction costs due to increased engineering, insurance, labor, materials and building code compliance costs. Taking a two-story, single family home as the norm, a three-story home is 1.3-1.5 times more expensive, a four-story home is 2x more expensive, a five-story is 3-4x more expensive, and 8-50 stories is 5.5-7.5x more expensive than a single-family home. (See, *In the Name of the Environment*, 2015, Holland & Knight, p.68. Available at: http://issuu.com/hollandknight/docs/ceqa_litigation_abuseissuu?e=16627326/14197714.)

Response 44.65

The Agency declines to make any revisions in response to this comment. The commenter asserts that higher density construction increases construction costs. However, the commenter's assertion is based solely on increased construction costs associated with taller buildings. Builders can also increase density by decreasing lot sizes. The Agency also notes that increasing density also reduces land costs per unit, by dividing that cost over a greater number of owners or renters. In any event, lead agencies have the discretion to select appropriate and feasible mitigation measures. See also, Response to Comment 44.60.

Comment 44.66

Additionally, new housing projects are the most frequent target of CEQA lawsuits for which there is a private sector applicant. In the most recent data (2013-2015) 25% of new housing projects were subjected to CEQA lawsuits – that's up 4% from 2010-2012. The percentage of CEQA lawsuits challenging higher density multifamily/mixed use housing projects like apartments and condominiums also increased—from 45% to 49%. (See, *California Environmental Quality Act Lawsuits and California's Housing Crisis*, Jennifer Hernandez, Hastings Environmental Law Journal, Volume 24, No. 1, Winter 2018, p.29, http://journals.uchastings.edu/journals/websites/west-northwest/HELJ_V_24_1.pdf.) Adding a VMT analysis and more density to housing projects that have a high propensity to be targets of CEQA litigation due to their density is not going to result in lower priced housing or any additional housing at all, particularly with the congestion and auto delay that accompany them.

Response 44.66

The Agency declines to make any revisions in response to this comment. The commenter claims new housing projects are frequent targets of litigation, that density is unpopular, and therefore density would increase litigation and overall project costs. First, nothing in the CEQA Guidelines updates requires density as a mitigation measure. See Response to Comment 44.60. Second, the comment complains of circumstances that far exceed the scope this Guidelines update. Please see Master Response 20 regarding legislative changes required to make major policy changes.

Comment 44.67

Increase location efficiency/locate in an infill area. While the proposed Guideline hopes to increase infill – and we hope it does – we don't believe that this proposal will result in more infill. According to the most recent data, the percentage of CEQA lawsuits aimed at infill projects has jumped from 80% (2010-2012) to 87% (2013-2015). One hundred percent of Bay Area CEQA housing lawsuits and 98% of the LA region's CEQA housing lawsuits target infill housing. Seventy percent of the LA region's CEQA litigation targeted transit oriented higher density housing. (See, *California Environmental Quality Act Lawsuits and California's Housing Crisis*, Jennifer Hernandez, Hastings Environmental Law Journal, Volume 24, No. 1, Winter 2018, p. 28, 30, 32. (http://journals.uchastings.edu/journals/websites/westnorthwest/HELJ_V_24_1.pdf).) Adding a VMT analysis designed to move projects to infill areas that have a high propensity to be targets of CEQA litigation due to their infill nature, is not going to result in more infill housing.

Response 44.67

The Agency declines to make any revisions in response to this comment. The commenter asserts that the proposal will not result in more infill, pointing to their claim of a high number of lawsuits today against infill. In fact, the highest share of these lawsuits are focused on environmental analyses using the level of service metric; the proposed shift to vehicle miles traveled would streamline infill development and would be expected to reduce the number of lawsuits on infill projects. Indeed, evidence submitted by jurisdictions that do study vehicle miles traveled instead of congestion directly contradicts the assertions in this comment. Please also see Master Response 8 regarding the effect of the Guidelines on housing production.

Comment 44.68

While there is a general desire to reduce commutes in the abstract, the means to accomplish this outcome have largely failed because there has not been an understanding of why people are so willing to endure long commutes. (See, *This Mom Has a Six Hour Daily Commute, Here's Why She Does It*, https://www.nbcnews.com/video/this-mom-has-a-six-hour-daily-commute-here-s-why-she-does-it-1146643011898 and http://www.latimes.com/local/california/la-me-lopez-commute-cherry-20171216-story.html.) It is a rarified part of the market that has unlimited financial resources to expend on shelter. Even a lawyer and her husband, a software engineer moved 40 miles away from her job in Palo Alto to be able to afford a home in Santa Cruz. (See, *Lawyer quits Palo Alto planning board over housing costs; monthly rent in shared house was $6,200*, ABA Journal, August 22, 2016. Available here, http://www.abajournal.com/news/article/lawyer_quits_planning_board_over_housing_costs_monthly_rent_shared_with_ano/.)

Response 44.68

The Agency declines to make any revisions in response to this comment. The proposed Guidelines would streamline development closer to jobs centers, allowing for shorter commute times and distances. Please also see Master Response 8 regarding the effect of the Guidelines on housing production.

Comment 44.69

As project applicants, we always begin a project with the end in mind. This means we must understand what the consumer wants constrained by what they can afford. No one will commit resources to a project for which there is no market. Based on our experience as project proponents who entitle, construct and sell or rent projects to consumers who have limited funds, we find that the proposed regulations will increase the cost to consumers. Those increased costs will come from the uncertainty created by the thresholds contained in the TA, the cost of preparing the VMT analysis and the mitigation measures imposed, the increased time to get controversial projects approved, and the increased litigation risk. Higher housing costs increase, rather than reduce, VMT. This fact has been acknowledged by the Center for Jobs report and the Legislative Analyst's Office, as noted above. High housing costs causes a form of leakage that occurs within California, not just outside of the state. This fact has also been noted in Government Code section 65589.5(a)(2)(A) and (I). Less expensive transit options or the elimination of vehicles (assuming such a social outcome could be achieved in more than a handful of places) does not make up for the increases in housing costs. While we do agree that looking at both housing costs and transportation costs are important in determining affordability, unfortunately, we do not find the Center for Neighborhood Technology (see, SRIA, p. 23) to be a reliable source of data. As just one example, they indicate that the average monthly housing cost in San Francisco is $2,036. (See, https://htaindex.cnt.org/fact-sheets/?lat=37.750345295506&lng=-122.42480220956969&focus=place&gid=2017#fs.) The California Association of Realtors Current Sales & Price Statistics indicates that San Francisco ended 2017 with a median sales price of $1,475,000. (See, https://www.car.org/marketdata/data/countysalesactivity/.) According to the Center, San Francisco has an annual transportation cost of $9,501 compared to $14,643 for Fairfield. (See, https://htaindex.cnt.org/factsheets/. And according to Realtor.com, the median sales price of a home in Fairfield is $435,000. See, https://www.realtor.com/local/Fairfield_CA.) As you can see, the difference in housing costs far outweigh the difference in transportation costs.

Response 44.69

The Agency declines to make any revisions in response to this comment. The commenter claims without evidence, and contrary to evidence in the Agency's record, that the proposal will increase costs to consumers. Please also see Master Response 8 regarding the effect of the Guidelines on housing production.

Comment 44.70

3. Suggestions for Making the SRIA More Accurate
The cost analysis should be revised so as not to treat LOS analysis as something that is eliminated – even in the CEQA context. For the reasons stated above, the VMT analysis to be required by the proposed revisions will result in is a cost increase not a reduction with respect to the additional analytic and mitigation requirements.

Response 44.70

The Agency declines to make any revisions in response to this comment. The commenter asserts that the SRIA should be revised to show added costs because (1) level of service analysis will continue to be required and (2) analysis of vehicle miles traveled will add new costs. As explained in the Initial Statement of Reasons and the SRIA, this Guidelines update replaces level of service with vehicle miles traveled as the primary measure of transportation impacts in a CEQA analysis. The SRIA, therefore,

quantifies the effect of that change. The commenter asserts that agencies may still require project applicants to conduct congestion studies as part of the planning process. Some local governments may do so; however, the costs of such study, if required, are attributable to the local planning agency, and not to the CEQA Guidelines. (See Proposed Section 15064.3(a) ("a project's effect on automobile delay shall not constitute a significant environmental impact").) The commenter further asserts that a congestion study is required to analyze impacts associated with air quality; however, no evidence supports that claim. On the contrary, air districts that participated in this rulemaking all expressed support for the change. (See, e.g., Comments 35.) None suggested that a congestion study was needed to evaluate air quality.

The Agency does not agree that analyzing vehicle miles traveled will add costs. As the commenter noted, vehicle miles traveled is already studied as part of an analysis of greenhouse gas emissions. It is also a necessary component of an analysis of energy and air quality impacts, which are already widely studied in CEQA analyses. The efficiency gained from using such studies to also be the basis of a transportation analysis is one of the key reasons that the Agency selected vehicle miles traveled, instead of some other metric, as the measure to replace level of service. (See Initial Statement of Reasons, at pp. 14-15 ("Methodologies for evaluating such impacts are already in use for most land use projects, as well as many transit and active transportation projects"); see also OPR, Preliminary Evaluation of Alternative Methods of Transportation Analysis (December 2013).)

Comment 44.71

In addition, the SRIA should note that a requirement to provide more information in the form of the new VMT analysis comes with more public hearings and staff time, more issues to argue over in court, more attorneys' fees that the project proponent must pay for (fees for the petitioner if the petitioner prevails, for intervenors if they prevail, the attorney's fees for the lead agency which are always required through indemnity agreements regardless of who prevails, and for the project proponent defending the approval as well). Attorneys' fees alone run into the millions of dollars for most projects. Cost analysis should also include the additional costs of delaying the project, both the cost of funds for lenders and investors (rates of return are considerably higher than construction or take-out financing, commensurate with the risk6) during the litigation delay, the added costs due to new regulations that have been adopted that now apply to the delayed project, either as a result of changes to CEQA, the development of science, or to new design, marketing, construction, financing, and liability requirements for the project.

Response 44.71

The comment suggests that the SRIA should reflect included costs from (1) new vehicle miles traveled analysis, (2) increased processing time, and (3) increased litigation. The Agency declines to make any revisions in response to this comment.

As explained above in Response to Comment 44.70, analysis of vehicle miles traveled is already a routine component of a CEQA analysis. (See also, SRIA at p. 24.) Thus, it is not a new cost.

Second, while the comment alleges that analysis of vehicle miles traveled will increase processing times, evidence in the record before the Agency demonstrates the converse. The City of San Francisco studied this issue, and found substantial time savings. There is nothing in the Guideline that would require "more public hearings," as the comment asserts.

Third, the comment alleges that litigation will increase, but offers no evidence to support that claim. Litigation over project approvals will occur with or without the proposed Guideline, and even without CEQA. (See Master Response 20 regarding broad policy issues.) Thus, any attempt to estimate litigation that may result from the proposed changes in the Guidelines would be purely speculative. The Agency is mindful of litigation risk, however, and has crafted the Guidelines to reduce that risk to the degree possible in regulation. For example, it states that lead agencies have discretion in developing the methodology to study impacts, and may rely on the use of professional judgment. It also specifically refers to the standard of adequacy for EIRs, which indicates that analysis need not be perfect.

Comment 44.72

Disparate Impact on Communities of Color, Increase Homelessness, and Dependence on Government-Subsidized Services. According to the California Department of Housing and Community Development's State Housing Assessment (SHA), http://www.hcd.ca.gov/policy-research/plansreports/docs/SHA_Final_Combined.pdf, (February, 2018), those hardest hit by high housing costs are communities of color: Housing cost burden is experienced disproportionately by people of color. Figure 1.22 [below] looks across all income levels in the state and shows that the percentage of renters paying more than 30 percent of their income toward rent is greater for households that identify as Black or African-American, Latino or Hispanic, American Indian or Alaska Native, or Pacific Islander, compared to renter households that identify as White. This may become an even greater factor in the need for affordable housing as population trends suggest that California will become increasingly diverse in the coming decades. See, SHA, p.28. This fact has been recognized in the codification of Government Code section 65589.5(a)(2)(F) (F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.
High housing costs are also a significant cause of homelessness: In 2015, nearly half of the homeless population surveyed in San Francisco responded they were still homeless because they could not afford rent. Respondents were also asked what prevented them from obtaining housing. The greatest percentage (48%) reported they could not afford rent. Twenty-eight percent (28%) reported a lack of job or income. Most other respondents reported a mixture of other income or access related issues, such as the lack of available housing (17%), difficulty with the housing process (13%), or an eviction record (6%). Twelve percent (12%) of respondents reported that a criminal record prevented them from obtaining housing, and 8% reported a medical illness. Eight percent (8%) of respondents reported they did not want housing. (San Francisco, 2015) Regulation & Housing: Effects on Housing Supply, Costs & Poverty (May 2017), p. 34-35. See, https://centerforjobs.org/wpcontent/uploads/center_for_jobs_regulation_and_housing_study_may_2017.pdf
And high housing costs deprive people of health care and make them more dependent on government subsidized services: When Californians have access to safe and affordable housing they have more money for food and health care, they are less likely to become homeless and need government subsidized services, their children are apt to do better in school, and businesses do not have as hard a time recruiting and retaining employees. SHA, P. 48.
The Equal Protection Clause of the United States' and California's constitutions and the many laws implementing them will likely become a legal barrier to implementing VMT as a transportation metric. For these reasons also, we believe the TA should be withdrawn.

Response 44.72

The comment addresses the Technical Advisory prepared by the Governor's Office of Planning and Research, which is not a regulatory document and is not part of the Agency's proposed rulemaking for

the CEQA Guidelines. This comment is not specifically directed at the Agency's proposed rulemaking or its procedures. Thus, the Agency declines to comment further upon its merit and make any change in response. (Gov. Code, § 11346.9(a)(3).) The Agency has forwarded the comments to OPR for its consideration. Please also see Master Response 8 regarding housing costs and SRIA at page 23, specifically addressing potential impacts to low-income Californians.

Comment 44.73

B. Costs Associated with Guidelines other than Guideline 15064.3
We believe that the SRIA should also analyze the costs of: 1. Per our comments on Guideline sections 15064 and 15064.7, the proposed Updates go far beyond existing case law and would require providing substantial evidence for the *use* of another agency's thresholds in an EIR or an explanation when *using* thresholds in an initial study. This is a new, added CEQA compliance cost.

Response 44.73

The Agency declines to make any revisions in response to this comment. As reflected in the 15-day language, the Agency proposes to delete the suggestion in section 15064(b)(2) that a lead agency should describe the substantial evidence supporting how compliance with a threshold means the impact is less than significant. The Agency removed that provision in response to comments that it would be too burdensome, particularly in the context of when an agency prepares an initial study. The proposed revision requires a change to the Statement of Regulatory Impact Assessment.

Comment 44.74

2. By limiting the tools for tiering, as proposed in the Updates to Guideline section 15152, subsequent projects that wish to tier off a previous CEQA document will now have to analyze and explain why every more specific tiering option does not apply. This is a new, added CEQA compliance cost.

Response 44.74

The Agency declines to make any revisions in response to this comment. The Agency disagrees that the proposed revision to Guidelines section 15152 limits the tools for tiering. The proposed revision acknowledges that lead agencies have discretion to apply the appropriate tiering mechanism. The Agency also proposes further revisions to section 15152, as the 15-day language reflects, and these revisions also do not limit the tools for tiering. The proposed revision requires a change to the Statement of Regulatory Impact Assessment.

Comment 44.75

3. As discussed in our comments on the Land Use and Planning and Transportation elements of the Appendix G Checklist, there will be increased costs arising out of applying inapplicable plans, policies, etc., and from agencies without lawful jurisdiction over the project. Similarly, the proposed Updates to the Utilities and Service Systems element of the Appendix G Checklist would increase costs by uniformly expanding the parameters of water supply analysis to projects of all sizes and types.

Response 44.75

The Agency declines to make any revisions in response to this comment. Appendix G is only a sample checklist that can be tailored to address local conditions and project characteristics. The changes are consistent with cases interpreting CEQA. Because the changes do not create any new requirements, the proposed revision requires a change to the Statement of Regulatory Impact Assessment.

Comment 44.76

III. COMMENTS REGARDING THE TECHNICAL ADVISORY (TA)

To preface, our coalition includes project proponents who have projects within and outside transit priority areas; we also build on infill sites, suburban sites, greenfield and rural areas. We do not approach the proposed revisions with a preconceived preference for any particular kind of development. Instead, we look for solutions that address valid issues in a way that helps all projects, or at least does not harm them. As more fully set forth below, we do not find the TA to be helpful to any type of project – whether infill or greenfield. More importantly, we think the proposed new guideline, which necessarily includes the TA will increase cumulative VMT and increase costs for all projects, rather than result in a reduction for some. The principal reasons for this, are: 1) SB 743 does not effectively eliminate community concerns about auto delay and congestion; 2) LOS will still play a role even in CEQA, through general plans, regional transportation plans and/or congestion management plans; 3) in order to conduct the kind of

VMT analysis necessary to satisfy SB 743, an LOS analysis must be conducted first; and 4) congestion and delay will still need to be mitigated but will now require VMT mitigation for the LOS mitigation. Therefore, we believe the proposed revisions will add significant costs to projects which will increase housing costs, especially for infill projects, pushing people into longer commutes. For the reasons contained in this letter, we believe that the TA should be withdrawn. In addition, we believe that the TA incorporates a number of inconsistencies, both internally (see, #2, #5,below) and with other laws (see #1 and #3, below), is vague and ambiguous (see, #4, below), and will therefore result in more litigation and its associated costs.

1. The TA is Inconsistent with SB 375 the TA recommended threshold for residential projects provides as follows: A proposed project exceeding a level of 15 percent below existing VMT per capita may indicate a significant transportation impact. Existing VMT per capita may be measured as regional VMT per capita or as city VMT per capita. Proposed development

referencing city VMT per capita must not cumulatively exceed the number of units

specified in the SCS for that city and must be consistent with the SCS. (TA p. 12.)

First, it is clear from the language of SB 375 that Sustainable Communities Strategies (SCSs) were not intended to be mandatory – either on the part of a local land use agency (cities and counties) or on the part of project applicants. SCSs do not regulate the use of land or supersede the land use authority of cities and counties. Nor are general plans or land use policies required to be consistent with an SCS. Both applicants and local land use agencies moved from opposed to support of the bill when SCSs became incentive based rather than mandatory. One of the most obvious indications of this may be found in Government Code section 65080(b)(2)(K):

Neither a sustainable communities strategy nor an alternative planning strategy regulates

the use of land, nor, except as provided by subparagraph (J), shall either one be subject to any state approval. Nothing in a sustainable communities strategy shall be interpreted as

superseding the exercise of the land use authority of cities and counties within the region.

…. Nothing in this section shall be interpreted to authorize the abrogation of any vested

right whether created by statute or by common law. Nothing in this section shall require a

city's or county's land use policies and regulations, including its general plan, to be

consistent with the regional transportation plan or an alternative planning strategy.
These provisions are acknowledged by MPOs. For example, Plan Bay Area 2040 (http://2040.planbayarea.org/cdn/farfuture/u_7TKELkH2s3AAiOhCyh9Q9QlWEZIdYcJzi2QDCZuIs/1510696833/sites/default/files/2017-11/Final_Plan_Bay_Area_2040.pdf) provides:
Local Control It is important to emphasize that the region's cities and counties retain local land use authority and that local jurisdictions will continue to determine where future development occurs. Plan Bay Area 2040 is supported by through implementation efforts such as neighborhood-level planning grants for PDAs and local technical assistance. The plan does not mandate any changes to local zoning rules, general plans or processes for reviewing project; nor is the plan an enforceable direct or indirect cap on development locations or targets in the region. As is the case across California, the Bay Area's cities, towns and counties maintain control of all decisions to adopt plans and to permit or deny development projects. Plan Bay Area 2040, p. 44.
The alternatives analysis done for the EIRs for SCSs also show that dramatically different land use patterns can achieve the SB 375 GHG targets other than the preferred alternative in the final SCS. Therefore, deviating from the SCS will not necessarily undermine achievement of its regional targets. The incentive that is provided for a project that is consistent with an SCS is provided in Public Resources Code section 21159.28: (a) If a residential or mixed-use residential project is consistent with the … sustainable communities strategy … and if the project incorporates the mitigation measures required by an applicable prior environmental document, then any findings or other determinations for an exemption, a negative declaration, a mitigated negative declaration, a sustainable communities environmental assessment, an environmental impact report, or addenda prepared or adopted for the project pursuant to this division shall not be required to reference, describe, or discuss (1) growth inducing impacts; or (2) any project specific or cumulative impacts from cars and light-duty truck trips generated by the project on global warming or the regional transportation network. (b) Any environmental impact report prepared for a project described in subdivision (a) shall not be required to reference, describe, or discuss a reduced residential density alternative to address the effects of car and light-duty truck trips generated by the project. There is no mandate that a project be consistent with an SCS; instead, if a project is consistent with an SCS then there are limitations on what needs to be discussed in CEQA analysis with respect to tail-pipe emissions. There is no population limit, no limit on the number of units, no constraint on the location of projects, either in the CEQA provisions of SB 375 or in Government Code section 65080.8 A SCS is not a limit on population or housing. Moreover, it is beyond question that establishing limits on the number of housing units and constraining their location, drives up the cost of those residential projects lucky enough to survive our complicated and litigious entitlement process. Higher housing costs are what drives increases in VMT as residents with limited financial resources drive until they can qualify. Neither the private nor the public sector can afford to provide the subsidies necessary to meet our affordability needs. Cost reductions are the surest means of reducing VMT. Higher costs create leakage on a regional, statewide and international (*below*) scale and serve to increase, rather than reduce GHG. This is contrary to the purpose of SB 743. (See, Public Resources Code section 21099(b)(1).) Just last year, the California Legislature found and declared that: *(A) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are* hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and *undermining the state's environmental and climate objectives.* (B) While the causes of this crisis are multiple and complex, the absence of meaningful and effective policy reforms to significantly enhance the approval and supply of housing affordable to Californians of all income levels is a key factor.
(C) The crisis has grown so acute in California that supply, demand, and affordability

fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.
(D) According to reports and data, California has accumulated an unmet housing backlog of nearly 2,000,000 units and must provide for at least 180,000 new units annually to keep pace with growth through 2025.
(E) California's overall homeownership rate is at its lowest level since the 1940s. The state ranks 49th out of the 50 states in homeownership rates as well as in the supply of housing per capita. Only one-half of California's households are able to afford the cost of housing in their local regions.
(F) Lack of supply and rising costs are compounding inequality and limiting advancement opportunities for many Californians.
(G) The majority of California renters, more than 3,000,000 households, pay more than 30 percent of their income toward rent and nearly one-third, more than 1,500,000 households, pay more than 50 percent of their income toward rent. (H) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.
(I) *An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.*
(California Government Code section 65589.5(a)(2). *Emphasis added*.).
According to Regulation & Housing: Effects on Housing Supply, Costs & Poverty, California Center for Jobs & the Economy:
California's current high housing costs have resulted in longer commutes as Californians seek housing they can afford in outlying areas. Previous analyses by LAO found that a 10% increase in a metro area's rental costs produced a 4.5% in commuting times. (P.5).
And… *California Commuters Continue Reliance on their Own Cars*
In spite of decades of investments in public transit, carpool lanes, and other alternative modes for commuting, California commuters have continued to show a clear preference for the privacy, security, and flexibility of single occupant vehicles as the housing choices they can afford move further away from the urban cores. (P. 43).
For these reasons, we believe that the TA would make the proposed VMT Guideline inconsistent with existing law (SB 375) and undermines the purpose of reducing GHG emissions. Therefore, we believe the TA should be withdrawn. 2. A Non-Binding Advisory May Not Include Mandates The recommended thresholds in the TA are expressed as mandates when the TA is declared to be not binding. The TA states that "OPR's guidance is not binding on public agencies" (TA, p.8), but includes mandates by using "must". For example, we found the following:
(a) "Proposed development referencing city VMT per capita *must* not cumulatively exceed the number of units specified in the SCS for that city, and *must* be consistent with the SCS. (TA, p.12)
(b) "In MPO areas, development in unincorporated areas measured against aggregate city VMT per capita (rather than regional VMT per capita) *must* not cumulatively exceed the population or number of units specified in the SCS for that city because greater-than- planned amounts of development in areas above the regional threshold would undermine achievement of regional targets under SB 375." (TA, p. 12).
(c) "A transportation project which leads to additional vehicle travel on the roadway

network, commonly referred to as "induced vehicle travel," *must* quantify the amount of additional vehicle travel in order to assess air quality impacts, greenhouse gas emissions impacts, energy impacts, and noise impacts." (TA, p.16).

(d) Additionally, the TA provisions addressing RTP-SCS Consistency (All Land Use Projects), are based on the assumption that a project *must* be consistent with an SCS (TA, p. 15).

The recommended thresholds that require consistency with an SCS or RTP-SCS are inappropriate because they illegally treat SCS's as land use documents and limits on population. In order to be non-binding, the TA would have had to say that lead agencies are free to choose a threshold that is less (or more) stringent than what is suggested by the TA. We believe that for these reasons also, the TA should be withdrawn.

3. What Substantial Evidence Supports the TA Thresholds?

Because CEQA is ultimately based on substantial evidence, to the extent that anyone may rely on the TA, the 15% reduction below existing VMT references multiple public and private sector entities as sources for the 15% suggestion. It is unclear whether simply referencing these other standards constitutes substantial evidence (see, e.g., comments above regarding the use of regulatory standards) or whether or not those standards were arrived at based on substantial evidence. Additionally, it appears that the referenced sources use varying baselines, so it is not clear what baseline to use if a lead agency were to adopt the TA's suggested threshold. Does the Scoping Plan11 use a 2010-2012 baseline? What are the baseline assumptions for the SB 375 targets for each of the MPOs? Is the appropriate baseline the VMT per capita in 1990 as contained in AB 32, SB 32, the Executive Orders cited in the TA and SB 391? What baseline is used for CAPCOA? What is the data indicating per capita VMT for whatever year is used? We ask these questions because the TA states that "based on OPR's extensive review of the applicable research and literature on this topic, **OPR finds that in most instances a per capita or per employee VMT that is fifteen percent below that of existing development may be a reasonable threshold.**" (TA, p. 8). The lessons learned from, *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 842 [invalidating an EIR that based significance determination in part on comparing the project's emissions to statewide emissions], and *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 228 [invalidating an EIR because the lead agency did not provide sufficient evidence that "the Scoping Plan's statewide measure of emissions reduction can also serve as the criterion for an individual land use project"] make reliance on state agency standards risky without fully knowing the substantial evidence to back it up. Moreover, that risk has become greater with the California Supreme Court's caveat, "we do not hold that the analysis of greenhouse gas impacts employed by SANDAG in this case will necessarily be sufficient going forward. CEQA requires public agencies like SANDAG to ensure that such analysis stay in step with evolving scientific knowledge and state regulatory schemes." (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 504, 519.) For this reason, we request that the TA be withdrawn.

4. The TA Thresholds Are Inconsistent with the State's Zero Emission Vehicle Goals VMT as a metric treats zero emission vehicles (ZEVs) the same as any other vehicle. The inclusion of ZEVs in calculating a project's VMT undermines the Governor's Executive Orders (B-48-18 and B-16-12) and calls into question whether this Guideline is about greenhouse gas reduction. This has the effect of punishing the conversion to ZEVs. We believe that the TA should be withdrawn for this reason as well.

5. Transportation Projects and Induced Travel

There is some concern that subsection (b)(2) may require an analysis of induced travel. The concern arises from this statement: "The proposed changes also provide that the analysis of certain transportation projects *must* address the potential for induced travel." (See, TA, p. 1, and references to

induced travel or induced VMT also found at pp. 2, 16, 19, 20, 21, 27, 28 and 29). Since the TA looks like a mandate while claiming to be non-binding, we believe the TA should be withdrawn.

Conclusion We wish to express our gratitude to you for reviewing these comments. We appreciate the time and effort you give to considering and responding to them. We hope that these comments will make the finished product the best it can be for all those affected by their use.

Response 44.76

The comment addresses the Technical Advisory prepared by the Governor's Office of Planning and Research, which is not a regulatory document and is not part of the Agency's proposed rulemaking for the CEQA Guidelines. This comment is not specifically directed at the Agency's proposed rulemaking or its procedures. Thus, the Agency declines to comment further upon its merit or make any change in response. (Gov. Code, § 11346.9(a)(3).) The Agency has forwarded the comments to OPR for its consideration.

Comment 45 - California Council for Environmental and Economic Balance

Comment 45.1

On behalf of the California Council for Environmental and Economic Balance ("CCEEB"), I write to thank you for the opportunity to submit comments on the California Natural Resources Agency ("Agency") proposed Amendments and Additions to the State CEQA Guidelines ("Guidelines") January 26, 2018. Founded in 1973, CCEEB is a non-profit and non-partisan organization that works to advance strategies to achieve a sound economy and a healthy environment. Since the Office of Planning and Research launched its effort to update the Guidelines back in 2011, CCEEB has been an active stakeholder participating in workshops and providing comments on the numerous drafts and public comment opportunities.
Overall, CCEEB believes the Guidelines to be largely consistent with statutes and case law with the exception of two proposed changes. **We believe it is critically important for the Agency to modify these two sections – CEQA Guidelines subsection 15125(a)(2) and CEQA Guidelines subsection 15126.4(a)(1)(B) - in order for them to be consistent with current case law.**

Response 45.1

The Agency declines to make any revisions in response to this comment. This comment is introductory and general in nature. Specific responses are provided below for the more specific comments that follow. The Agency thanks the commenter for its letter.

Comment 45.2

Proposed New CEQA Guidelines Subsection 15125(a)(2)
Proposed new CEQA Guidelines subsection 15125(a)(2) provides: "*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."* Several subsections of Section 15125 are revised to incorporate case law including the California Supreme Court's holdings in *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, allowing use of representative past conditions as the baseline when conditions fluctuate over time, and *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439,

allowing use of a future baseline where an existing conditions baseline would be misleading. However, the revised language states that the heightened evidentiary showing, that using an existing conditions baseline would be "misleading or without informative value", applies when the baseline is "*either a historic conditions baseline or a projected future conditions baseline."* That is **inconsistent** with the recent case *Association of Irritated Residents v. Kern County* (2017) 17 Cal.App.5th 708, which holds that the heightened evidentiary standard applies *only* to a future conditions baseline, not to a historic conditions baseline. On January 31, 2018, the California Supreme Court issued an order denying a petition for review and requests for depublication of *Association of Irritated Residents*, so the case remains binding precedent. **Consistent with *Association of Irritated Residents*, the Natural Resources Agency should**

Response 45.2

The Agency has further refined section 15125(a)(2) in response to comments. As reflected in the Agency's 15-day language, the Agency has deleted reference to a "historic conditions baseline" in section 15125(a)(2). Please see Master Response 14 for a further response regarding Guidelines section 15125.

Comment 45.3

Proposed Revised CEQA Guidelines Subsection 15126.4 (a)(1)(B)
Proposed revised CEQA Guidelines subsection 15126.4 (a)(1)(B) provides that mitigation may be deferred when the lead agency: *"(1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve,* ***and*** *(3) lists the potential actions to be considered, analyzed, and potentially incorporated in the mitigation measure…"* (emphasis added). However, requiring both criteria (2) and (3) to be met in each case is inconsistent with case law which provides that either performance standards (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899) or a menu of mitigation options (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261), can separately suffice to justify deferred mitigation. That these are alternative options is also correctly stated in the Natural Resources Agency's Initial Statement of Reasons accompanying the release of the proposed CEQA Guidelines amendments. Page 42 of the Initial Statement of Reasons reads:
these changes clarify that when deferring the specifics of mitigation, the lead agency should either provide a list of possible mitigation measures, or adopt specific performance standards. The first option is summarized in *Defend the Bay v. City of Irvine, supra*. In that case, the court stated that deferral may be appropriate where the lead agency "lists the alternatives to be considered, analyzed and possibly incorporated into the mitigation plan." (*Defend the Bay, supra*, at p. 1275; *see also Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376; *Rialto Citizens for Responsible Growth, supra,* 208 Cal.App.4th 899; …) Alternatively, the lead agency may adopt performance standards in the environmental document, as described by the court in *Rialto Citizens for Responsible Growth v. City of Rialto, supra*. There, the court ruled that where mitigation measures incorporated specific performance criteria and were not so open-ended that they allowed potential impacts to remain significant, deferral was proper. **Consistent with the cases and the Initial Statement of Reasons, the Natural Resources Agency should revise subsection 15126.4 (a)(1)(B) to change "*(1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) lists the potential actions to be considered, analyzed, and potentially incorporated in the mitigation measure…"* to read "*commits itself to the mitigation and (1) adopts specific performance standards***

the mitigation will achieve, or (2) lists the potential actions to be considered, analyzed, and potentially incorporated in the mitigation measure…."

Response 45.3

The Agency declines to make any revisions in response to this comment. Please see Master Response 15 regarding Guidelines section 15126.4.

Comment 45.4

Proposed New CEQA Guidelines Section 15357
CCEEB suggests that the proposed addition to Guidelines Section 15357 be simplified and track the language in Guidelines Section 15002(i). The new language states: "*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 [sic] might be raised in an environmental impact report.*" While this language is legally accurate when you assume that the EIR "concerns" are all permissible CEQA concerns, it is confusing in this context because it puts the EIR before the CEQA trigger and could be interpreted too broadly. We prefer other language consistent with *Friends of Westwood, Inc. v. City of Los Angeles (1987)* 191 Cal. App.3d 259 and included in Guidelines 15369, which provides: "A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out." This captures the two necessary prongs that distinguish ministerial and discretionary actions: 1) the ability to approve or disapprove a project, and 2) the ability to shape or change the project (e.g., revising its size, purpose, design, conditions or construction) using subjective judgment. **Consistent with Guidelines 15369, the Natural Resources Agency should strike the new language and replace it with the following: "The key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project."**

Response 45.4

As reflected in the 15-day language, the Agency has further modified Guidelines section 15357 in response to comments. The Agency has revised the original sentence that started with "The key question . . . ," which now reads: "The key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project." The Agency made this revision to address commenters' concerns that the originally proposed sentence was unclear and would spur litigation. The Agency believes that the revised language is consistent with the definition of "ministerial," non-discretionary actions: "A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out." (CEQA Guidelines, § 15369; see *Friends of Westwood v. City of Los Angeles* (1987) [lead agency's employees were "empowered by ordinance to use largely subjective criteria to create individualized standards as to a vast array of important issues"].)

Comment 45.5

Proposed New CEQA Guidelines Section 15064.3
Finally, CCEEB continues to be concerned with the scope of proposed new Guidelines Section 15064.3 that goes beyond the statutory language in SB 743, by mandating statewide application of the new Vehicle-Miles-Traveled (VMT) methodology in lieu of traditional Level of Service

(LOS) analysis. SB 743 directs the Office of Planning Research (OPR) to develop, and the Agency to certify and adopt, Guidelines revisions establishing significance criteria for transportation impacts only for "*projects within transit priority areas*", that is, within one-half mile of an existing or planned rail transit station, ferry terminal served by bus or rail transit, or the intersection of two more major bus routes. (Pub. Res. Code §21099(b)(1))
SB 743 also provides that OPR "*may adopt* guidelines… establishing alternative metrics… for transportation impacts outside transit priority areas" which "may include the retention of traffic levels of service, where appropriate" as determined by OPR. (Pub. Res. Code § 21099(c)). Thus, this provision authorizes only informal, advisory OPR guidance for analysis outside transit priority areas, not revisions to CEQA Guidelines formally adopted by the Agency making the VMT metric mandatory throughout the state.

Response 45.5

The comment suggests that the Agency may not adopt procedures for analyzing transportation impacts outside of transit priority areas. The comment specifically suggests that Public Resources Code section 21099(c) only authorizes OPR to adopt informal guidance, and does not authorize the Agency to update the CEQA Guidelines, outside of transit priority areas. The Agency disagrees. The term "guidelines" in the Public Resources Code refers to the CEQA Guidelines. There is no suggestion in the statute that subdivision (c) refers to informal guidance; on the contrary, that subdivision specifically refers to Section 21083 which is the formal Guidelines rulemaking process. The proper reading of subdivisions (b) and (c) are that a change in the Guidelines must be made within transit priority areas, and may be made, in OPR's and the Agency's discretion, outside of those areas. Even absent subdivision (c), Section 21083 provides the Agency with broad authority to update the Guidelines, and nothing in subdivision (b) limits that authority. Further, as explained in the Initial Statement of Reasons and in the Master Responses to Comments, limiting the changes to transit priority areas would fail to achieve the purposes of the statute, would fail to realize cost savings, and would fail to achieve the other policy objectives underlying this Guidelines update. Please see Master Response 3 regarding the geographic scope of CEQA Guidelines section 15064.3; Initial Statement of Reasons, at pages 16-17; see also Standardized Regulatory Impact Assessment, at pages 24-27.

Comment 45.6

Moreover, as discussed in detail in CCEEB's November 21, 2014 comment letter (copy attached), we believe that VMT has not been sufficiently studied to require its use statewide. By applying the VMT metric within transit priority areas as required by Pub. Res. Code §21099(b)(1), its effectiveness and implementation issues can be further evaluated before considering its broader application -- or possible retention of the LOS metric authorized by Pub. Res. Code § 21099(c) – beyond transit priority areas.

Response 45.6

Please see Master Response 3 regarding the geographic scope of CEQA Guidelines section 15064.3.

Comment 45.7

In particular, SB 743 preserves the authority of local agencies to apply the LOS metric through their general plans, zoning codes, conditions of approval, thresholds or other planning requirements, based on their police power or any other authority. (Pub. Res. Code § 21099(b)(4)) To the extent that local agencies retain LOS in planning requirements, mandating the VMT metric creates another layer of analysis for transportation impacts, rather than simply replacing LOS. Since consistency

with local land use plans and policies is typically an environmental topic addressed in CEQA documents, this additional layer of analysis may result in significant land use impacts although no impact is reported in the transportation section using the VMT methodology. The Agency's Initial Statement of Reasons (p. 16) refers to confusion and litigation risk from the uncertainty of requiring two different types of analysis, but does not
address the consequences of local agencies using LOS in land use analysis. **The scope of proposed Guideline Section 15064.3 should remain limited to "transit priority areas" as directed by SB 743, until such implementation issues may be evaluated and considered.**

Response 45.7

Please see Master Response 3 regarding the geographic scope of CEQA Guidelines section 15064.3. Also, while the comment suggestions that additional time is needed to consider implementation issues, these changes have been under discussion for nearly five years. During that time, several local jurisdictions moved ahead with their own procedures to measure vehicle miles traveled instead of congestion for CEQA purposes. The Agency's proposed guideline is not new, and leaves lead agencies with sufficient discretion and flexibility to successfully implement.

Comment 45.8

CCEEB appreciates the opportunity to comment on the Guidelines. We believe that our recommendations regarding Section 15125(a)(2), Section 15126.4(a)(1)(B), and Section 15357 accurately reflect current case law and should be incorporated into the final document, and that the VMT-based significance threshold should apply only within transit priority areas consistent with the language of SB 743. If you have any comments or questions concerning our suggested revisions, please contact me or Jackson R. Gualco, Kendra Daijogo or Cliff Moriyama, CCEEB's governmental relations representatives at The Gualco Group, Inc. at (916) 441-1392.

Response 45.8

This comment is general in nature and summarizes the previous comments, which the Agency addressed above. Thus, the Agency declines to make any revisions in response to this comment. The Agency thanks the commenter for its letter.

Comment 46 – California Rural Counties Task Force

Comment 46.1

Thank you for the opportunity to comment on the Natural Resources Agency's Proposed Rulemaking for Amendments and Additions to the State CEQA Guidelines. There is a major inconsistency in the proposed rules for when the statewide start date for when Lead Agencies must switch from using Level of Service (LOS) to Vehicle Miles Traveled (VMT) for CEQA transportation impacts. The *Proposed Regulatory Text* is inconsistent with what the statewide start date with what is stated in the *Initial Statement of Reasons* and the *Notice of Proposed Rulemaking* for the New Section 15064.3 - Determining the Significance of Transportation Impacts.

The Proposed Regulatory Text on page 11 section (c) Applicability states, "The provisions of this section shall apply prospectively as described in section 15007. A lead agency may elect to be governed by the provisions of this section immediately. **Beginning on July 1, 2019, the provisions of this section shall apply statewide."** The **July 1st 2019** statewide start date in the *Proposed Regulatory Text* is not consistent with the language in the *Initial Statement of Reasons* and *the*

Notice of Proposed Rulemaking for the New Section 15064.3 - Determining the Significance of Transportation Impacts. On Page 8 of the *Notice of Proposed Rulemaking* states, **"a two-year grace period for those agencies that need time to update their own procedures."** Also a period for local jurisdictions will **"have until 2020 to switch to VMT if they so choose"** Page 16 - Initial Statement of Reasons. Assuming six months before the adoption of these proposed rules by the Office of Administration Law on October 2017, the proposed July 1st 2019 statewide adoption date is only nine months away which is significantly less than the 2 year grace period and the 2020 start date proposed in the other Natural Resource Agency Proposed Rulemaking documents.

OPR's Final Proposed Updates to the CEQA Guidelines from November 2017 page 80, 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 January 1, 2020, the provisions of this section shall apply statewide."**

As a rural Regional Transportation Planning Agency, the start date of this section by July 1st 2019 does not allow enough time for local and regional agencies to adopt new thresholds of significance for the new VMT transportation metric. The OPR's Final SB 743 Recommendations does not include any recommendations for a VMT methodology, thresholds of significance, and mitigation measures for rural regions. The OPR's Final

Response 46.1

Please see Master Response 7 regarding CEQA Guidelines section 15064.3(d).

Comment 46.2

CEQA Guidelines recommendations are exclusively for urbanized regions. From Page 15 of OPR's Technical Advisory Document, "In rural areas of non-MPO counties (i.e., areas not near established or incorporated cities or towns), fewer options may be available for reducing VMT, and **"significance thresholds may be best determined on a case-by-case basis."** We are planning to establish a VMT methodology, thresholds of significance, and mitigation measures as part of comprehensive Vehicles Miles Traveled (VMT) Study for our region. This will help to avoid issues with having to use VMT thresholds on case by case basis.

Response 46.2

The Agency is not making any changes in response to this comment. The Agency disagrees that Guidelines section 15064.3 is exclusively for urbanized regions. Section 15064.3 applies to all projects regardless of their location. Lead agencies, including those reviewing rural projects, may select the appropriate significance threshold for the particular project. (CEQA Guidelines, § 15064; *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 371-373.) The Agency supports the commenting agency's plan to exercise its discretion to establish its own methodology for analyzing vehicle miles traveled, significance thresholds, and mitigation measures as part of its comprehensive study of vehicle miles traveled for the region.

Comment 46.3

In order to establish our VMT thresholds, we need a least a two year transition period which was recommended by OPR to allow local and regional agencies time to transition from LOS to VMT. A rush to implement these new rules for local and regional agencies will severely impact the development

entitlement process which would include approving housing projects. Local and regional agencies want to be consistent with State laws including SB 743 and the new rules proposed by the Natural Resources Agency. However, rushing implementation could have unintended consequences such as: legal, economic, social equity, and environmental impacts throughout the State.

We recommend to the Natural Resource's Agency to change the proposed July 1st 2019 statewide start date in Proposed Regulatory Text to a two year transition period from the date of the adoption of these proposed rules by the Office of Adm.inistr tion Law for the provision of 15064.3 Determining the Significance of Transportation Impacts to apply Statewide **on January 1st 2021.**

Response 46.3

Please see Master Response 7 regarding CEQA Guidelines section 15064.3(d).

Comment 47 - California Water Association

Comment 47.1

On behalf of the California Water Association (CWA) and the 100 water utilities regulated by the California Public Utilities Commission (CPUC) that serve 6 million Californians with safe, reliable high-quality water, I am pleased to provide the following comments on the Governor's Office of Planning and Research's (OPR) proposed updates to regulations implementing the California Environmental Quality Act (CEQA), Title 14, Division 6, Chapter 3 of the California Code of
Regulations (Guidelines).

OPR has proposed the most comprehensive and far-reaching revisions to the CEQA Guidelines in more than a decade. The proposed revisions, if adopted, could dramatically increase CEQA compliance requirements for all projects, including capital projects undertaken by CWA's member water utilities. As such, our specific comments that follow emphasize balancing critically needed new water and wastewater infrastructure with effective and reasonable protection of the environment under CEQA.

Response 47.1

The Agency declines to make any revisions in response to this comment. This comment is introductory and general in nature. Specific responses are provided below for the more specific comments that follow.

Comment 47.2

The amendment to section 15155, *City or County Consultation with Water Agencies*, proposes to codify the holding in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412. Specifically, this amendment would require an evaluation of a proposed project's water supply and the environmental impacts of supplying that water to the project for all phases of the project. This amendment will affect water service utilities that will have to devote considerable administrative time and resources to comply with the new substantial analytical requirements in preparation of water supply assessments under Senate Bill (SB) 610. OPR's explanation of this amendment places a strong emphasis on drought and climate change as drivers that heighten the need to identify reliably water supplies (Proposed Updates to the CEQA Guidelines (Nov. 2017), pp. 69-70). The amendments also would require an acknowledgement of circumstances affecting the certainty of supplies and identification of alternative supplies where there is uncertainty (*id.* at pp. 71-72). CWA suggests that the text

of the proposed amended Guidelines section 15155, subdivision (f)(4) include language that is currently only in the explanatory text (*id.* at p. 72) which states that project alternatives may include alternatives that require less water and curtailing later project phases.

Response 47.2

The Agency declines to make any revisions in response to this comment. The comment asserts that the changes will increase burdens on water suppliers preparing water supply assessments. Please note, the proposed changes do not affect the content requirements for water supply assessments prepared pursuant to the Water Code. The proposed changes implement the guidance of the California Supreme Court regarding CEQA's independent requirement to analyze water supply for proposed projects.

Also, the Agency's proposed addition of Guidelines section 15155(f)(4) provides that if the lead agency cannot determine that a particular water supply will be available, the agency must analyze alternative water sources or project alternatives that could be served with available water. Lead agencies have the discretion to evaluate a range of alternatives to a project. (Pub. Resources Code, §§ 21100(b)(4), 21002; Guidelines, § 15126.6.) Thus, the Agency declines to provide specific suggestions for project alternatives that are appropriately determined by the lead agency. Additionally, the California Supreme Court in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 434 noted that project alternatives may include curtailing development. (*Ibid.* ["an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives—including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases—and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact.]."

Comment 47.3

New section 15064.3, *Determining the Significance of Transportation Impacts*, implements SB 743 and represents a paradigm shift in the evaluation of projects' transportation impacts. The new section replaces the traffic congestion-based LOS metric with the vehicle miles traveled (VMT) metric (*id.* at pp. 77-80). Under the new required VMT analysis, the very act of driving a vehicle is an environmental impact requiring analysis and potentially mitigation. The proposed regulation generally removes traffic congestion from the required scope of a CEQA impacts analysis even though congestion analysis will still be required to show consistency with local jurisdictions' general plans. CWA member utilities' capital water projects would be evaluated under the new VMT regulation as there is no carve out for non-transportation related infrastructure. The new VMT-based impacts analysis will likely result in water service infrastructure projects – even those with minimal long-term traffic impacts – having significant transportation impacts requiring new costly mitigation under the new required VMT measure. Water infrastructure projects, which are essential to address California's water supply needs under conditions of drought and climate change, should not be subordinated to an environmental impact analysis and potential mitigation for driving a vehicle. Accordingly, CWA respectfully requests that the new VMT regulation **not** apply to water service-related infrastructure.

Response 47.3

The Agency declines to make any revisions in response to this comment regarding Guidelines section 15064.3. Public Resources Code section 21099, which directed OPR to propose a new transportation metric, does not provide a specific exemption for water service-related infrastructure. The Agency

further notes that a lead agency has the discretion to establish the thresholds of significance for use in reviewing a project's environmental impacts. (See CEQA Guidelines, § 15064(b).) The comment asserts that water projects will be subject to costly mitigation but provides no evidentiary support to support that claim. Moreover, the CEQA Guidelines do not require any particular type of mitigation. Lead agencies determine whether any particular mitigation measure is feasible in the context of the project under review. (See, e.g., CEQA Guidelines § 15091.) Feasibility includes "economic" considerations. (*Id* at § 15364.)

Comment 47.4

Analysis of Energy Impacts, per new section 15126.2(b), is intended to underscore the requirement to perform an energy impacts analysis for all project phases and components, include a determination of whether a project's energy use is "wasteful, inefficient, and unnecessary," and identify alternatives and/or mitigation measures to reduce energy use determined to be wasteful, inefficient, and unnecessary (*id.* at pp. 66-67). Water utilities will have to gain approval from the CPUC to incorporate potentially expensive energy savings technologies as alternatives or mitigation into capital projects and will further need to seek CPUC approval of rate increases to fund those technologies. At a time when cost pressures on customer rates have created a difficult regulatory environment for water utilities and their regulators, CWA respectfully requests that the CPUC have discretion over determining whether water infrastructure projects' energy use rises to the level of "wasteful, inefficient and unnecessary."

Response 47.4

The Agency declines to make any revisions in response to this comment regarding Guidelines section 15126.2(b). The Public Resources Code requires an analysis of whether a project's energy use is "wasteful, inefficient and unnecessary." It does not require any particular mitigation measure, however. Lead agencies determine whether any particular mitigation measure is feasible in the context of the project under review. (See, e.g., CEQA Guidelines § 15091.) Feasibility includes "economic" considerations. (*Id* at § 15364.)

Comment 47.5

The amendments to section 15064.4, *Analysis of Impacts from Greenhouse Gas Emissions*, largely codify the caselaw and good CEQA practice. That said, compliance with the amendments would nonetheless result in significant administrative burdens and potential imposition of costly new mitigation. The changes to this section would clarify that the analysis of impacts from greenhouse gas (GHG) emissions: (i) is a requirement (not a recommendation), (ii) should focus on projects' incremental contribution to climate change, and (iii) should consider a timeframe appropriate to the project. The amendments also would require projects to support any determination about a project's incremental contribution to climate change with substantial evidence, when based on the project's consistency with long-term climate goals, strategies, and policies. This requirement was added to force project proponents and lead agencies to fill a potential analytical gap between a statewide GHG reduction goals and a specific project (*id.* at p. 83), something that may present practical challenges for CWA member utilities' undertaking water infrastructure projects.

Response 47.5

The Agency declines to make any revisions in response to this comment. The commenter does not propose any specific revisions to the rulemaking package. The Agency also notes that the proposal reflects existing case law. Moreover, the Guideline does not require adoption of any particular type of mitigation. Lead agencies determine whether any particular mitigation measure is feasible in the context of the project under review. (See, e.g., CEQA Guidelines § 15091.) Feasibility includes "economic" considerations. (*Id* at § 15364.)

Comment 47.6

CWA appreciates that it is necessary to update the Guidelines from time to time, and it is supportive of OPR's overall efforts to reflect recent legislative changes to CEQA, clarify certain portions of the existing Guidelines, and update the Guidelines consistent with recent court decisions. However, CWA's members must always be aware of the administrative burdens and increased costs resulting from regulatory updates as they must be approved by the CPUC and ultimately passed onto water service customers. CWA hopes that OPR agrees and that the final amendments to the Guidelines will reflect these concerns.
CWA appreciates this opportunity to provide these comments on the proposed amendments to the Guidelines. If you have any questions, please feel free to contact me at jhawks@calwaterassn.com or (415) 561-9650.

Response 47.6

The comment does not suggest any changes to the proposed text. Thus, the Agency is not making any changes in response to this comment. The Agency thanks the commenter for providing a public comment. The Agency also notes that cost containment was a key consideration in the development of this rulemaking package. Many of the provisions in this package are expected to reduce costs as described in the Standardized Regulatory Impact Assessment.

Comment 48 – Climate Plan, *et al*.

Comment 48.1

On behalf of the undersigned organizations, we thank you for the opportunity to provide comments on the CEQA evaluation of transportation impacts. Our organizations are committed to successful development and implementation of these Guidelines, and we have been engaged closely at every step of the process for developing new CEQA guidelines under SB 743.
With other states looking to California as they consider similar changes to environmental laws, it is critical to get these guidelines right to set a good precedent for the rest of the nation.
We strongly support the statewide replacement of Level of Service with Vehicles Miles Traveled and want to reiterate our support for the following changes in the Guidelines, many of which are already incorporated in the policies enacted by Pasadena, San Francisco, Oakland, and San Jose:

● Promoting public health, environmental justice, and climate goals
● Providing guidance that active transportation projects will cause a less than significant impact
● Providing guidance that development within a half-mile of transit stations cause less than

significant transportation impacts
● Promoting consistency with adopted Sustainable Communities Strategies when calculating project level VMT
● Providing flexibility and guidance depending on the community, including urban and rural areas
● Allowing jurisdictions to set more stringent VMT standards than what is recommended as a minimum
● Focusing safety considerations to discourage road capacity expansion in the name of safety
● Requiring SCS consistency when using city-wide VMT to analyze transportation impacts
However, we have concerns with the the proposed language, and recommend the following to strengthen and clarify the guidelines, as well as to help further advance social equity:

Response 48.1

The Agency declines to make any revisions in response to this comment. This comment is introductory and general in nature. The comment does not suggest any changes to the proposed text. The Agency acknowledges with gratitude the engagement and input from the organizations noted in the comment, and thanks the commenters for their support.

Comment 48.2

1) Apply a VMT-based approach to all projects, including road capacity projects.
We are sorely disappointed that the proposed Section 15064.3(b) exempts roadway capacity projects from using a VMT-based measure of transportation-related environmental impacts. With the proposed rulemaking, the State has determined that the best approach to measuring transportation-related environment impacts is vehicle miles traveled; yet, at the same time, the State has exempted projects with arguably the greatest impact on the environment from using that metric. To close this loophole that threatens California's environment and public health, we will be recommending that Caltrans commit to applying the VMT metric when they are the responsible agency.

Response 48.2

Please see Master Response 5. Please note, however, Section 15064.3(b)(2) does not exempt roadway capacity projects from analysis. It merely notes that lead agencies for such projects may choose the measure of analysis.

Comment 48.3

2) Strengthen the VMT threshold over time to align with long range climate goals.
We recognize the hard work that went into determining the proper threshold for measuring the significance of an increase in vehicle miles traveled. We appreciate the alignment of the metric with other State and regional goals, including the currently adopted SB 375 regional targets; Caltrans' Strategic Management Plan; CAPCOA research; and ARB's Scoping Plan. However, each of these benchmarks will be updated over time. To ensure consistency with the State's climate goals and policy framework, the State should commit to regularly updating the threshold in the Technical Advisory to ensure it is aligned with the statewide VMT reductions needed to meet California's climate goals. Specifically, we recommend that the VMT threshold align with ARB's most current Scoping Plan. The 2017 Scoping Plan is based on a 15 percent reduction in

total light-duty VMT from the business-as-usual VMT in 2050.

Response 48.3

The comment is about the Technical Advisory prepared by the Governor's Office of Planning and Research, which is not part of the Agency's proposed rulemaking for the CEQA Guidelines. Nonetheless, the Agency notes that a lead agency has the discretion to establish the thresholds of significance for use in reviewing a project's environmental impacts. (See CEQA Guidelines, § 15064(b) ["The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved . . . ."]. Because this comment is not specifically directed at the Agency's proposed rulemaking or its procedures, and the Agency declines to comment further upon its merit and to make any changes in response. (Gov. Code, § 11346.9(a)(3).) The Agency has forwarded the comment to the Governor's Office of Planning and Research for its consideration.

Comment 48.4

3) Further advance social equity by including additional measures to protect against potential gentrification and displacement.

The replacement of LOS with VMT will improve transit service and walkability, benefiting low-income households who are more likely to take transit and walk. In addition, the proposed guidelines will help streamline the development process of housing in low-VMT and transit-oriented locations, thereby helping increase the supply of housing options in areas with low transportation costs. However, as neighborhoods change and property values increase with new investment and development, there is risk of gentrification and displacement. Research shows that preserving affordability and avoiding such displacement while building more infill housing avoids increases in VMT. We see a need for OPR's Technical Advisory 1 to recognize the relationship between income and VMT and to address this risk of increased VMT. We recommend the following to be added to OPR's Technical Advisory to encourage affordable housing in infill locations and reduce the risk of displacement:
- Provide high-level recommendations on mitigating the risk of displacement, including best practices from communities across California that have confronted these issues while building more infill and TOD.
- Add a presumption of "less than significant" for all projects that are 100 percent affordable in infill locations, consistent with SB 226.
- Add an additional exception from the presumption of "less than significant" for projects within a half-mile of transit for projects that result in a net reduction in the number of affordable rental units. "Affordable rental units" includes rental dwelling units that are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity's valid exercise of its police power; or occupied by lower or very low income households.2

Response 48.4

The comment is about the Technical Advisory prepared by the Governor's Office of Planning and Research, which is not part of the Agency's proposed rulemaking for the CEQA Guidelines. Because this comment is not specifically directed at the Agency's proposed rulemaking or its procedures, and the Agency declines to comment further upon its merit and to make any changes in response. (Gov. Code, §

11346.9(a)(3).) The Agency has forwarded the comment to the Governor's Office of Planning and Research for its consideration.

Comment 48.5

4) Monitor implementation to see if the guidelines are meeting intended results.
We recognize a lot of time and commitment has been put into these guidelines, and many communities and stakeholders alike would like to see real on-the-ground change. We encourage the State to regularly monitor the implementation of these guidelines and OPR's Technical Advisory to see if they are actually working, and if not, to recommend concrete changes. The Governor's Office of Planning and Research Annual Planning Survey provides an opportunity for ongoing monitoring. For example, the State should track regional VMT per capita, city-wide VMT per capita for the major cities, commonly used thresholds of significance, and VMT mitigation strategies. In addition, the State could track the number of new developments, active transportation projects, and road capacity projects that are built as a result of these revised guidelines, potentially through a survey of local jurisdictions.

Response 48.5

The comment is about the Technical Advisory and the Annual Planning Survey, both of which are prepared by the Governor's Office of Planning and Research. Neither of these documents are part of the Agency's proposed rulemaking for the CEQA Guidelines. Because this comment is not specifically directed at the Agency's proposed rulemaking or its procedures, and the Agency declines to comment further upon its merit and to make any changes in response. (Gov. Code, § 11346.9(a)(3).) The Agency has forwarded the comment to the Governor's Office of Planning and Research for its consideration.

Comment 48.6

5) Clarify how to determine "consistency" with SCS. We support that OPR's Technical Advisory promotes consistency with Sustainable Communities Strategies (SCS) for both land use projects and land use plans. However, more guidance is needed on what constitutes "consistency." For example, the "Recommendations Regarding Land Use Plans" in the Technical Advisory states that a "plan may have a significant impact on transportation if it is not consistent with the relevant RTP-SCS." If a land use plan allows for new residential development on a greenfield site that is not planned for development in the SCS, but
the land use plan promotes compact development within the site, is it consistent with the SCS? We recommend that the Technical Advisory provide further guidance in determining consistency with an SCS. For example, determining consistency should include a comparison between the land use plan and the SCS regarding the 1) conversion of agricultural or natural lands, 2) density of development, 3) mixture of uses, 4) transportation network, and 5) timing or phasing of the land use and transportation investments.

Response 48.6

The comment is about the Technical Advisory prepared by the Governor's Office of Planning and Research, which is not part of the Agency's proposed rulemaking for the CEQA Guidelines. Because this comment is not specifically directed at the Agency's proposed rulemaking or its procedures, and the Agency declines to comment further upon its merit and to make any changes in response. (Gov. Code, § 11346.9(a)(3).) The Agency has forwarded the comment to the Governor's Office of Planning and Research for its consideration.

Comment 48.7

6) Clarify how to determine "low VMT areas" in map-based screening approach.
We support streamlining projects with VMT reductions, and the map-based screening approach in OPR's Technical Advisory is a simple and effective method for identifying projects with low VMT. However, this approach needs further clarification to ensure it is consistent with the rest of the Technical Advisory. For example, the same indicators of high VMT for projects within a half-mile of transit could be applied to projects within low VMT areas--if a project locates in a low VMT area but has an FAR less than 0.75, more parking than is required by the jurisdiction, or is inconsistent with the RTP-SCS, then the presumption of less than significant may not be appropriate. In addition, we recommend further guidance on how to determine that a project has "similar features" to other development in the low VMT area. Thank you again for allowing us the opportunity to comment on the guidelines. The revisions have the potential to transform the planning processes and development decisions in many communities in the state and create safe, healthy, walkable and equitable neighborhoods for people of all ages, incomes and abilities.

Response 48.7

The comment is about the Technical Advisory prepared by the Governor's Office of Planning and Research, which is not part of the Agency's proposed rulemaking for the CEQA Guidelines. Because this comment is not specifically directed at the Agency's proposed rulemaking or its procedures, and the Agency declines to comment further upon its merit and to make any changes in response. (Gov. Code, § 11346.9(a)(3).) The Agency has forwarded the comment to the Governor's Office of Planning and Research for its consideration. The Agency thanks the commenters for their letter.

Comment 49 - Coalition for Adequate Review

Comment 49.1

I. THE PROPOSED GUIDELINES AMENDMENTS ARE NOT CONSISTENT WITH CEQA AND ARE NOT REASONABLY NECESSARY TO EFFECTUATE THE STATUTORY PURPOSES OF CEQA
According to the California Administrative Procedures Act ("APA"), "**[N]o regulation adopted is valid or effective unless consistent and not in conflict with the statute *and* reasonably necessary to effectuate the purpose of the statute."** (Cal. Gov. Code §11342.2 [emphasis added].) No proposed CEQA Guideline is valid without meeting both requirements.
The proposed Guidelines Amendments fail to comply with these basic requirements, since they are inconsistent with CEQA and other statutes and/or are not reasonably necessary to effectuate the purpose of CEQA Many of the Proposed Amendments to the State CEQA Guidelines (14 Cal. Code Regs. §§15000 *et seq.* ["Guidelines"] released by the California Natural Resources Agency on January 26, 2018 in a voluminous "package," conflict with and undermine the purpose and intent of CEQA, case law interpreting CEQA's statutory and regulatory provisions, and existing regulations. Many of the proposed amendments conflict with and are not supported by any statutory provisions cited from CEQA or existing Guidelines, including Public Resources Code ["PRC"] §§ 21083, 21083.01, 21083.05, 21083.09, and 21099. The proposed Guidelines Amendments far exceed the rulemaking authority contemplated as "regular updates" to the Guidelines in PRC §21083. Instead, the proposed "rulemaking" alters and revises statutory provisions without legislative authority and eviscerates the broad public goals and environmental protections that are the fundamental purpose of CEQA. For example, the proposed Guidelines amendments vastly expand and contradict the language of PRC §21099, which only applies to

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

Response 49.1

The Agency declines to make any changes in response to this comment. The Agency disagrees that the proposed rulemaking package conflicts with the Public Resources Code and the CEQA Guidelines and the cases interpreting those provisions. As the Notice of Proposed Rulemaking and the Initial Statement of Reasons explain, the proposed rulemaking includes substantive, technical, and efficiency improvements, which implement legislative directives (e.g., Senate Bill 743 [transportation], Senate Bill 1241 [wildfire]) and case law. (Notice of Proposed Rulemaking, pp. 1-5; Initial Statement of Reasons, pp. 3-4.) In developing the rulemaking package, the Agency and OPR solicited stakeholder input on changes that would (1) make the CEQA process more efficient, (2) result in better environmental outcomes, consistent with other adopted state policies, and (3) that are consistent with the Public Resources Code and the cases interpreting it. (Notice of Proposed Rulemaking, p. 4.) Overall, the Agency believes the proposed rulemaking presents a balanced package that is rooted in statutory directives and case law, and is consistent with the existing CEQA Guidelines provisions. (Initial Statement of Reasons, p. 2.) The rulemaking package makes specific references to the relevant statutes, regulations, and case law that support each of the proposed changes. (See generally, Notice of Proposed Rulemaking and Initial Statement of Reasons.) Thus, in consideration of the foregoing, the rulemaking package meets the directive in Public Resources Code section 21083, which requires the adoption of guidelines to provide public agencies and the public with guidance about the procedures and criteria for implementing CEQA.

The commenter makes a general claim that the Initial Statement of Reasons lacks in clarity, but does not point to a specific example. Nonetheless, the Agency believes that the close-to 200-page Initial Statement of Reasons and its Addendum more than adequately describe the proposed regulatory changes. The Agency addresses the commenter's more specific comments in subsequent responses.

Please see Master Response 3 regarding the application of the VMT metric to areas outside of transit priority areas.

Comment 49.2

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

Response 49.2

The comment generally suggests that the Guidelines do not satisfy the Administrative Procedures Act requirements for necessity and clarity. Please see response 49.1. To the extent the comment raises a specific concern regarding a particular Guideline, a response is provided below. Please also note, the Agency did conduct a quantified economic impacts analysis to the extent that quantification is feasible. The results of that analysis are set forth in the Standardized Regulatory Impact Assessment, which is attached to the Initial Statement of Reasons.

Comment 49.3

The January 26, 2018 Notice of Proposed Rulemaking admits that, instead of "simply complying with the Public Resources Code, the Natural Resources Agency identified several policy objectives in assembling this package of CEQA Guidelines Updates." (Notice, page 4.) However, the Natural Resources Agency has no legal authority to create regulatory amendments based on "policy objectives" solicited from and promulgated by unidentified "stakeholders." The Agency should identify those stakeholders and their interest in amending the Guidelines in ways that weaken and eviscerate the statutory mandates of CEQA. The only relevant "policy" objectives are those stated in the statute itself. (See PRC Division 13, Chapter 1. Policy, §§21000 *et seq.*) The real "stakeholders" are all the people of California whose environment is at stake. The following are some examples of the proposed Amendments to specific Guidelines that do not meet the requirements of Gov. Code §§11342.2.

Response 49.3

The comment criticizes the Agency for considering specified policy objectives in crafting this Guidelines update. The Agency disagrees with the commenter's suggestion that the Agency is not adhering to the Administrative Procedure Act (Gov. Code, § 11340 et seq.). Public Resources Code section 21083 requires regular updates to the CEQA Guidelines to explain and implement CEQA, and provides to the Agency broad discretion in doing so. The Agency proposes revisions that reflect the requirements set forth in the Public Resources Code, as well as court decisions interpreting the statute. Additionally, beyond simply complying with the Public Resources Code, the Agency identified several policy objectives in assembling this package of CEQA Guidelines updates. Notwithstanding the policy objectives, components of the proposed rulemaking package, such as the Regulatory Text, Initial Statement of Reasons, the Addendum to the Initial Statement of Reasons, and Notice of Proposed Rulemaking, clearly specified the statutory bases for each change.

In any event, the policy objectives that guided the development of this package are consistent with the policies underlying CEQA. As explained in the Notice of Rulemaking, "the Agency and the Office of Planning and Research, which develops changes to the CEQA Guidelines, specifically solicited [suggestions for] changes that would (1) make the CEQA process more efficient, (2) result in better environmental outcomes, consistent with other adopted state policies, and (3) that are consistent with the Public Resources Code and the cases interpreting it." The Legislature has expressly called for the CEQA process to be efficient. (Pub. Resources Code § 21003(f) (it is the intent of the Legislature that "[a]ll persons and public agencies involved in the environmental review process be responsible for carrying out the process in *the most efficient, expeditious manner* in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment") (emphasis added).) The Legislature has also expressly called for environmental protection and consistency with other state policies in the implementation of CEQA. (See, e.g., id. at § 21001(d) (legislative policy to "[e]nsure that the long-term protection of the environment, consistent with the provision of a decent

home and suitable living environment for every Californian, shall be the guiding criterion in public decisions"); § 21003(a) (policy to "integrate the requirements of [CEQA] with planning and environmental review procedures otherwise required by law").) Consistency with the Public Resources Code and cases interpreting it is an underling requirement of regulations, and the CEQA Guidelines specifically. (*See id*. at § 21083.) Thus, contrary to the comment's assertion, the Agency identified policy objectives that are consistent with CEQA.

The Agency further disagrees with the commenter's characterization that the Agency did not adequately engage stakeholders. Since 2013, OPR and the Agency have engaged in an iterative and extensive process to develop the CEQA Guidelines proposal. As part of that process, which has been one of the most extensive ever under CEQA, OPR and the Agency broadly solicited suggestions during public comment periods from stakeholders and the public regarding what updates, if any, should be made to the CEQA Guidelines. OPR published all comments, including the identity of those providing suggestions, on its website, and provided all of those comments to the Agency to include in the rulemaking record. In addition to these public comment periods, OPR, the Agency, or both have gathered input from close to 200 stakeholder meetings, presentations, conferences, and other venues. The rulemaking package reflects the numerous suggestions from the public for improvements to the CEQA Guidelines. A list of stakeholders whom OPR and the Agency engaged with and solicited input from was included in OPR's proposed package of materials transmitted to the Agency in November 2017. A link to this list is on the Agency's website, http://resources.ca.gov/ceqa/, and is available on OPR's website, http://opr.ca.gov/docs/20171127_Public_Outreach_Nov_2017.pdf. Thus, contrary to the suggestion in the comment, OPR and the Agency engaged in a transparent update process.

The Agency is not making any changes in response to this comment.

Comment 49.4

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

Response 49.4

The Agency is not making any changes in response to this comment. The Agency disagrees with the commenter that the proposed change to Guidelines section 15004 is inconsistent with *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116. *Save Tara* addressed the issue of when CEQA applies to certain activities that precede project approval, including preliminary agreements. The court declined to set forth a bright-line rule. Instead, the court concluded that several factors are relevant to the

determination of when CEQA review must be completed. The purpose of the addition of subdivision (b)(4) is to assist lead agencies in applying the principles identified by the California Supreme Court in the *Save Tara* decision. The first sentence in section 15004(b)(4) acknowledges that preliminary agreements may fall on a spectrum between mere interest in a project and a commitment to a definite course of action. The proposed changes are intended to prohibit a lead agency from entering preliminary agreements that constrain its discretion to modify, approve or deny a project prior to CEQA review. Thus, these changes are consistent with the Court's discussion in *Save Tara*:

> A CEQA compliance condition can be a legitimate ingredient in a preliminary public-private agreement for exploration of a proposed project, but if the agreement, viewed in light of all the surrounding circumstances, commits the public agency as a practical matter to the project, the simple insertion of a CEQA compliance condition will not save the agreement from being considered an approval requiring prior environmental review. (*Save Tara, supra,* 45 Cal.4th at p. 132.)
>
> [W]e apply the general principle that before conducting CEQA review, agencies must not "take any action" that significantly furthers a project "in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project." (Citations.)
>
> In applying this principle to conditional development agreements, courts should look not only to the terms of the agreement but to the surrounding circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project. (See Cal. Code Regs, tit. 14, § 15126.6, subd. (e).) In this analysis, the contract's conditioning of final approval on CEQA compliance is relevant but not determinative. (*Save Tara, supra,* 45 Cal.4th at pp. 138-139.)

Additionally, the Initial Statement of Reasons explains that proposed changes to Guidelines section 15004 are reasonably necessary to reflect the Supreme Court's decision in *Save Tara.* (Initial Statement of Reasons, p. 6.) Thus, the Agency disagrees that the proposed changes are not necessary to effectuate CEQA's purpose, and declines to make any changes in response to this comment.

Comment 49.5

2. Proposed Amendment to §15051 "*Criteria for Identifying the Lead Agency*"
The proposed amendment changes the criteria for identifying a lead agency where two or more agencies are involved with a project by changing the language in Guidelines §15051(c) to make the agency that "will act first on the project in question" the lead agency, rather than the agency conducting environmental review of a project.
The proposed amendment contradicts existing Guidelines §15050(a), which defines the "lead agency" as the agency "responsible for preparing an EIR or negative declaration for the project." (Guideline §15050(a).) Under existing Guidelines, agencies that "act" on the project are called "decision making bod[ies] of each responsible agency," and each responsible agency "shall certify that its decision making body reviewed and considered the information contained in the EIR or negative declaration on the project." (Guidelines §15050(b).) Thus the proposed amendment contradicts the existing Guidelines definition, duties, function, and

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

Response 49.5

The Agency declines to make any changes in response to the comment. Existing CEQA Guidelines section 15051(c) provides that "[w]here more than one public agency equally meet the criteria in subdivision (b), the agency which will act first on the project in question shall be the lead agency." The Agency proposes to revise that subdivision to state that the "the agency which will act first on the project in question **will normally** ~~**shall**~~ be the lead agency." The Agency proposes a change to section 15051(c) because the existing language, if read literally, would prevent two potential lead agencies which meet the criteria in subdivision (b), each with a substantial claim to be the lead, from agreeing to designate one as the lead unless both happen to act at the exact same moment on the project. The purpose of the amendment is to increase the flexibility in the determination of a lead agency by changing the word "shall" to "will normally" to clarify that where more than one public agency meets the criteria in Guidelines section 15051(b), the agencies may agree pursuant to section 15051(d) to designate one entity as the lead. Thus, the Agency disagrees that the proposed amendment is inconsistent with CEQA and creates an internal conflict.

Additionally, the commenter incorrectly points to Guidelines section 15050(a) as the definition of "lead agency." Rather, Public Resources Code section 21067 and Guidelines section 15367 define "lead agency" generally as the public agency with the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.

Comment 49.6

3. Proposed Amendments to §15064. "*Determining the Significance of the Environmental Effects Caused by a Project"*
The proposed amendment adds a new section at §15064(b)(2) that provides an agency may use "thresholds of significance" *as amended* (in yet another proposed amendment of §15064.7), to "assist lead agencies in determining whether a project may cause a significant impacts." (emphasis added.) The Initial Statement of Reasons claims the amendment is "necessary to clarify that compliance with relevant standards may be a basis for determining that the project's impacts are less than significant." The Initial Statement of Reasons thus conflates "necessity" with an agenda to eliminate the requirement of substantial evidence from the
impacts analysis. Viewed together, the proposed amendments to §§15064 and 15064.7 invite a rote conclusion of ***no*** significant impact *without the required prerequisite of substantial evidence*. Since the proposed §15064.7 amendments eliminate the requirement of substantial evidence and instead allow an "ordinance, resolution, rule, regulation, order, plan or other plan" to become an "environmental standard as a threshold of significance,"
there is *no* requirement of substantial evidence for a threshold of significance in the proposed amendment to §15064.7. The proposed amendment at §15064(b)(2) improperly defers the agency's burden of providing substantial evidence on significant impacts until *after* the agency has already concluded *without substantial evidence* that a project will have no impacts: "Compliance with the

threshold does not relieve a lead agency of the obligation to *consider* substantial evidence indicating that the project's environmental effects may still be
significant." No guidance is provided on when that substantial evidence is "considered," even though that substantial evidence must go into the agency's determination of whether there is a fair argument that "there is substantial evidence in the record that the project may have a significant effect on the environment" requiring an EIR. (Existing Guidelines §15064(f).) Indeed, such evidence is reduced to an afterthought by the proposed amendment, since the agency would only "evaluate any substantial evidence supporting a fair argument that, despite compliance with the thresholds, the project's impacts are nevertheless significant" after already finding a project will have no impacts. ("Initial Statement of Reasons," p. 13.) The proposed amendment conflicts with and is inconsistent with CEQA's requirements and purpose of identifying and mitigating significant impacts based on substantial evidence, and is unnecessary to effectuate CEQA.

Response 49.6

The Agency declines to make any changes in response to this comment. The Agency disagrees that the Agency is attempting to eliminate the requirement of substantial evidence from the impacts analysis. The proposed revisions do not modify the existing requirements for lead agencies to support their significance determinations with substantial evidence. The last sentence in proposed Guidelines section 15064(b)(2) acknowledges the fair argument standard. In other words, based on existing case law, the sentence cautions that a lead agency must evaluate any substantial evidence supporting a fair argument that, despite compliance with thresholds, the project's impacts are nevertheless significant. (*Protect the Historic Amador Waterways, supra*, 116 Cal.App.4th at pp. 1108-1109 ("thresholds cannot be used to determine automatically whether a given effect will or will not be significant[;]" rather, "thresholds of significance can be used only as a measure of whether a certain environmental effect 'will normally be determined to be significant' or 'normally will be determined to be less than significant' by the agency"); see also *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 112-113.) The Agency proposes this revision to make it clear that lead agency must not apply thresholds in a rote manner; analysis and evaluation of the evidence is still required. Moreover, contrary to the comment's suggestion, the proposed changes are necessary to effectuate the directive in the Public Resources Code that the Guidelines include criteria to determine when an impact may be significant. (Pub. Resources Code § 21083(b).)

Comment 49.7

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

Response 49.7

The Agency is not making any changes in response to this comment. The commenter does not suggest any specific changes to the proposed rulemaking. Nor does the commenter specifically state how the proposed revisions exceed the Agency's rulemaking authority and are inconsistent with CEQA. To the extent the commenter raises more specific claims later in its letter, the Agency addresses those comments at that point.

Comment 49.8

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

Response 49.8

The Agency declines to make any revisions in response to this comment. The commenter erroneously asserts that the Agency failed to analyze the potential economic impacts of the amendments in the proposed guidelines. The Agency conducted an extensive study of impacts, and set forth its analysis in the Standardized Regulatory Impact Assessment.

Comment 49.9

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

Response 49.9

The Agency declines to make any revisions in response to this comment. Subdivision (a) describes the section's "purpose" and also provides a general summary of section 15064.3. Proposed new Guidelines section 15064.3 is tethered to Public Resources Code section 21099, which states that automobile delay shall not be considered a significant environmental impact. Please also see Master Response 1 regarding consistency with Public Resources Code Section 21099.

Comment 49.10

PRC section 21099 instead states that the OPR should prepare proposed Guidelines revisions for "determining the significance of transportation impacts of projects *within transit priority areas.*" (PRC §21099(1).) Section 21099 further provides: "In developing the criteria, the office shall recommend potential metrics to measure transportation impacts *that may include**, but are not limited to,** vehicle miles traveled, vehicle miles traveled per capita, automobile trip generation rates, or automobile trips*

generated. The office may also establish criteria for models used to analyze transportation impacts to ensure the models are accurate, reliable, and consistent with the intent of this section." Finally, §21099 states: "(2) Upon certification of the guidelines by the Secretary of the Natural Resources Agency pursuant to this section, **automobile delay, as described *solely* by level of service or similar measures of vehicular capacity or traffic congestion**, shall not be considered a significant impact on the environment pursuant to this division, except in locations specifically identified in the guidelines, if any." (PRC §21099(b) [emphasis added].) The proposed amendment at §15064.3(a) misreads and contradicts PRC §21099 by dictating that automobile delay does not "constitute" a significant impact, regardless of how it is measured. The proposed new amendment contradicts the authorizing statute by dictating that "VMT" is the only methodology for determining impacts, by completely eliminating automobile delay as a significant impact, and by eliminating level of service or similar measures of vehicular capacity or traffic congestion as usable methodologies for determining impacts in combination with other possible methodologies, as in PRC §21099. Section 21099(b) explicitly states that recommended new "metrics" to measure transportation impacts ***may*** include, but ***are not limited to*****"** VMT. (emphasis added.) Contrary to the proposed new amendment, Section 21099(b) explicitly DOES include automobile delay as a significant impact. (PRC §21099(b)(2).) That provision only states that automobile delay *as described solely by level of service or similar measures of vehicular capacity or traffic congestion"* shall not be a significant impact. (PRC §21099(b)(2) [emphasis added].) That does not mean that automobile delay is not a significant impact under CEQA, but only that such delay may not *solely* be measured by level of service or similar measures. Here, VMT does *not* measure automobile delay at all, does not apply to public transportation projects and other projects that do not result in additional miles traveled, and does not measure the obvious greenhouse gas and other emissions caused by automobile delay.

Response 49.10

The Agency declines to make any revisions in response to this comment. The comment objects to the provision in Section 15064.3(a) stating that automobile delay is not a significant effect on the environment. The comment argues further that Section 21099 only states that automobile delay is not an environmental impact if it is described as "solely by level of service or similar measures of vehicular capacity or traffic congestion." The comment reads Section 21099 far too narrowly. The description of legislative intent in SB 743 illustrates why. "Transportation analyses under [CEQA] typically study changes in automobile delay. New methodologies … are needed for evaluating transportation impacts that are better able to promote the state's goals of reducing greenhouse gas emissions and traffic-related air pollution, promoting the development of a multimodal transportation system, and providing clean, efficient access to destinations." (Senate Bill 743 (Steinberg, 2013) § 1(a)(2).)

Comment 49.11

VMT does not comply with CEQA's requirement to begin with existing conditions (baseline) and then measure a project's impacts on those conditions. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2; existing Guidelines §§15065, 15125, 15126.2, 15126.4, 15130,
etc.)

Response 49.11

The Agency is not making any changes in response to this comment. The commenter does not specifically state how the proposed revision does not comply with CEQA's requirement to begin with the baseline. Nonetheless, proposed Guidelines section 15064.3 does not, nor is it intended to, alter the requirement in Guidelines section 15125 to measure a project's environmental impacts against the existing setting.

Comment 49.12

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

Response 49.12

The Agency declines to make any revisions in response to this comment. VMT analyses are science-based, and have been, and continue to be, used to analyze project impacts associated with greenhouse gas emissions and air quality. Nothing in the proposed new Guidelines section 15064.3 changes the requirement under CEQA to analyze cumulative impacts.

Comment 49.13

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

Response 49.13

The Agency declines to make any revisions in response to this comment. The Agency disagrees that the proposed VMT metric conflicts with CEQA's requirements to identify and mitigate significant impacts. Proposed new Guidelines section 15064.3 is tethered to Public Resources Code section 21099, which states that automobile delay shall not be considered a significant environmental impact upon certification of the Guidelines by the Secretary of the Agency. Nothing in new Guidelines section changes the requirement under CEQA to analyze significant environmental impacts. In fact, Public Resources Code section 21099(b)(3) states that "[t]his subdivision does not relieve a public agency of the requirement to analyze a project's potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation." Moreover, Section 15064.3 does not prohibit agencies from considering transportation impacts in addition to vehicle miles traveled. That section states: "*Generally*, vehicle miles traveled is the most appropriate measure of transportation impacts. … Other relevant considerations may include the effects of the project on transit and non-motorized travel." (Emphasis added.)

Comment 49.14

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

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

Response 49.14

The Agency declines to make any revisions in response to this comment. Public Resources Code section 21099 directs OPR to develop and transmit to the Agency a new metric to measure transportation impacts. Section 21099(b)(1) also required the new metric to promote the reduction of greenhouse gas emissions, development of multimodal transportation networks, and a diversity of land uses. Public Resources Code section 21099(b)(2) states that automobile delay shall not be considered a significant environmental impact upon certification of the Guidelines by the Secretary of the Agency. Nothing in new Guidelines section alters the existing requirement under CEQA to analyze significant environmental impacts, including cumulative impacts.

Comment 49.15

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

Response 49.15

The Agency declines to make any revisions in response to this comment. Proposed new Guidelines section 15064.3 is tethered to Public Resources Code section 21099, which states that automobile delay shall not be considered a significant environmental impact upon certification of the Guidelines by the Secretary of the Agency. Further, Section 21099 requires an update to the CEQA Guidelines to replace congestion as the primary measure of transportation impacts. Thus, Section 15064.3, which sets forth vehicle miles traveled as the primary measure of impacts, is necessary to implement Section 21099.

Comment 49.16

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

Response 49.16

The Agency declines to make any revisions in response to this comment. Vehicle miles traveled is in fact a measure of transportation impact that can be applied to transportation projects; many transportation projects increase or decrease vehicle miles traveled. The commenter is correct that the proposed new Guidelines section 15064.3 update would preclude traffic delay and congestion from triggering a significant impact. Public Resources Code section 21099(b)(2) states that automobile delay shall not be considered a significant environmental impact upon certification of the Guidelines by the Secretary of the Agency.

Comment 49.17

Proposed §15064.3(b)(2), on "roadway capacity projects," gives "agencies" broad discretion to

determine "the appropriate measure of transportation impacts." Why and how would any "agency" determine anything other than the presumption of *no* impacts with the circular finding *no* impacts dictated by this provision?

Response 49.17

The Agency declines to make any revisions in response to this comment. The commenter appears to incorrectly assume that automobile delay impacts are the only type of transportation impacts and that all transportation projects are presumed to have no impacts on the environment under CEQA. Various types of transportation projects can lead to additional automobile delay and/or additional vehicle miles traveled. Further, even where an agency chooses to measure impacts of roadway capacity projects using something other than vehicle miles traveled, the agency's analysis must be consistent with CEQA. Thus, the Guideline does not exempt roadway capacity projects from any analysis.

Comment 49.18

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

Response 49.18

The Agency declines to make any revisions in response to this comment. Proposed new Guidelines section 15064.3 is tethered to Public Resources Code section 21099, which states that automobile delay shall not be considered a significant environmental impact upon certification of the Guidelines by the Secretary of the Agency. Nothing in new Guidelines section alters the existing requirement under CEQA to analyze significant environmental impacts, including cumulative impacts.

Comment 49.19

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

Response 49.19

The Agency declines to make any revisions in response to this comment. Proposed new Guidelines section 15064.3 is tethered to Public Resources Code section 21099, which states that automobile delay shall not be considered a significant environmental impact upon certification of the Guidelines by the Secretary of the Agency. Nothing in new Guidelines section alters the existing requirement under CEQA to analyze significant environmental impacts, including cumulative impacts, compared to the appropriate environmental setting required by Guidelines section 15125.

Comment 49.20

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

Response 49.20

The Agency declines to make any revisions in response to this comment. Generally, lead agencies (rather than OPR or the Agency) have the discretion to select the methodology, significance thresholds, and mitigation measures that are appropriate for their projects. (CEQA Guidelines, § 15064; *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 371-373.) Nothing in proposed new Guidelines section 15064.3 constrains a lead agency's discretion to determine the significance of impacts and appropriate methodology.

Comment 49.21

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

Response 49.21

The Agency declines to make any revisions in response to this comment. Please see responses 49.16, 49.17, and 49.18.

Comment 49.22

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

Response 49.22

The Agency declines to make any revisions in response to this comment. Proposed Guidelines section 15064.3 states, "Generally, vehicle miles traveled is the most appropriate measure of transportation impacts." The commenter correctly notes that "VMT does not measure delay or traffic congestion due

to a project…"; in fact, SB 743 states, "(u)pon certification of the guidelines by the Secretary of the Natural Resources Agency pursuant to this section, automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion shall not be considered a significant impact on the environment pursuant to this division, except in locations specifically identified in the guidelines, if any." Models used for assessing vehicle miles traveled, or methods used for adjusting such models, must be supported by substantial evidence.

Comment 49.23

Proposed New §15064(c) "*Applicability"*
Proposed §15064(c) adds a new provision that directly conflicts with §15007(b), and generally with the prospective applicability of any regulatory provision under the law. The proposed new §15064(c) states: "The provisions of this section shall apply prospectively as described in section 15007. *A lead agency may elect to be governed by the provisions of this section immediately*. Beginning on July 1, 2019, the provisions of this section shall apply statewide." (emphasis added.) By allowing a lead agency to "elect to be governed" by the proposed amendment "immediately," the proposed amendment negates both its own prospective application provision and the prospective application provision *already* in §15007(b), which states: **"***Amendments to the guidelines apply prospectively only."* (Guidelines §15007(b) [emphasis added]; see also, *e.g.*, *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 299-300, fn.6 [LOS standards remain in effect].) No authority allows a lead agency to exempt itself from the prospective applicability of amendments to CEQA Guidelines that have *not yet been adopted or certified.*

Response 49.23

The Agency declines to make any revisions in response to this comment. The Agency assumes that the commenter is referring to section 15064.3(c), not section 15064 as the comment states. The Agency disagrees that there is a conflict regarding the applicability of proposed Guidelines section 15064.3. Nothing in Section 15064.3 conflicts with provisions regarding prospective application.

Comment 49.24

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

Response 49.24

The Agency has made further revisions in response to comments. The Agency's Addendum to the Initial Statement of Reasons, dated July 2, 2018, includes a detailed description of CEQA Guidelines section 15064.4 related to greenhouse gas emissions. The Addendum was included in the materials for the 15-Day Revisions.

Comment 49.25

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

The proposed Guidelines amendments would radically expand the lead agency's power to determine the significance of a project's impacts by using arbitrary, agency-created "thresholds of significance" with no standards for determining the validity of such "thresholds." The authorities cited do not support the proposed amendment, which conflicts with CEQA's basic policies, purpose and requirements to identify and mitigate a proposed project's significant impacts before approving the project, both to inform the public and decisionmakers and to allow the public participation in the CEQA process. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.) The proposed amendment to §15064.7(b) conflicts with and effectively eliminates existing provisions requiring thresholds of significance to be supported by substantial evidence. Instead the proposed amendment would allow lead agencies to "use thresholds on a case-by-case basis as provided in Section 15064(b)(2),"meaning transportation projects would be *presumed* to "cause a less than significant transportation impact," and that presumption would become a "threshold of significance." (*Id.*) The proposed amendments add a section 15064.7(d) that also conflicts with CEQA, allowing any public agency to adopt *or* use (*without* adopting) "an environmental standard" as a threshold of significance that may be found in any "ordinance, resolution, rule, regulation, order, plan, or other environmental requirement" without supporting that document's rhetoric or conclusory text with substantial evidence.

Response 49.25

The Agency declines to make any changes in response to this comment. The Agency disagrees that the proposed revision to Guidelines section 15064.7 would "radically expand the lead agency's power to determine the significance of a project's impacts by using arbitrary, agency-created 'thresholds of significance[.]'" Existing CEQA Guidelines section 15064(b) and case law give lead agencies discretion in selecting an appropriate threshold of significance. (*San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 896.) The proposed revision does not modify lead agency discretion.

Lead agencies are also not required to adopt their own thresholds of significance, and agencies have discretion in determining the significance of impacts on a case-by-case basis. (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 896 [Guidelines section 15064.7 "does not *require* a public agency to adopt such significance thresholds, however, and it does not forbid an agency to rely on standards developed for a particular project."], emphasis in original.) Moreover, lead agency discretion in applying a project-specific threshold is appropriate given that "the significance of an activity may vary with the setting." (CEQA Guidelines, § 15064(b).)

The Agency further disagrees that the proposed revision conflicts with CEQA by allowing a public agency to adopt or use an environmental standard as a threshold of significance without supporting the analysis with substantial evidence. The proposed revision to section 15064.7(d) recognizes that lead agencies may treat environmental standards as significance thresholds. The proposed revision is consistent with the rulings in *Communities for a Better Environment, et al., v. Resources Agency* (2002) 103 Cal.App.4th 98 and *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099. Also, the Guidelines already require all significance determinations to be supported with substantial evidence. (See CEQA Guidelines § 15064(f) ("The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency").)

Comment 49.26

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

The proposed amendment to §15087(c)(5) would change CEQA's requirement to disclose the address of the location where copies are publicly available of an EIR "and all documents referenced in the EIR." Instead, the proposed amendment states that disclosure must only be of "documents *incorporated by reference* in the EIR." (Proposed amendment to §15087(c)(5), emphasis added.) Thus, the proposed amendment *eliminates* the
requirement to make publicly available for public review at a specified address "*all documents* referenced in the EIR" as presently required by §15087(c)(5) (emphasis added).
The proposed amendment to §15087 contradicts CEQA's fundamental legislative purpose to disclose information to the public so that the public can meaningfully participate in environmental review of a project. The proposed amendment is also contrary to PRC §21167.6(e), which requires comprehensive information to be available and included in the administrative record of the agency's proceedings on approving any project.
The proposed amendment to §15087 must be rejected, since it is contrary to CEQA, is unnecessary to implement its mandate, and is designed to prevent the public disclosure that CEQA requires.

Response 49.26

The Agency declines to make any changes in response to this comment. The Agency proposes to clarify in Guidelines section 15087 that a lead agency is not required to make every document that is merely cited in an EIR or a negative declaration available in its entirety for public review, and instead must only include all documents that are incorporated by reference as described in Guidelines section 15150. In enacting CEQA, the Legislature declared that “it is the policy of the state that … [a]ll persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner ….” (Pub. Resources Code, § 21003(f).) In an EIR or a negative declaration, a lead agency will often cite to a number of documents, including books, maps, and other potentially voluminous and/or obscure references. Referenced documents may only provide supplementary information, and may be contained in a consultant’s files or research libraries. While still valid sources of information, it is less important for such documents to actually be in the lead agency’s possession. In contrast, documents that are “incorporated by reference” provide a portion of the document’s overall analysis, and because the final initial study must reflect the independent judgment of the lead agency, one would expect a copy of the incorporated document to actually be among the lead agency’s files. For those reasons, the Agency finds the latter interpretation to be a more practical interpretation of CEQA. The Agency also notes that the public may have other legal mechanisms outside of CEQA by which it may be able to access documents referenced in the EIR or negative declaration.

Comment 49.27

Proposed Amendment to § 15088 *"Evaluation of and Response to Comments"*
Contrary to CEQA, the proposed amendment to §15088(a) limits the agency's obligation to respond to public comment on a draft EIR, unless the lead agency determines that the comment raises "*significant* environmental issues." The existing regulation requires the lead agency to evaluate *all comments* on "environmental issues" on a draft EIR; but the proposed amendment eliminates the public's right to receive agency responses on *all* comments received on a draft EIR. That, again, is contrary to the public disclosure mandate of CEQA, and CEQA's imperative to provide the public the opportunity for meaningful input on the environmental review of a project. It is also contrary to the existing Guidelines, requiring "good faith, reasoned
analysis in response. Conclusory statements unsupported by factual information will not suffice." (Existing Guidelines §15088(c).) Instead, the amendment invites such conclusory, unsupported

statements, or worse, no response at all, based on an agency's subjective notion of whether a comment raises "significant" issues. The proposed amendment is contrary to CEQA and is unnecessary. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

Response 49.27

The Agency declines to make any changes in response to this comment. The proposed revision to Guidelines section 15088(a) clarifies that a lead agency need only respond to comments raising significant environmental issues. The proposed revision is consistent with Public Resources Code section 21091(d)(2)(B) and Guidelines section 15088(c), which both generally state that written response must describe the disposition of significant environmental issues raised by commenters. (See also Guidelines, § 15132(d) [final EIR must consist of "[t]he responses of the Lead Agency to significant environmental points raised in the review and consultation process"].) The proposed revision is also consistent with Guidelines section 15204, which states that "[w]hen responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR." (*See also Gallegos v. California State Board of Forestry* (1978) 76 Cal.App. 3d 945, 954 ("[t]he public agency need not respond to every comment raised in the course of the review and consultation process, but it must specifically respond to the most significant environmental questions raised in opposition to the project").)

Comment 49.28

Proposed Amendment to § 15124 "*Project Description"*
The proposed amendment to § 15124 changes that section from requiring a "clearly written statement of project objectives" that "should include the underlying purpose of the project" to add proselytizing on behalf of a project. Instead of an objective description as required by the existing Guidelines, the proposed amendment adds that the Project Description "*may discuss the project benefits."* The purpose of an EIR's Project Description is to inform the public and decisionmakers of the project's impacts on the existing conditions of the environment, not to avoid mitigating those impacts by promoting claimed "benefits" of a project and anticipating the need for a statement of overriding considerations. The proposed amendment is contrary to CEQA's requirement of objective identification of a project's impacts to the public and decisionmakers, and it does not in any way contribute to implementing CEQA's requirements, but only creates another loophole to avoid them. Nothing in the statute or authorities supports this proposed amendment. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

Response 49.28

The Agency declines to make any changes in response to this comment. The proposed revision is not a mandatory provision. The proposal merely states that a lead agency would be able to discuss a project's benefits, which they can do currently. This clarification is necessary to ensure that the CEQA Guidelines are consistent with case law. (See *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 192 (determined an accurate project description allows decision makers to balance the proposal's benefit against its environmental cost).) The Agency believes that the proposed revision ensures that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA. The proposed revision is also consistent with Assembly Bill 2782 (Friedman, 2018), which codifies the following text in Public Resources Code section 21082.4:

In describing and evaluating a project in an environmental review document prepared pursuant to this division, the lead agency may consider specific economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of a proposed project and the negative impacts of denying the project. Any benefits or negative impacts considered pursuant to this section shall be based on substantial evidence in light of the whole record.

Comment 49.29

Proposed Amendment to §15125 "*Environmental Setting"*
The proposed amendment to §15125 completely eviscerates CEQA's requirement to identify and mitigate a project's impacts by describing the physical environmental conditions in the vicinity of the project as they exist at the time the notice of preparation of an EIR is published or when preparation of the EIR begins. (Existing Guidelines §15125.) When combined with an accurate, stable and finite Project Description, this provision enables objective analysis of the project's impacts on the existing environment, an essential beginning to CEQA's analytical path that must precede project approval. Instead of this clear, logical method of describing existing conditions, the amendment allows a lead agency to "define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational," and states "a lead agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record." (Proposed Amendments to §15125(a).) The failure to accurately state existing conditions results in an inaccurate baseline for analyzing impacts in violation of CEQA. (*e.g., Poet, LLC. v. State Air Resources Bd. ["Poet II"]* (2017) 10 Cal.App.5th 764,797 [agency's failure to justify use of correct baseline is an abuse of discretion and invalidates the impacts analysis].) The required baseline for analyzing impacts must establish, with substantial evidence, the existing conditions. The baseline of existing conditions is then compared with an accurate Project description to determine whether the Project will have significant impacts. (*Id.*) The proposed amendment is not authorized by any statutory provision, including PRC §21099 and is contrary to CEQA's purpose and procedures for implementation. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

Response 49.29

The Agency disagrees with the commenter's characterization of the proposed changes in Section 15125, regarding identification of the environmental baseline. The changes do not eviscerate CEQA's requirements; rather, they implement recent decisions on the issue from the California Supreme Court.

As the 15-day language reflects, the Agency has further revised Section 15125(a)(2) in response to comments. Please see Master Response 14. CEQA gives lead agencies discretion in determining the appropriate existing conditions baseline, subject to the court's review for substantial evidence. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 452-453; *Communities for a Better Environment v. South Coast Air Quality Management Dist*. (2010) 48 Cal.4th 310, 328.) Where appropriate and supported by substantial evidence, the lead agency has the discretion to rely on historical conditions or conditions predating the filing of the notice of preparation as the environmental baseline. (See *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 218 [agency "did not abuse its discretion by adopting a baseline that accounted for mining conditions during the five-year period prior to the filing of the NOP."].) Lead agencies also may use, "under appropriate factual circumstances, a baseline of conditions expected to obtain at the time the proposed project would go into operation[]," —in other words, a future conditions baseline.

(*Neighbors for Smart Rail, supra,* 57 Cal.4th at p. 453.) A lead agency's reliance solely on a future baseline must be supported by ample justification. (*Id.* at p. 451.)

Comment 49.30

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

Response 49.30

The Agency declines to make any changes in response to this comment. The Agency proposes revisions to Guidelines section 15126.2 because CEQA has long required energy impact analyses in Appendix F, but those requirements have largely gone unnoticed and implementation among lead agencies has not been consistent. A stand-alone energy impacts analysis may be appropriate in certain situations. A lead agency may also determine that integrating the energy impacts discussion in other closely-related topics (such as transportation and greenhouse gases) may result in a clearer and better understood impacts analysis. In either situation, the Agency notes that lead agencies must still consider all of the significant effects of a proposed project. (CEQA Guidelines, § 15126.2(a).) Additionally, the courts have not required that the energy impacts analysis be constrained to its own section. For example, in *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, the lead agency's EIR did not contain a separate section analyzing energy impacts, and instead discussed energy impacts in other EIR sections. (*Id.* at p. 262.) The court found that the EIR failed to adequately address the energy impacts from vehicle trips and operational and construction impacts, but not on the basis that the EIR did not include a stand-alone energy section. (*Id.* at p. 264-265; see also *California Clean Energy Com. v. City of Woodland* (2014) 225 Cal.App.4th 173 [same].) Finally, an EIR is not required to follow a specific format so long as it contains the informed required by CEQA and the CEQA Guidelines. (Guidelines, § 15160.) Thus, the Agency is not making a change to Guidelines section 15126.2 based on this comment.

Comment 49.31

Proposed Amendment to §15126.4 *"Consideration and Discussion of Mitigation Measures proposed to Minimize Significant Effects"*
The proposed amendment to §15126.4(a)(1)(B) contradicts CEQA's central purpose to mitigate the significant impacts of a project identified in an EIR by allowing an agency to defer mitigating those impacts. The proposed amendment allows an agency to *defer* "*specific details of a mitigation measure. . .* when it is impractical or infeasible to include those details in the project's environmental review." (emphasis added.) The proposed amendment allows an agency to simply list "the potential actions to be considered, analyzed and potentially incorporated in the mitigation measures," without saying *when* the public and decisionmakers will consider those "potential actions" and without requiring that those "potential actions" be enforceable and effective as required by CEQA before a project can be approved. (*e.g.*, PRC §§21002, 21002.1(b), 21081.) The result, if adopted, means that ***no*** actual mitigation would be required for each significant impact identified in an EIR as required by CEQA's substantive mandate. (See, *e.g.*, *City of San Diego v. Board of Trustees of the California State University* (2015) 61 Cal.4th 945, 960 ["Mitigation is the rule"] and 962-963 [CEQA's mitigation requirement is a fundamental mandate];

Mountain Lion Foundation v. Fish and Game Comm. (1997) 16 Cal.4th 105, 104; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92 [mitigation may not be deferred].)

Response 49.31

As reflected in the 15-day language, the Agency has further refined Guidelines section 15126.4 in response to comments. Please see Master Response 15 for a general discussion of the revisions to that section. The Agency disagrees that the proposed revisions contradict CEQA by allowing an agency to defer mitigation measures and that the revision would result in no mitigation being required before project approval. The proposed changes relate to the level of detail that must be included in a measure to be determined adequate. The general rule is the formulation of mitigation measures cannot be deferred until after project approval. (CEQA Guidelines, § 15126.4(a)(1)(B); *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.) But practical considerations sometimes preclude development of specific details in mitigation plans at the time of project consideration. In such cases, courts have permitted lead agencies to defer some of the *details* of mitigation measures provided that the agency commits itself to mitigation and analyzes the different mitigation alternatives that might ultimately be incorporated into the project. (See, e.g., *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028–1030; *id.* at p. 1029 [“the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval. Where future action to carry a project, forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated.”].) Thus, the proposed revision to section 15126.4 are consistent with case law. Additionally, the proposed revision does not alter CEQA’s existing requirement that mitigation measures must be enforceable through legally binding mechanisms such as conditions of approval or a contract. (Pub. Resources Code, § 21081.6(b).)

Comment 49.32

Further, the proposed amendment at §15126.4(a)(1)(B) allows that "compliance with a regulatory permit process may be identified as a future action" justifying deferring mitigation details "if compliance is mandatory and would result in implementation of measures that would be reasonably expected…to reduce the significant impact to the specified performance standards." That gobbledygook apparently allows an agency to defer identifying mitigation measures in an EIR or even avoid mitigating a project's impacts identified in an EIR by simply complying with "specified performance standards" of a "regulatory permit process" that may be irrelevant to environmental review of the project and may never have itself received environmental review. Mitigating the impacts of a project is central to CEQA's purpose, and deferring mitigation as proposed in the amended §15126.4 (a)(1)(B) conflicts with CEQA's substantive mandate, is contrary to the law's fundamental purpose, and is unnecessary. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

Response 49.32

As reflected in the 15-day language, the Agency has further refined Guidelines section 15126.4 in response to comments. Please see Master Response 15 for a general discussion of the revisions to that section.

The Agency disagrees that Guidelines section 15126.4(a)(1)(B) is inconsistent with CEQA. Existing Guidelines section 15126.4(a)(1)(B) acknowledges that measures may specify performance standards when practical considerations require deferral of devising the precise details of mitigation measures. Case law also makes clear that deferral may be appropriate where another regulatory agency will issue a

permit for the project so long as the environmental document includes specific performance criteria and the lead agency commits itself to mitigation. (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 237 [court upheld as enforceable mitigation a measure requiring developers to obtain necessary permits and to comply with the mitigation measures imposed on those permits, as well as those imposed by the lead agency]; see also *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261.)

Comment 49.33

Proposed Amendment to §15152 *"Tiering"*
The proposed amendment adding §15152(h) gives discretion to a lead agency to choose from "multiple methods" to "streamline the environmental review process," and excuses such methods from the requirements of §15152 "where other methods have more specific provisions." (Proposed new amendment §15152(h).) The proposed amendment lists as "other methods" what in the existing §15152(h) are "*types of EIRs* that may be used in a tiering situation." (Guidelines §15152(h) [emphasis added].) Thus, where the existing §15152(h) indicates an initial EIR is required for tiering, the proposed amendment would apparently *not* require an initial EIR for the "methods" described at, *e.g.*, subsection (h)(5) "Multiple family residential development/residential and commercial or retail mixed-use development §15179.5," (6) "Redevelopment project Section 15180," (7) "Projects consistent with community plan, general plan, or zoning (section 15183)." The proposed amendment adds "Infill projects" to its list of "methods" to "streamline the environmental review process." (Section 15183.3) However, instead of an EIR for those projects, the amended §15152(h) apparently allows the project itself to be a "method" to "streamline the environmental review process" with *no* EIR. A project is not a method of tiering. The proposed Guideline does not clarify §15152, and appears to eliminate the existing provision of a required EIR for several types of projects, and therefore conflicts with existing statutory requirements.

Response 49.33

As reflected in the 15-day language, the Agency has made a further non-substantive revision to Guidelines section 15152(h) in response to comments. Specifically, the Agency has omitted the following proposed sentence: “Where other methods have more specific provisions, those provisions shall apply, rather than the provisions in this section.”

The Agency disagrees with the commenter’s characterization that the proposed revisions to section 15152(h) are not consistent with CEQA. Tiering is a streamlining mechanism, as recognized in existing Guidelines section 15152(a) and later tier documents can be EIRs or negative declarations. The Agency proposes to rewrite this section to clarify that the rest of section 15152 governs tiering generally, and that tiering is only one of several streamlining mechanisms that can simplify the environmental review process. The Agency’s revisions do not alter a lead agency’s ability to currently use the listed methods in subdivision (h) to streamline the environmental analysis. And by adding “infill projects” to section 15152(h), the Agency is merely highlighting an existing streamlining method. As to the section 15152(h)(5)-(h)(7), those subdivisions already exist in the Guidelines section and the Agency does not propose to revise those subdivisions. Again, the Agency merely clarifies at the beginning of subdivision (h) that there are multiple streamlining methods, including those found in subdivision (h)(1)-(h)(8), that are within the lead agency’s discretion to apply.

Comment 49.34

Proposed Amendment to §15155 *"Water Supply Analysis; City or County Consultation with Water Agencies"*
The proposed amendment changes the title and expands §15155, which presently is only about "City or County Consultation with Water Agencies."
The proposed amendment adds a new subsection "(f)" that conflicts with the California Supreme Court's holding in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova ["Vineyard"]* (2007) 40 Cal. 4th 412. In *Vineyard*, the Court made clear that environmental review cannot be deferred for long-term water supply. (*Id.* at pp. 439-443.) The proposed §15155(f) takes text of the *Vineyard* decision out of context to allow *uncertainty* in an EIR about the availability and adequacy of water supplies. *Vineyard* holds that an initial EIR on a project must inform the public and decisionmakers, at minimum, with a quantitative analysis supported by explaining the long-term availability and likely sources of water, including competing demands, and an analysis of mitigation of impacts of supplying water in the long term (and the short term) before a project is approved. (*Vineyard, supra,* at pp. 439-443.) Contrary to *Vineyard* and to CEQA, the proposed amendment §15155(f)(1) instead requires only "[s]ufficient information regarding the project's proposed water demand and proposed water supplies to permit the lead agency to evaluate the pros and cons of supplying the amount of water that the project will need." The analysis, however, is not about the pros and cons of supplying the needed amount of water, but about informing the public and decisionmakers of the actual availability of an adequate long-term water supply to meet the demand of a project, and the environmental impacts of meeting that demand, including impacts on other demands.

Response 49.34

The Agency declines to make any changes in response to this comment. The Agency disagrees with the commenter's characterization of *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412. The Court in *Vineyard* specifically acknowledged that there may be some uncertainty involved in long-term water planning, which may be reflected in the EIR:

> If the uncertainties inherent in long-term land use and water planning make it impossible to confidently identify the future water sources, an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives – including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases – and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact. (§ 21100, subd. (b).) (*Id.* at p. 434.)

The proposed revision to section 15155 is not intended to allow uncertainty in an EIR, as the commenter states. The proposed revision merely requires that the lead agency disclose uncertainty in the project's water supply analysis.

The Agency also disagrees with the commenter that the environmental analysis "is not about the pros and cons of supplying the needed amount of water[.]" The Court in *Vineyard* expressly stated that a lead agency's discussion of an adequate water supply analysis included the pros and cons of supplying water necessary for the project: "Decision makers must, under the law, be presented with sufficient facts to 'evaluate the pros and cons of supplying the amount of water that the [project] will need.' (Citation.)" (*Vineyard, supra,* 40 Cal.4th at p. 431.) The Agency believes that the proposed revision to section 15155 is consistent with the Court's directive.

Comment 49.35

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

Response 49.35

The Agency declines to make any changes in response to this comment. The Agency notes that the proposed revision is not exclusive of, or preclude lead agencies from considering, relevant factors when analyzing water supplies. In fact, proposed Guidelines section 15155(f)(3) states: “An analysis of circumstances affecting the likelihood of the water’s availability, as well as the degree of uncertainty involved. Relevant factors *may include but are not limited to*, drought, salt-water intrusion, regulatory or contractual curtailments, and other reasonably foreseeable demands on the water supply.” (Emphasis added.) Thus, at the lead agency’s discretion and in light of project-specific circumstances, a lead agency may consider a number of relevant factors in its water supply analysis.

Comment 49.36

The proposed amendment at §15155(f)(4) misstates the *Vineyard* holding and excuses the lead agency from determining whether a water supply is available for a project. Alternatives to a project must already be included in an EIR. However, that does not make an EIR adequate that fails to determine the long-term availability of water to meet the demands of a project and mitigating the impacts of supplying that water. The proposed amendments improperly weaken CEQA's EIR requirements to identify to the public and decisionmakers the long-term water sources for projects, including large development projects, before a project is approved, and the proposed mitigation of the impacts of supplying that water. Further, this proposed
amendment is unnecessary to effectuate CEQA's purposes.

Response 49.36

The Agency declines to make any changes in response to this comment. The Agency disagrees that proposed Guidelines section 15155(f)(4) misstates *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412 and excuses the lead agency from determining whether a water supply is available for a project. The Court in *Vineyard* stated:

> [W]here, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies. (Citation.) The law's informational demands may not be met, in this context, simply by providing that future development will not proceed if the anticipated water supply fails to materialize. But when an EIR makes a sincere and reasoned attempt to analyze the water sources the project is likely to use, but acknowledges the remaining uncertainty, a measure for curtailing development if the intended sources fail to materialize may play a role in the impact analysis. (Citation.)” (*Vineyard, supra,* 40 Cal.4th at p. 432.)

The proposed Guidelines section 15155(f)(4) is consistent with the Court's holding in *Vineyard*.

Comment 49.37

Proposed Amendment to §15168 *"Program EIR"*
The proposed amendments to §15168 seeks to eliminate existing provisions requiring subsequent environmental review after a program EIR. The proposed amendment eliminates the following (bold) language in §15168(c)(2): "If the agency finds that pursuant to Section 15162, no **new effects could occur or no new mitigation measures would be required**, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required." (emphasis added.)
The proposed amendment changes that criteria for determining whether a new environmental document would be required to: "Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and description of covered infrastructure, as presented in the project description or elsewhere in the program EIR." (Proposed §15168(c)(2).)
The proposed amendment thus changes the criteria for requiring subsequent environmental review from the *impacts and mitigation of subsequent parts of a project* to planning jargon that is irrelevant to whether the subsequent parts of the project will have significant impacts or require mitigation. Claiming they are minor word changes, other proposed amendments improperly change the meaning of §15168. For example, the existing terms "Subsequent actions" "subsequent project," or "parts" of the project or program are changed to "later activities." (Proposed amendment to, *e.g.*, §15168(c)(3), (c)(5), (d).) Determining whether impacts of later site specific actions require subsequent environmental review is changed from whether they were "covered in" the program EIR to whether they were "within the scope of" the program EIR. (Proposed amendment to §15168(c)(4).) The proposed amendment therefore contradicts CEQA's mandate and purpose to identify and mitigate impacts on the environment. (PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.) It is not "necessary" to "clarify" case law or to effectuate CEQA's statutory purpose, which it contradicts.

Response 49.37

The Agency declines to make any changes in response to this comment. In Guidelines section 15162(c)(2), the Agency proposed to omit the phrase "new effects could occur or no new mitigation measures" from the first sentence to make the sentence clearer. This phrase is preceded by a reference to Guidelines section 15162, which governs subsequent environmental review. The phrase "new effects could occur or no new mitigation measures" is a summary of the requirements in Guidelines section 15162 and thus deletion of that phrase does not modify the requirements triggering subsequent review.

The comment further asserts that the enumeration of factors that a lead agency may consider in determining whether an activity falls "within the scope" changes the substance of this section. The Agency disagrees. As explained in the Initial Statement of Reasons, the Agency proposes to include the examples of factors to consider in order to assist lead agencies in implementing this section. Those examples of factors were drawn from caselaw interpreting Section 15168.

The Agency proposed changes to section 15168 that replace "subsequent" with the word "later" to improve clarity. (Initial Statement of Reasons, p. 52.) These changes do not, and are not intended to, modify the requirements for subsequent environmental review in Guidelines section 15162.

Comment 49.38

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

Response 49.38

The Agency is not making any change in response to this comment. The commenter does not propose any specific revisions to Guidelines section 15182. The Agency disagrees with the commenter's characterization of the reasons for the amendments to section 15182. As the Initial Statement of Reasons explains, Senate Bill 743 added Public Resources Code section 21155.4, which exempts certain commercial, residential and mixed-use projects that are consistent with a specific plan adopted pursuant to Article 8, Chapter 3 of the Government Code. (Initial Statement of Reasons, pp. 53-54.) The Agency's proposed revision reflects the new exemption in Public Resources Code section 21155.4 (and Public Resources Code section 21099) as well as the exemption in Government Code section 65457. The Agency further notes that it has made further revisions to Guidelines section 15182, as reflected in the 15-day language.

Comment 49.39

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

Response 49.39

The Agency is not making any change in response to this comment. The commenter does not propose any specific revisions to Guidelines section 15182. As the Initial Statement of Reasons explains, Senate Bill 743 added Public Resources Code section 21155.4, which exempts certain commercial, residential and mixed-use projects that are consistent with a specific plan adopted pursuant to Article 8, Chapter 3 of the Government Code. (Initial Statement of Reasons, pp. 53-54.) The Agency's proposed revision is to reflect the new exemption in Public Resources Code section 21155.4 (and Public Resources Code section 21099) as well as the exemption in Government Code section 65457. The Agency also notes that it has made further revisions to Guidelines section 15182, as reflected in the 15-day language. Though SB 743 did not specifically direct changes to the Guidelines to address the exemption in Section 21155.4, the Agency already has authority to update the Guidelines as provided in Section 21083. As explained in the Initial Statement of Reasons, the update is necessary to alert planners that the new exemption is

available and that, while similar to the exemption in Government Code section 65487, it has unique attributes.

Comment 49.40

The proposed amendment improperly changes the title of §15182, eliminating its restriction to "**Residential** Projects Pursuant to a Specific Plan." The proposed amendment substantively expands §15182 to also apply to "mixed use projects" and "commercial" projects. (Proposed amendment §115182(a).) The proposed amendment does not specify whether the required prior EIR for a specific plan that exempts such a project was only for a residential project.
The proposed amendment to §15182 is unauthorized by any underlying legislation, is an attempt to substitute rulemaking for legislation, is contrary to CEQA, and is unnecessary to effectuate CEQA's purposes, which are to identify and mitigate the impacts of proposed projects.

Response 49.40

The Agency is not making any changes in response to this comment. The Agency disagrees that the proposed amendment improperly changes the title of Guidelines section 15182 and expands the substance of that section. As the Initial Statement of Reasons explains, Senate Bill 743 added Public Resources Code section 21155.4, which exempts certain commercial, residential and mixed-use projects that are consistent with a specific plan adopted pursuant to Article 8, Chapter 3 of the Government Code. (Initial Statement of Reasons, pp. 53-54.) The Agency's proposed revision is to reflect the new exemption in Public Resources Code section 21155.4 (and Public Resources Code section 21099) as well as the exemption in Government Code section 65457. The Agency's proposed revision is to reflect the new exemption in Public Resources Code section 21155.4 (and Public Resources Code section 21099) as well as the exemption in Government Code section 65457. The Agency further notes that it has made further revisions to Guidelines section 15182, as reflected in the 15-day language.

Comment 49.41

Proposed Amendment to §15222 "*Preparation of Joint Documents*"
The proposed amendment allowing a lead agency to "enter into a Memorandum of Understanding with the federal agency to ensure that both federal and state requirements are met" is not authorized by CEQA or NEPA. Separate environmental documents are required to satisfy the different statutory and case law requirements of CEQA and NEPA.

Response 49.41

The Agency declines to make any changes in response to this comment. CEQA Guidelines section 15222 allows and encourages lead agencies to prepare joint federal-state environmental documents. Section 15222 provides that federal agency "involvement is necessary because federal law generally prohibits a federal agency from using an EIR prepared by a state agency unless the federal agency was involved in the preparation of the document." It is also common practice for a lead agency to prepare a joint federal-state document to coordinate project requirements, timelines, and reduce duplication under CEQA and NEPA provisions. The proposed revision to Guidelines section 15222 acknowledges that state and federal agencies may enter into a memorandum of understanding (MOU), but a MOU is not legally required. The proposed revision merely reflects existing practice of some agencies, and the Agency is not intending to constrain the discretion of lead agencies to choose to enter, or not enter, into MOUs for the preparation of joint environmental documents. Please also note, Public Resources Code section 21083.5 specifically calls for the CEQA Guidelines to provide direction on joint documents.

Comment 49.42

Proposed *New* § 15234. *"Remand."*
The proposed new § 15234 conflicts with statutory requirements at Public Resources Code section 21168.9 "Requirement of court order for noncompliance" and with established case law on mandamus and writ procedure, and infringes on the basic right to a remedy.
PRC §21168.9(a) requires:
"If a court finds, as a result of a trial, hearing, or remand *from an appellate court*, that any determination, finding, or decision of a public agency has been made without compliance with this division, the court shall *enter **an order*** that includes one or more of the following:

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

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

(3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division." (emphasis added.) That statutory provision is clear, narrow, and does not allow regulation to expand its terms. The proposed new Guidelines §15234 confuses the roles of a court of appeal and a trial court, and gives the trial court the power to issue a writ without first issuing an order or judgment directing the writ, which is contrary to the California Supreme Court's landmark decision in *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal. 3d 171, 181-182, which explicitly requires a court, including a trial court, to issue an order directing a writ before issuing that writ. Without that procedural provision, a petitioner who has achieved success in a court of appeal is without a remedy to appeal the court's action on remand. (*Id.*) Therefore, a court may not issue a peremptory writ of mandate without issuing an order or judgment directing such a writ. (*Id.*)

Response 49.42

The Agency declines to make any changes in response to this comment. The Agency disagrees that proposed Guideline section 15234 gives the trial court the power to issue a writ without first issuing an order or judgment directing the writ. The Agency proposed new Guidelines section 15234 to assist agencies in complying with CEQA in response to a court's remand, and help the public and project proponents understand the effect of the remand on project implementation. The Agency does not intend for the proposed revision to limit the powers of the judicial branch.

The Agency also notes that it has made further revisions to Guidelines section 15234 as reflected in the 15-day language. Please see Master Response 13.

Comment 49.43

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

Response 49.43

The Agency is not making any changes based on this comment. Guideline section 15234 does not shift the determination of whether a lead agency can proceed with a project from the court to the agency. The court's order may include various directions to the lead agency and must be limited pursuant to the court's findings listed in Public Resources Code section 21168.9. Both subdivisions (b) and (c) make clear that an agency may only proceed with those portions of the project that the court identifies in its order as severable. A good illustration of how this section will operate is found in *Center for Biological Diversity v. Department of Fish & Wildlife* (2017) 17 Cal.App.5th 1245 (clarifying that a trial court may partially decertify an environmental impact report).

The Agency also notes that it has made further revisions to Guidelines section 15234 as reflected in the 15-day language. Please see Master Response 13.

Comment 49.44

Contrary to the proposed new language, PRC section 21168.9(b) does *not* allow a project to proceed under such findings, but only limits the *order* referred to in Section 21168.9(a) to addressing "the specific project activity or activities found to be in noncompliance" only if a court finds that all three requirements of subsection (b) are met. Further, and again contrary to the proposed new language, noncompliance with specific sections must already have been found *before* such limitations can be imposed. Such limitations cannot be imposed without all of the explicit findings in PRC section 21168.9(b)(1), (2), and (3). None of the cited authorities or statutory provisions support the drastic changes proposed in the new section 15234, which eliminates the fundamental right of appeal after remand. The proposed amendment contradicts case law, constitutional provisions affecting the fundamental right of review, mandamus procedure, the right to a remedy under CEQA, is contrary to CEQA, and is unnecessary to effectuate the purposes of CEQA. (*e.g.*, PRC §§ 21000 *et seq.*, 21002, 21002.1, 21168.9; Gov. Code §11342.2.)

Response 49.44

Please see response 49.43. Also, as explained in the Initial Statement of Reasons, and illustrated by the caselaw, the proposed new section is necessary to educate public agencies and the public regarding possible outcomes following litigation.

Comment 49.45

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

Response 49.45

The Agency is not making any changes in response to this comment regarding CEQA Guidelines section 15301 and the existing facilities exemption. Additionally, the commenter does not propose any specific changes in this comment. The proposed change to section 15301 would exempt operations and minor alterations of existing facilities where those projects involved "negligible or no expansion of existing or former use." The Agency proposes this change to allow for situations where the facility was vacant even if it had a history of productive use. Precluding vacant facilities from using this exemption is inconsistent with California's policy goals of promoting infill development. The Agency also believes that the revisions to section 15301 appropriately reflect recent case law on the environmental setting, which allow lead agencies to look back at historic conditions to establish a baseline where existing condition fluctuate. (*Communities for a Better Environment v. South Coast Air Quality Management Dist*. (2010) 48 Cal.4th 310, 327-328; *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.)

Comment 49.46

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

Response 49.46

The Agency is not making any changes in response to this comment regarding CEQA Guidelines section 15301 and the existing facilities exemption. The Agency believes that the revisions to section 15301 appropriately reflect recent case law on the environmental setting, which allow lead agencies to look back at historic conditions to establish a baseline where existing condition fluctuate. (*Communities for a Better Environment v. South Coast Air Quality Management Dist*. (2010) 48 Cal.4th 310, 327-328; *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.)

Additionally, the commenter cites two cases that do not support its comment here. First, in *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 967, the court stated that Guidelines section 15301 did not apply because the project proposed to shift from a nonconsumptive hydroelectric use to a consumptive use of an additional 17,000 acre-feet of water. Thus, the court considered the project "a major change in focus . . . ." (*Ibid.*) The Agency's proposed revision is not

inconsistent with this case because a proposed project that contemplates a major change in use would likely not be able to fall under the Class 1 exemption. Second, *Save Our Carmel River v. Monterey Peninsula Water Management District* (2006) 141 Cal.App.4th 677, 697 does not discuss or interpret Guidelines section 15301.

Comment 49.47

The proposed amendment then adds language that allows a proposed project to be an "existing facility," contradicting the meaning of the categorical exemption to include *future* proposed projects as "existing facilities." For example, the proposed amendment adds the contradictory language at §15301(c) (proposed addition in bold in following): "Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety, **and other alterations, such as the *addition* of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities, and bicycle lanes, pedestrian crossings, and street trees, and other similar improvements that do not create additional automobile lanes."**
Response 49.47

The Agency declines to make any changes in response to this comment. The Agency disagrees that the proposed amendment to section 15301(c) is contradictory. Section 15301 describes one class of activities, changes to existing facilities, that normally would not have a significant effect on the environment, and therefore should be exempt from CEQA. These particular changes address activities within an existing public right of way. The purpose of this change is to clarify that alterations within a public right of way that enable use by multiple modes (i.e., bicycles, pedestrians, transit, etc.) would normally not cause significant environmental impacts. Alterations to the existing right of way (such as bike facilities) have long been understood to fall within the category of activities in section 15301(c), provided that the activity does not involve roadway widening. (See, *Erven v. Bd. of Supervisors* (1975) 53 Cal.App.3d 1004.) The Agency further notes that categorical exemptions are subject to exceptions. (CEQA Guidelines, § 15300.2.) Exceptions to the application of categorical exemptions for unusual circumstances and cumulative impacts should provide adequate safeguards to prevent use of the exemption in circumstances that would result in adverse impacts.

Additionally, the Agency has made further revisions to section 15301. As the 15-day language reflects, the Agency proposes to clarify that the exemption that applies to changes to existing highways and streets also applies to changes for bicycle facilities, pedestrian crossings, street trees and similar changes.

Comment 49.48

The proposed amendments contradict and violate CEQA by expanding the language of the existing facilities exemption. Well-established case law holds that exemptions are construed narrowly and may not be expanded beyond their terms or CEQA's statutory purpose. (*e.g.*, *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 966; *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1192.) The proposed amendments are also contrary to and undermine CEQA's requirements to establish existing conditions (§15125) and identify and mitigate a proposed project's impacts on those existing conditions. (See, *e.g.*, *County of Amador v. El Dorado County Water* Agency, supra, 76 Cal.App.4th at pp. 953-954; *Poet, LLC v. State Air Resources Board ["Poet II"]* (2017) 12 Cal.App.5th 52, 79-81.) The failure to accurately state existing conditions results in an inaccurate baseline for analyzing impacts in violation of CEQA. (*e.g., Poet, LLC. v. State Air Resources Bd. ["Poet II"]* (2017) 10 Cal.App.5th 764,797 [agency's failure to justify use of correct baseline is an

abuse of discretion and invalidates the impacts analysis].) The required baseline for analyzing impacts must establish, with substantial evidence, the existing conditions. The baseline of existing conditions is then compared with an accurate Project description to determine whether the project will have significant impacts. (*Id.*)
Further, the proposed amendments are contrary to recent case law that holds that CEQA does not allow a proposed project to be included in "existing conditions." (*e.g.*, *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2016) 2 Cal.App.5th 1067, 1073; *Parker-Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 783.)

Response 49.48

Please see responses 49.45, 49.46 and 49.47.

Comment 49.49

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

Response 49.49

Please see responses 49.45 and 49.47. Also, the comment appears to suggest that adding bicycle lanes would create new facilities, not make changes to existing facilities. The comment interprets the facilities at issue too narrowly. The introductory paragraph in Section 15301 explains: “The types of ‘existing facilities’ itemized below are not intended to be all inclusive of the types of projects which might fall within Class 1.” The subdivision within which the proposed changes would be made describes the following: “Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, *and similar facilities* (this includes road grading for the purpose of public safety).” Changing a developed right of way to accommodate modes of travel that eliminate or reduce pollution is precisely the type of activity that would not normally cause a significant effect on the environment.

Comment 49.50

The expansion of the exemption to include "other similar improvements that do not create additional automobile lanes" is contrary to the narrow construction of categorical exemptions in established case law, and it improperly creates a new exception to its broadening of §15301 so that creating any new "facilities" would be categorically exempt under "existing" facilities, except creating "additional automobile lanes." Neither the expansion of the terms of §15301 nor creating an exception to that expansion is authorized under established case law. The Initial Statement of Reasons falsely claims that the amendments to §15301 "adds no new substantive requirements." In fact the proposed amendments clearly broaden the existing facilities categorical exemption to include examples of physical changes to existing facilities, and therefore require economic impact analysis, including analyzing energy use and waste from increased traffic congestion from reducing traffic capacity of streets where traffic lanes and parking are eliminated to construct "bicycle facilities" and other projects. The proposed amendment contradicts and violates CEQA's requirements and purpose to identify and mitigate the impacts of

proposed projects, is not supported by any authority, and is contrary to and unnecessary to effectuate CEQA's statutory purpose. (Gov. Code §§11340 *et seq.*, 11342.2.)

Response 49.50

Please see responses 49.45, 49.46, 49.47 and 49.49. The comment suggests that bicycle lanes may waste energy. As explained in the Initial Statement of Reasons, encouraging non-polluting forms of transportation will lead to environmental benefits. To the extent any particular project may cause significant effects due to unusual circumstances or cumulative impacts, the exemption would not be available. The comment incorrectly asserts that the Agency lacks the authority to further clarify existing facilities in Section 15301. Public Resources Code section 21084 authorizes the Agency to identify classes of projects that normally would not cause significant effects.

Comments 49.51 – 49.53

20. Proposed Amendment to §15357 "Discretionary Project"
The proposed amendment creates an exception to the definition of a "discretionary project" and vastly expands the definition of "ministerial" projects for which no environmental review is required. The existing language contrasts a discretionary project requiring agency approval and CEQA review to "situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations."

The amendment adds the undefined term, *"or other fixed standards*." Thus, the proposed amendment would enable agency approval with *no* CEQA review of any project where the agency claims conformity with "other fixed standards."

Claiming that this significant reduction of the requirement of CEQA review of proposed discretionary projects is a "clarification" is false and disingenuous, since the proposed amendment does not clarify the definition of "discretionary project," but instead hugely expands the definition of projects that are not subject to CEQA review. The proposed amendment is contrary to CEQA's mandate and purpose to identify and mitigate a project's impacts before it is approved, and is unnecessary to effectuate CEQA's purpose. PRC §§ 21000 *et seq.*, 21002, 21002.1; Gov. Code §11342.2.)

Responses 49.51-53

The Agency declines to make any changes in response to this comment. The Agency disagrees that proposing to add the phrase “or other fixed standards” “hugely expands the definition” of ministerial projects. The current definition of “discretionary project” contrasts those types of projects “from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.” But there may be other mechanisms—akin to statutes, ordinances, or regulations—that may apply to a project and result in a ministerial project approval. The proposed addition is consistent with the CEQA Guidelines definition of “ministerial” in section 15369: “A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out.” Additionally, the Agency proposes to add “or other fixed standards” to be consistent with the holding in *Health First v. March Joint Powers Authority* (2009) 174 Cal.App.4th 1135. In that case, the lead agency’s review of an applicant’s design application “involved deciding whether the application was consistent with the requirements, fixed standards, and proposed

mitigation of the Specific Plan, the Focused EIR, and the Design Guidelines." (*Id.* at p. 1144.) The lead agency "accomplished its review by completing a checklist of about 125 yes-or-no questions. In doing so, the Implementation Committee exercised no discretion and instead acted ministerially." (*Ibid.*) The Agency notes that it made further revisions to section 15369 in response to other comments, as reflected in the 15-day language.

Comment 49.54

Proposed Amendment to Appendix G *"Environmental Checklist Form"*
The proposed Amendment to Appendix G contradicts CEQA and case law, including, for example, the following (bold type indicates proposed amendment deletions).
Proposed III. (b) [AIR QUALITY]: Eliminates language that require identification of impacts that **"[v]iolate an air quality standard or contribute substantially to an existing or projected air quality violation**." Proposed III. (b) [AIR QUALITY]: Changes language that requires the agency to identify cumulative impacts from increases in pollutants already in non-attainment, as shown bold in following: "Result in cumulatively considerable net increase of any criteria pollutant **for which the project region is in nonattainment** under an applicable federal or state ambient air quality standard **(including releasing emissions which exceed quantitative thresholds for ozone precursors)."** Proposed III.(e) [AIR QUALITY]: Omits (bold): "**Create objectionable** odors affecting a substantial number of people."

Response 49.54

The Agency declines to make any change in response to this comment regarding the air quality questions in Appendix G. The commenter does not propose any specific revisions and states, without specific reasons, that the proposed changes to Appendix G contradict CEQA. The Agency notes that it made further revisions to Appendix G in response to other comments, as reflected in the 15-day language.

As the Agency stated in the January 2018 Notice of Proposed Rulemaking and Initial Statement of Reasons, the Agency proposed revisions that would make the CEQA process more efficient and easier to navigate, and also acknowledged that Appendix G checklist cannot contain an exhaustive list of questions. (Notice, p. 4; Initial Statement of Reasons, p. 69.) Appendix G is only a sample checklist that can be tailored to address local conditions and project characteristics. Even if certain questions are revised or omitted, Appendix G advises that "[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered."

Please also see Master Response 18 regarding Appendix G.

Comment 49.55

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

Response 49.55

The Agency declines to make any change in response to this comment regarding the geology and soils question in Appendix G. The commenter does not propose any specific revisions and states, without specific reasons, that the proposed changes to Appendix G contradict CEQA. The Agency proposed revisions that would make the CEQA process more efficient and easier to navigate, and also

acknowledged that Appendix G checklist cannot contain an exhaustive list of questions. (Notice of Proposed Rulemaking, p. 4; Initial Statement of Reasons, p. 69.) Appendix G is only a sample checklist that can be tailored to address local conditions and project characteristics. Even if certain questions are revised or omitted, Appendix G advises that "[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered." Additionally, as the Initial Statement of Reasons explains, the proposed change to the geology and soils question in Appendix G is consistent with CEQA's general requirement that agencies consider the direct and indirect impacts caused by a proposed project. (See generally, Pub. Resources Code, §§ 21065 [definition of a "project"], 21065.3 [definition of a "project-specific effect"].) The proposed changes are consistent with the Supreme Court's direction in the CBIA v. BAAQMD case

Please also see Master Response 18 regarding Appendix G.

Comment 49.56

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

Response 49.56

The Agency declines to make any change in response to this comment regarding the hazards and hazardous materials question in Appendix G. The commenter does not propose any specific revisions and states, without specific reasons, that the proposed changes to Appendix G contradict CEQA. The Agency proposed revisions that would make the CEQA process more efficient and easier to navigate, and also acknowledged that Appendix G checklist cannot contain an exhaustive list of questions. (Notice of Proposed Rulemaking, p. 4; Initial Statement of Reasons, p. 69.) Appendix G is only a sample checklist that can be tailored to address local conditions and project characteristics. Even if certain questions are revised or omitted, Appendix G advises that "[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered." Also note, the Agency has added a whole new section in the checklist to address wildfire hazards, as required in Senate Bill 1241 (Kehoe, 2012).

Please also see Master Response 18 regarding Appendix G.

Comment 49.57

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

Response 49.57

The Agency declines to make any change in response to this comment regarding the hydrology and water quality questions in Appendix G. The commenter does not propose any specific revisions and states, without specific reasons, that the proposed changes to Appendix G contradict CEQA. The Agency proposed revisions that would make the CEQA process more efficient and easier to navigate, and also

acknowledged that Appendix G checklist cannot contain an exhaustive list of questions. (Notice of Proposed Rulemaking, p. 4; Initial Statement of Reasons, p. 69.) Appendix G is only a sample checklist that can be tailored to address local conditions and project characteristics. Even if certain questions are revised or omitted, Appendix G advises that "[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered."

Please also see Master Response 18 regarding Appendix G.

Comment 49.58

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

Response 49.58

The Agency declines to make any change in response to this comment regarding the land use questions in Appendix G. The commenter does not propose any specific revisions and states, without specific reasons, that the proposed changes to Appendix G contradict CEQA. The Agency proposed revisions that would make the CEQA process more efficient and easier to navigate, and also acknowledged that Appendix G checklist cannot contain an exhaustive list of questions. (Notice of Proposed Rulemaking, p. 4; Initial Statement of Reasons, p. 69.) Appendix G is only a sample checklist that can be tailored to address local conditions and project characteristics. Even if certain questions are revised or omitted, Appendix G advises that "[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered."

Additionally, the Agency notes that as to proposed Questions XI(b) and XI(c), the Agency proposes to clarify that the focus of the analysis should not be on the "conflict" with the plan, but instead, on any adverse environmental impact that might result from a conflict.

Please also see Master Response 18 regarding Appendix G.

Comment 49.59

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

Response 49.59

The Agency declines to make any change in response to this comment regarding the noise questions in Appendix G. The commenter does not propose any specific revisions and states, without specific reasons, that the proposed changes to Appendix G contradict CEQA. The Agency notes that it made further revisions to Appendix G in response to other comments, as reflected in the 15-day language.

The Agency proposes revisions that would make the CEQA process more efficient and easier to navigate, and also acknowledged that Appendix G checklist cannot contain an exhaustive list of questions. (Notice of Proposed Rulemaking, p. 4; Initial Statement of Reasons, p. 69.) Appendix G is only a sample checklist

that can be tailored to address local conditions and project characteristics. Even if certain questions are revised or omitted, Appendix G advises that “[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered.”

Please also see Master Response 18 regarding Appendix G.

Comment 49.60

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

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

Response 49.60

The Agency declines to make any change in response to this comment regarding the population and housing questions in Appendix G. The commenter does not propose any specific revisions and states, without specific reasons, that the proposed changes to Appendix G contradict CEQA. The Agency proposed revisions that would make the CEQA process more efficient and easier to navigate, and also acknowledged that Appendix G checklist cannot contain an exhaustive list of questions. (Notice of Proposed Rulemaking, p. 4; Initial Statement of Reasons, p. 69.) Appendix G is only a sample checklist that can be tailored to address local conditions and project characteristics. Even if certain questions are revised or omitted, Appendix G advises that “[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered.” The focus on unplanned growth is appropriate, because such growth is not likely to have been studied in an environmental document associated with a general plan or specific plan.

Please also see Master Response 18 regarding Appendix G.

Comment 49.61

Proposed XVII. [TRAFFIC]: Changes the title of the checklist item to "TRANSPORTATION"
Proposed XVII (a) [TRAFFIC]: Eliminates language determining impacts from conflicts with an applicable plan, ordinance or policy **establishing measures of effectiveness for the performance of** the circulation system," including "intersections, streets, highways, and freeways, pedestrian and bicycle paths, and mass transit." Instead of the criteria of "establishing measures of effectiveness for the performance of the circulation system," the proposed amendment to the checklist only includes conflict with an applicable plan, ordinance or policy that "addresses the circulation system, including transit, roadways, bicycle lanes, and pedestrian paths," thus removing impacts on "intersections, streets, highways, and freeways." Proposed XVII(b) [TRAFFIC]: Eliminates language determining impacts from "**conflict with an applicable congestion management program, including but not limited to level of service standards and travel demand measures."** Instead, only ask "For a land use project, would the project conflict or be inconsistent with" the *amended* Guidelines §15064.3(b)(1). Proposed XVII(c) [TRAFFIC]: Eliminates language determining impacts where projects "**result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks."** Instead of that provision, the proposed amendment changes the checklist XVII(c) to exempt all transportation projects from CEQA: "For a transportation project, would the project conflict

with or be inconsistent with" the *amended* Guidelines §15064(b)(2)? Proposed XVII(d) [TRAFFIC]: Qualifies determining an impact from "hazards due to a design feature…" by changing the language to "geometric hazards due to a design feature."

Response 49.61

The Agency declines to make any change in response to this comment regarding the transportation questions in Appendix G. The commenter does not propose any specific revisions and states, without specific reasons, that the proposed changes to Appendix G contradict CEQA. The Agency notes that it made further revisions to Appendix G in response to other comments, as reflected in the 15-day language.

The Agency proposes revisions that would make the CEQA process more efficient and easier to navigate, and also acknowledged that Appendix G checklist cannot contain an exhaustive list of questions. (Notice of Proposed Rulemaking, p. 4; Initial Statement of Reasons, p. 69.) Appendix G is only a sample checklist that can be tailored to address local conditions and project characteristics. Even if certain questions are revised or omitted, Appendix G advises that "[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered." The Agency also proposes to revise proposed question XVII(a) related to "measures of effectiveness" so that the focus is more on the circulation element and other plans governing transportation. The Agency proposes deletion of references to the level of service metric to be consistent with Public Resources Code section 21099. The proposed revision references the new CEQA Guidelines section 15064.3. The Agency proposes to insert the word "geometric" to more clearly describe the design features that are already listed in the existing Appendix G question as examples.

Please also see Master Response 18 regarding Appendix G.

Comment 49.62

Proposed XIX(a) [UTILITIES AND SERVICE SYSTEMS]: Deletes question of whether project would **"exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board."** Proposed XIX(b) [UTILITIES AND SERVICE SYSTEMS]: Changes the question at XIX(d) and eliminates language in checklist of whether water supplies to serve a proposed project are **"from existing entitlements and resources, or are new or expanded entitlements needed?"** Proposed XIX(d): [UTILITIES AND SERVICE SYSTEMS]: Changes question at XIX(f) that asks if a project is **"covered by landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?"** Proposed XIX(e): [UTILITIES AND SERVICE SYSTEMS]: Changes language in XIX(g).

Response 49.62

The Agency declines to make any change in response to this comment regarding the utilities and service systems questions in Appendix G. The commenter does not propose any specific revisions and states, without specific reasons, that the proposed changes to Appendix G contradict CEQA. The Agency proposed revisions that would make the CEQA process more efficient and easier to navigate, and also acknowledged that Appendix G checklist cannot contain an exhaustive list of questions. (Notice of Proposed Rulemaking, p. 4; Initial Statement of Reasons, p. 69.) Appendix G is only a sample checklist that can be tailored to address local conditions and project characteristics. Even if certain questions are revised or omitted, Appendix G advises that "[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered." Please also see Master Response 18 regarding Appendix G.

Comment 49.63

Proposed XXI(a): [MANDATORY FINDINGS OF SIGNIFICANCE]: Changes language to add a new requirement (additions bold, underlined) that a project must "have the potential to **substantially** degrade the quality of the environment," and must "**substantially** reduce the number or restrict the range of a rare plant or animal." These proposed amendments to Appendix G undermine and are inconsistent CEQA's requirements and purpose to identify and mitigate a project's impacts and are unnecessary to effectuate CEQA's purpose.

Response 49.63

The Agency declines to make any change in response to this comment. The Agency proposes the addition of “substantial” to Appendix G Question XXI.a. in order to be consistent with the existing language in CEQA Guidelines section 15065(a)(1) related to the mandatory findings of significance. Please also see Master Response 18 regarding Appendix G.

Comment 49.64

[Copy of comments 49.1-49.63.]

Response 49.64

The commenter attached a copy of the comment letter. Please see responses 49.1 through 49.63, above.

Comment 50 - Environmental & Regulatory Specialists, Inc.

Comment 50.1

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.

Response 50.1

The Agency is not making any changes in response to these comments. The commenter does not propose any specific revisions to the rulemaking package, and the comments are introductory and general in nature. Please also see Master Response 20 regarding broad policy matters.

Comment 50.2

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.

Response 50.2

The Agency is not making any changes in response to these comments. The commenter does not propose any specific revisions to this rulemaking package, and the comments are introductory and general in nature. The commenter also provides comments directed at the Legislature, which is outside the scope of the Agency's proposed rulemaking. Thus, the Agency declines to comment further upon the merit of those comments and to make any changes in response. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters. Finally, the Agency disagrees that the proposed updates appear to further dismantle CEQA. The proposal is a balanced package that is intended to make the process easier and quicker to implement, and better protect natural and fiscal resources consistent with California's environmental policies.

Comment 50.3

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.

Response 50.3

The Agency is not making changes in response to this comment. The commenter does not propose any specific revisions to the rulemaking package. The commenter merely summarizes requirements related to general plan.

Comment 50.4

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 of 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]).
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.

Response 50.4

The Agency is not making changes in response to this comment. The commenter does not propose any specific revisions to the rulemaking package. The commenter merely states general provisions related to CEQA.

Comment 50.5

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.

Response 50.5

The Agency declines to make any revisions in response to this comment. The comment does not suggest any changes to the proposed text. The Agency also notes that it proposed further revisions to Guidelines section 15125 as reflected in the 15-day language. Please also see Master Response 14 regarding baselines.

Comment 50.6

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 **California Environmental Quality Act** CEQA defines the Environment as a the Whole of the Environment **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 law, which grants a density bonus and incentives or concessions for qualified affordable housing projects. **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 Bills.

Response 50.6

The commenter does not propose any specific revisions to the rulemaking package. The commenter discusses housing-related regulatory changes, which are outside the scope of the rulemaking package. Thus, the Agency declines to comment further upon the merit of this comment and to make any changes in response. (Gov. Code, § 11346.9(a)(3).)

Comment 50.7

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. 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 environment. 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 million statewide.7 HCD estimates there are 8 million existing residential lots with single-family Government Code § 65915 – 65918 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 CEQA Guidelines §15162 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 **Existing CEQA Guielines** Scope of CEQA Analysis (% of the Environment Addressed in a CEQA Document) Existing Regulatory and CEQA Guideline Exemptions dwellings 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.

Response 50.7

The commenter does not propose any specific revisions to the rulemaking package. Additionally, the commenter discusses housing-related regulatory changes, which are outside the scope of the rulemaking package. Thus, the Agency declines to comment further upon the merit of this comment and to make any changes in response. (Gov. Code, § 11346.9(a)(3).)

Comment 50.8

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).

Response 50.8

The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. Additionally, the commenter discusses general plans and housing-related regulatory changes, which are outside the scope of the rulemaking package. The comment asks whether legislative changes are subject to CEQA, and the answer is no. As a general matter, the Agency notes that many planning documents analyze a range of potential new development activities based on a variety of planned densities and projected market conditions. Whether conditions on the ground change substantially from what was analyzed in a planning document will necessarily depend the extent to which individuals make use of tools such as the new accessory dwelling unit laws. Thus, the Agency declines to comment further upon the merit of this comment and to make any changes in response. (Gov. Code, § 11346.9(a)(3).)

Comment 50.9

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.

Response 50.9

The Agency is not making a change in response to this comment. This comment does not propose any specific revision to the proposed rulemaking. The commenter merely summarizes the proposed addition of Guidelines section 15064.3. Additionally, Public Resources Code section 20199 states that "[u]pon certification of the guidelines by the Secretary of the Natural Resources Agency pursuant to this section, automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion shall not be considered a significant impact on the environment . . . ."

Comment 50.10

Projects will continue to be evaluated to determine consistency will 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.

Response 50.10

The Agency is not making a change in response to this comment. In general, because the level of service metric would not be used for the analysis of transportation impacts, studies of vehicle miles traveled would be part of the CEQA process. Because the Public Resources Code provides that automobile delay is a not an environmental impact, level of service will not be analyzed under CEQA.

Comment 50.11

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.

Response 50.11

The Agency is not making a change in response to this comment. The comment makes an incorrect assertion. Generally, no traffic analysis would be required, however a lead agency could potentially require one for planning purposes, outside of CEQA. It is unclear what the commenter means in referring to "project that have the potential to impact local and regional traffic models…." Models are generally used to assess impacts.

Comment 50.12

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.

Response 50.12

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. Public Resources Code section 21099(b)(2) marks a shift in environmental analysis regarding transportation and traffic impacts. That section states that upon certification of the Guidelines by the Secretary of the Agency, automobile delay shall not be considered a significant environmental impact. Air quality and other effects of a project would still require analysis. (Pub. Resources Code § 21099(b)(3).) New proposed Guidelines section 15064.3 is consistent with that directive.

Comment 50.13

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.

Response 50.13

Please see response 50.12. Also, the comment incorrectly states that indirect effects of transportation impacts would not be disclosed or mitigated. To the extent that a project causes air quality impacts, for example, the agency would need to analyze and mitigate such impacts.

Comment 50.14

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.

Response 50.14

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package.

Comment 50.15

This proposed change to the Guidelines appear to conflict with the Act, increasing CEQA litigation risks.

Response 50.15

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to the rulemaking package and only makes a general, unsubstantiated claim. Please see response 50.12.

Comment 50.16

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

Response 50.16

The Agency is not making a change in response to this comment. The Agency disagrees that the proposed revision would allow for the possibility of a complete exemption from project-level environmental review for projects below the VMT threshold. The proposed Guidelines section 15064.3(b)(1) includes a rebuttable presumption: "Projects that decrease vehicle miles traveled in the project area compared to existing conditions should be considered presumed to have a less than significant transportation impact." Air quality and other effects of a project would still require analysis. (Pub. Resources Code § 21099(b)(3).)

Comment 50.17

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.

Response 50.17

The Agency is not making a change in response to this comment. The commenter makes general and unsupported assertions about risks associated with congested complete streets.

Comment 50.18

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

Response 50.18

The Agency is not making a change in response to this comment. Please see response 50.12.

Comment 50.19

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!

Response 50.19

The Agency is not making a change in response to this comment. The commenter makes the unsupported claim that "it is a certainty that . . . 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." OPR's General Plan Guidelines provide extensive guidance on developing general plans without using metrics of automobile delay. (Governor's Office of Planning and Research. (2017) General Plan Guidelines: 2017 Update, Appendix B, Transportation Safety.) There are also numerous examples of local jurisdictions that have updated their analysis of transportation impacts to focus on vehicle miles traveled. Also, because vehicle miles traveled has been analyzed for many years as part of greenhouse gas emissions analyses, among others, it is unclear why the comment asserts that environmental review for existing planning documents would no longer retain informational value.

Comment 50.20

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.

Response 50.20

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package.

Comment 50.21

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.

Response 50.21

The Agency is not making a change in response to this comment. The proposed Guidelines section relates to the vehicle miles traveled metric, but Guidelines section does not govern whether a lead agency would have evidence to negate any presumptions or whether a fair argument can be made as to certain impacts. Nothing in the proposed Guidelines revisions alters the existing requirement for a lead agency to adopt feasible mitigation measures to address a significant impact.

Comment 50.22

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. "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, nonexistent ADU traffic data and ITE generation rates for in-fill developments.

Response 50.22

The Agency is not making a change in response to this comment. The Agency disagrees with the commenter's characterizations of the proposed Guidelines section. Proposed Guidelines section 15064.3 offers a presumption, subject to rebuttal, that development near transit will exhibit below-threshold VMT. The presumption is based on reviews of research conducted at various locations in the state and beyond (see for example *Impacts of Transit Service Strategies on Passenger Vehicle Use and Greenhouse Gas Emissions - Policy Brief* (Handy et al.). Please also see Master Response 4 regarding the presumption of less than significant impacts for projects located near transit.

Comment 50.23

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 sever 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.

Response 50.23

The Agency is not making a change in response to this comment. See responses 50.22 and 50.21.

Comment 50.24

Given the state's projected population growth, 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.

Response 50.24

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. This comment is outside the scope of the rulemaking package and the Agency declines to comment further upon the merit of this comment. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 50.25

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….). 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.

Response 50.25

The Agency is not making a change in response to this comment. The commenter is correct that the proposal would eliminate analysis of congestion in CEQA. Public Resources Code section 21099(b)(2) states that upon certification of the Guidelines by the Secretary of the Agency, automobile delay shall not be considered a significant environmental impact. New proposed Guidelines section 15064.3 is consistent with that directive. However, a jurisdiction could analyze traffic congestion outside of CEQA, such as through the general plan process. OPR's general plan guidelines provide recommendations on this topic. (Governor's Office of Planning and Research. (2017) General Plan Guidelines: 2017 Update, Appendix B, Transportation Safety.) Extensive analysis of transportation issues also occurs at the regional scale in the congestion management plans of congestion management agencies and regional transportation plans of metropolitan planning organizations.

Comment 50.26

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.

Response 50.26

The Agency is not making a change in response to this comment. The commenter suggests traffic can delay emergency response times. In fact, emergency response times suffer more from greater distances to destinations found in the sprawling areas than from congestion in compact and congested areas. From Yeo et. al, 2014: "Emergency medical service (EMS) delay is another possible mediator that could help explain the direct non-VMT-involved sprawl effect on traffic fatalities. Urban sprawl increases EMS waiting time, and delay in ambulance arrival can increase the severity of traffic-related injuries (Trowbridge et al. 2009). 'For every 10% increase in population density'…the models estimated by Lambert and Meyer (2006, 2008) predict 'a 10.4% decrease in EMS run time' in the Southeastern United States and nationwide 'an average 0.61 percent decrease in average EMS run time'" (Yeo et. al, 2014). OPR's General Plan Guidelines provides additional discussion about considering transportation safety in CEQA. (Governor's Office of Planning and Research. (2017) General Plan Guidelines: 2017 Update, Appendix B, Transportation Safety.) Please also see Master Response 20 regarding broad policy matters.

Comment 50.27

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.

Response 50.27

The Agency is not making a change in response to this comment. Reducing vehicle miles traveled will lessen transportation impacts by reducing the amount of car travel loaded onto the roadway network. In comparison, mitigation of localized congestion leads to worse overall regional congestion by leading to more vehicle travel overall. (See Governor's Office of Planning and Research. (2017) General Plan Guidelines: 2017 Update, Appendix B; see also Tumlin et al., *Decisions, Values, and Data: Understanding Bias in Transportation Performance Measures*, ITE Journal, August 2014.) The commenter recommends retention of "traffic analysis" (which a jurisdiction may, outside of CEQA). The commenter also makes other recommendations and predictions on policy, legislation, and technology beyond the scope of the rulemaking. Please also see Master Response 20 regarding broad policy matters.

Comment 50.28

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.

Response 50.28

The Agency is not making any changes in response to this comment. The proposed revisions to the CEQA Guidelines must be consistent with the Public Resources Code. The Agency, in conjunction with OPR, has carefully considered the proposed revisions, which are largely a result from numerous stakeholder meetings and oral and written comments received since 2013. Thus, the Agency believes that the proposed revision have incorporated language that encourages public and lead agency awareness about CEQA's requirements. Please also see Master Response 20 regarding broad policy matters.

Comment 50.29

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.

Response 50.29

The Agency is not making a change in response to this comment. The commenter suggests the proposal directly conflicts with existing law, e.g., congestion management law, but does not describe the nature or details of the supposed conflict. In fact, the proposal changes transportation impact assessment in CEQA, while other policies and laws may continue to require traditional level of service transportation impact analysis in their own processes. The remainder of the comment addresses changes in society. Please also see Master Response 20 regarding broad policy matters.

Comment 50.30

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?

Response 50.30

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. This comment asks a question about future planning documents subject to CEQA. Please see Response to Comment 50.8. This comment is outside the scope of the rulemaking package and the Agency declines to comment further upon the merit of this comment. (Gov. Code, § 11346.9(a)(3).)

Comment 50.31

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.

Response 50.31

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. The commenter discusses topics that are outside the scope of the rulemaking package. Thus, the Agency declines to comment further upon the merit of this comment. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 50.32

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 appropriative 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.

Response 50.32

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. The commenter discusses topics that are outside the scope of the rulemaking package. Thus, the Agency declines to comment further upon the merit of this comment. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 50.33

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 appropriative water right from the appropriate water purveyor. In passing this legislation the state has precommitted 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."

Response 50.33

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. The commenter discusses topics that are outside the scope of the rulemaking package. Thus, the Agency declines to comment further upon the merit of this comment. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 50.34

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).

Response 50.34

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. The Agency notes, however, that the Agency previously added Appendix M and N in particular to provide guidance to local agencies who were considering infill projects pursuant to CEQA Guidelines section 15183.3. Additionally, the commenter discusses topics that are outside the scope of the rulemaking package. Thus, the Agency declines to comment further upon the merit of this comment. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 50.35

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).

Response 50.35

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. In proposing this regulatory package, the Agency is considering revisions to the CEQA Guidelines that reflect recent legislative changes to CEQA, clarify certain provisions of the existing Guidelines, and update the Guidelines consistent with recent court decisions. Please also see Master Response 20 regarding broad policy matters.

Comment 50.36

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.

Response 50.36

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. In proposing this

regulatory package, the Agency is considering revisions to the CEQA Guidelines that reflect recent legislative changes to CEQA, clarify certain provisions of the existing Guidelines, and update the Guidelines consistent with recent court decisions. The commenter asserts the proposal would "increase the scope of compliance requirements with transportation plans." In fact, vehicle miles traveled must already be assessed in order to assess impacts associated with greenhouse gas emissions, energy, and air pollutant emissions, and so use of that measure in a transportation analysis is not additive.

Comment 50.37

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 decisionmakers 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.

Response 50.37

The Agency is not making a change in response to this comment. This comment appears to be directed at the Legislature. The Agency does not have discretion to adopt legislative exemptions. Please also see Master Response 20 regarding broad policy matters. In the context of the CEQA Guidelines, the Agency can only certify and adopt proposed revisions to the Guidelines. In proposing this regulatory package, the Agency is considering revisions to the CEQA Guidelines that reflect recent legislative changes to CEQA, clarify certain provisions of the existing Guidelines, and update the Guidelines consistent with recent court decisions. As to the Guidelines section 15125 regarding the environmental setting, the Agency's proposed changes to that section is to make the provision consistent with recent case law. (See, e.g., *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439.)

Comment 50.38

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. 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).

Response 50.38

The Agency is not making a change in response to this comment. In proposing this regulatory package, the Agency is considering revisions to the CEQA Guidelines that reflect recent legislative changes to CEQA, clarify certain provisions of the existing Guidelines, and update the Guidelines consistent with recent court decisions. The comment raises social concerns that extend far beyond this rulemaking. Please see Master Response 20 regarding broad policy matters.

Comment 50.39

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.

Response 50.39

Please see response 50.37.

Comment 50.40

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.

Response 50.40

Please see response 50.37.

Comment 50.41

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?

Response 50.41

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. The Agency does not

have control over adopted legislation or local agency responses to such legislation. Additionally, the commenter discusses topics that are outside the scope of the rulemaking package. Thus, the Agency declines to comment further upon the merit of this comment. (Gov. Code, § 11346.9(a)(3).)

Comment 50.42

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.

Response 50.42

Please see response 50.37 and 50.38.

Comment 50.43

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.
Response 50.43

Please see response 50.37 and 50.38.

Comment 50.44

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.

Response 50.44

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. The Agency's proposal

addresses changes to the CEQA Guidelines and is not intended to restrict personal liberty, health, safety and quality of life. A lead agency would still be required "to analyze a project's potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation." (Pub. Resources Code, § 21099(b)(3).)

Comment 50.45

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.

Response 50.45

The Agency is not making a change in response to this comment. In the context of the CEQA Guidelines, the Agency can only certify and adopt proposed revisions to the Guidelines. The Agency does not have control over state legislation. Additionally, the commenter discusses topics that are outside the scope of the rulemaking package. Thus, the Agency declines to comment further upon the merit of this comment. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 50.46

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.

Response 50.46

Please see response 50.37.

Comment 50.47

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.

Response 50.47

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. The commenter only makes a general comment about OPR's proposed package of Guidelines revisions, which are not the subject of this rulemaking before the Agency.

Comment 50.48

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.

Response 50.48

Please see response 50.37. Additionally, the commenter discusses topics that are outside the scope of the rulemaking package. Thus, the Agency declines to comment further upon the merit of this comment. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 50.49

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.

Response 50.49

The Agency is not making a change in response to this comment. The Secretary of the Agency, not the State Legislature, certifies and adopt the proposed Guidelines revisions. (Pub. Resources Code, § 21083(e).) A lead agency also has the discretion to establish the thresholds of significance for use in reviewing a project's environmental impacts. (See CEQA Guidelines, § 15064(b).) Based on existing case

law, a lead agency must evaluate any substantial evidence supporting a fair argument that, despite compliance with thresholds, the project's impacts are nevertheless significant. (*Protect the Historic Amador Waterways, supra*, 116 Cal.App.4th at pp. 1108-1109; see also *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 112-113.) Additionally, the commenter makes several unsubstantiated assertions about results of eliminating automobile delay from environmental review, but provides no suggested revisions to the proposed rulemaking. Please also see Master Response 20 regarding broad policy matters.

Comment 50.50

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.

Response 50.50

The Agency is not making a change in response to this comment. In general, pursuant to CEQA's statutory scheme, activities that are exempt are not required to undergo environmental review.

Comment 50.51

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.

Response 50.51

Please see response 50.37. The Agency does not have control over future litigation. Additionally, the commenter discusses topics that are outside the scope of the rulemaking package. Thus, the Agency declines to comment further upon the merit of this comment. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 50.52

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. 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.

Response 50.52

The commenter does not propose any specific revisions to the rulemaking package. The comment is directed at the Legislature and thus this comment is outside the scope of the proposed rulemaking. Thus, the Agency declines to comment further upon the merit of this comment and to make any changes in response. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 50.53

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

Response 50.53

The Agency is not making a change in response to this comment. The "blanket policy" the commenter mentions is found in Public Resources Code section 21099(d)(1). The Agency does not have the authority through this rulemaking to change the statute. Additionally, the commenter discusses topics that are outside the scope of the rulemaking package. Thus, the Agency declines to comment further upon the merit of this comment. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 50.54

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.

Response 50.54

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. Additionally, the commenter discusses topics that are outside the scope of the rulemaking package. Thus, the Agency declines to comment further upon the merit of this comment. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 50.55

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.

Response 50.55

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. Additionally, the commenter discusses topics that are outside the scope of the rulemaking package. Thus, the Agency declines to comment further upon the merit of this comment. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 50.56

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.

Response 50.56

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. Additionally, the commenter discusses topics that are outside the scope of the rulemaking package. Thus, the Agency declines to comment further upon the merit of this comment. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 50.57

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, Californian's 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

Response 50.57

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. Additionally, the commenter discusses topics that are outside the scope of the rulemaking package, and the comment appears to be directed at the Legislature. Thus, the Agency declines to comment further upon the merit of this comment. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 50.58

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.

Response 50.58

The Agency is not making a change in response to this comment. In proposing this regulatory package, the Agency is considering revisions to the CEQA Guidelines that reflect recent legislative changes to CEQA, clarify certain provisions of the existing Guidelines, and update the Guidelines consistent with recent court decisions. The Agency does not have control over a lead agency ultimate decision as to the length of an environmental document. Additionally, the commenter discusses topics that are outside the scope of the rulemaking package, and the comment appears to be directed at the Legislature. Thus, the Agency declines to comment further upon the merit of this comment. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 50.59

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.

Response 50.59

The Agency is not making a change in response to this comment. The commenter does not propose any specific revisions to or provide specific comments about the rulemaking package. The Agency will take into consideration the commenter's suggestions in this comment, and will also forward them to OPR for its consideration. The Agency further notes that the proposed rulemaking package is intended to make the process easier and quicker to implement, and better protect natural and fiscal resources consistent with California's environmental policies.

Comment 50.60

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.

Response 50.60

The commenter does not propose any specific revisions to the rulemaking package. The comment is directed at the Legislature and thus this comment is outside the scope of the proposed rulemaking. Thus, the Agency declines to comment further upon the merit of this comment and to make any changes in response. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 51 - Environmental & Regulatory Specialists, Inc. (2)

Comment 51.1

Thank you for the opportunity to submit supplemental 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 economy. These supplemental comments express concerns about the potential effects from the legislature's past and
potential future actions and the effects the proposed CEQA Guidelines Update may have on jobs and the state and local government economies. In the prior comments I reiterated concerns expressed by many who provided written comments to OPR over the potential increased risk of litigation. In my prior comments I expanded their concerns to include the risk of litigation from recent legislative bills including AB 2299 and proposed SB 827 on the adequacy of existing
CEQA documents certified for future planning documents.

Response 51.1

The Agency is not making any changes in response to these comments. The commenter does not propose any specific revisions to the rulemaking package, and the comments are introductory and general in nature. The Agency will address more specific comments in subsequent responses to this letter. The Agency also directs the commenter to its responses to letter number 50, which is the commenter's previous letter.

Comment 51.2

In these supplemental comments I will continue to using these bills as examples. I will demonstrate their potential effects on the CEQA and the choices faced by local governments. In addition, I will explain the situation local governments will find themselves in should the proposed CEQA Guidelines Updates be approved as written. In reviewing the public records, it is my opinion OPR has not adequately characterized the comments received, the gravity of the comments or identified the current unresolved issues in their thematic responses. As a result, I will identify how this has increased tension between the state, local governments and the public. Finally, I will provide recommendations on what steps I recommend the Resources Agency consider. Here is an example of the affect of recent legislation (AB 2299) on CEQA. Let's use a common project example, a proposed subdivision of 250 single-family detached dwellings. To demonstrate the point let's make things simple.
Assumptions:
Applicant: Developer
Project: A 250 unit single-family housing subdivision
Location: City
Project size: 250 acres
General Plan: Residential R-1
Zoning: R-1, 1 acre minimum lot size
CEQA Documentation: EIR
Sensitive on-site resources: none

AB 2299 Compliance: State law - no city ordinance

Response 51.2

The Agency is not making any changes in response to these comments. The comments are introductory in nature and the Agency will address more specific comments in subsequent responses to this letter.

Comment 51.3

Project 1 The Developer files a subdivision application and the city deems the application complete. Let's assume the Initial Study determined the appropriate CEQA document for the project is an EIR whose scope would include analysis potential impacts on a range of topics including Land Use and Planning. On the surface, based on these assumptions there is reasonable expectation that the project would not result in potentially significant impacts to Land Use and Planning due to the project's consistency with the general plan and zoning designations for the site. As part of the EIR analysis, the city will make a finding of the proposed project's consistency with its general plan. Let's assume the city determines the project to be in conformance with its general plan. All other potentially significant impacts are mitigated to a level of less than significant, the EIR is certified and the project receives all entitlements needed for development. The Builder then decides pursuant to AB 2299 to construct 250 ADUs in addition to the 250 dwelling units evaluated in the EIR and approved by the subdivision application. The city has no discretionary authority to deny the 250 ADUs. The Builder submits all appropriate plans and city issues building permit for 500 dwellings. It appears obvious the legislature intended CEQA not to address the impacts resulting from the construction of the 250 ADUs. This is not an unintended consequence. ADUs are exempt from CEQA, considered accessory structures or uses, not new units. It is likely some cities and some residents might be upset, feeling they have been gamed by the system. This would be particularly aggravating if the project was served by qualifying bus service and the ADUs qualified for reduced parking standards.

Response 51.3

The Agency is not making any changes in response to these comments. The commenter discusses Assembly Bill 2299 and its impact on CEQA, which is outside the scope of the proposed rulemaking package. The comment also describes a hypothetical development scenario. Thus, the Agency declines to comment further upon the merit of this comment and to make any changes in response. (Gov. Code, § 11346.9(a)(3).) Please also see Response to Comment 50.8 and Master Response 20 regarding broad policy matters.

Comment 51.4

An application for a second identical subdivision of 250 single-family dwellings is filed by a different Developer in the same city on a similar site. It is likely someone will ask during the EIR scoping process or prior to project approval if the project will include construction of ADUs. The Developer could honestly say there are no plans at this time to construct ADUs. What does the city do?
1. As before, the city could choose to make a determination the project is in conformance with its general plan, certify the EIR and approve the requested entitlements for the project.
One or more of those feeling they have been gamed by the system and not wanting to be gamed again could challenge the project's CEQA document. What will be the likely impact to the city if the

determination of general plan consistency was challenged claiming the general plan and the general plan's certified CEQA document are inadequate, based on a regulatory change in circumstances (CCR§15162), the failure to address the effects of AB 2299) and therefore, the project's EIR is flawed? City options:
a) The city fully aware of AB 2299 denies their general plan and its certified CEQA document are inadequate (a probable response) and it is litigated. The courts could (choose to error on the side of the environment and) impose some form of development moratorium while considering the facts of the case. The court could determine there is no merit and dismiss the suit. Ultimately, the court will decide the outcome based on merit. One party will prevail, one party will not prevail. This process could take a considerable period of time and expense and the city runs the risk of losing.
b) The city may elect to avoid the threat of litigation and update its general plan. During this process the city may try to avoid a development moratorium by imposing some level of development restrictions. The success of this strategy is political and should be viewed on a case by case basis (city by city). Cities facing high opposition to increased development are at higher risk of litigation. In updating its general plan the city would determine how many potential ADUs could be constructed within the city pursuant to AB 2299 (and/or dwelling units permitted by SB 827 (if approved)) and estimate the number of ADUs expected to be constructed over the life of the general plan. The city would then determine if additional supplemental CEQA documentation would be required for the update to its general plan. Assuming supplemental CEQA documentation is needed, the city will be cognizant of the threat of CEQA litigation and could choose to error on the side of the environment (leaning toward the worst-case assumptions (greater number of ADUs constructed)) knowing their methodology could be challenged as speculative because no historical data exists for all types of ADUs permitted by AB 2299. If the city chooses to lean toward the worst-case assumptions for implementation of AB 2299 in its general plan update (more ADUs will be constructed than they actually believe will be constructed) the analysis could identify the need for significantly greater development constraints and infrastructure upgrades resulting in general plan policy changes and development restrictions throughout the city. This process could take a considerable period of time and expense; Conservative over-planning will have a significant adverse economic impact on the city; and The risk of litigation will be present.
c) The city could chose to use what it considers a reasonable assumption of the number of ADU constructed through the general plan's horizon year. Perhaps adopt a mid-range projection indicating to the public it will periodically update its projections. Should the city take this course it faces litigation from one or more of those feeling they have been gamed by the system and not wanting to be gamed again challenge the general plans CEQA document citing the fact that the city has no discretionary authority to deny ADUs and knowing if the general plan CEQA document is certified and the general plan is approved additional in-fill development will occur. For coastal cities the general plan update will likely include a revision to their Local Coastal Plan. Another time consuming process, exposing the city to the potential for litigation, additional delay and expense.

Response 51.4

The Agency is not making any changes in response to these comments. The Agency does not have control over the individual decisions by applicants, lead agencies, and the courts. The commenter also does not propose any specific revisions to the rulemaking package, and discusses topics that are outside the scope of the proposed rulemaking package. Thus, the Agency declines to comment further upon the

merit of this comment and to make any changes in response. (Gov. Code, § 11346.9(a)(3).) Please also see Response to Comment 50.8 and Master Response 20 regarding broad policy matters.

Comment 51.5

Project,1 the EIR could identify the potential impacts should ADUs be constructed at some time in the future, noting they are not a part of CEQA and are being provided for information purposes only. Additional CEQA mitigation measures and/or subdivision conditions of approval based on the potential for construction of ADUs could subject the city to legal challenge from the Developer (increased road/intersection improvements, up-sized infrastructure requirements, increased impact fees or other exactions that would have the effect of devaluing the project). Alternatively, if the potential adverse impacts from construction of ADUs are not included in the EIRs alternatives analysis and mitigation measures or equivalent conditions of approval imposed for identified potentially significant adverse physical impacts on the environment from the future construction of ADUs there would be at an increased risk of litigation to the Developer and city from those feeling gamed by the system. Either way the risk of litigation is increased. For coastal cities the general plan update will likely include amendment to its Local Coastal Plan. Another time consuming process, exposing the city to the potential for litigation, additional delay and expense.

Response 51.5

Please see response 51.4.

Comment 51.6

3. Based on the threat of litigation, the city does not take action, delays action or denies the Project. The result is a potential negative impact to jobs and the economy carrying with it an increased risk of litigation from the Developer against the city.
4. Based on the threat of litigation, the Developer sees the handwriting on the wall and does not file the subdivision application or withdraws the application. The result is a potential negative impact to jobs and the economy. In general, the same potential for litigation challenging the adequacy of a general plan and its certified CEQA document cited in the example above applies to any project proposing to intensify an urbanized area whether it is a mixed use, commercial, multi-family, affordable housing project. This increased risk of litigation is not restricted to the states 480+ cities and 58 counties. It includes the 18 metropolitan planning organizations and
county or regional governing authorities who receive data from their members and prepare future planning documents subject to CEQA.

Response 51.6

Please see response 51.4.

Comment 51.7

Growth Projections: Many local governments will provide future growth projections based on whatever historical data they have to associations of governments and the state when updating their housing elements and obtaining their RHNA numbers. The provision of future growth projections based on

historical data which does not account for regulatory changes in circumstances increases the risk of litigation to all parties involved in the process.

Response 51.7

The comment addresses methodologies for growth projections. The comment does not address any specific provision in this proposed rulemaking, and so the Agency will not make any changes in response to this comment. Please also see Master Response 20 regarding broad policy matters.

Comment 51.8

Need to Amend General Plans and local Coastal Plans: A number of commenter's stated in their written comments to OPR that general plan amendments or updates would be required following adoption of the proposed CEQA Guidelines Update due in part by the conversion from a Traffic LOS metric to a Transportation VMT metric. Converting general plans to a VMT metric will affect a wide range of general 1 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 plan policies affecting implementation of planned infrastructure and infrastructure funding. In addition to the time and cost of conversion, the 480+ cities and 58 counties face an increased risk of litigation each time they amend or update their general plans and local coastal plans. Why have these costly crumbs and the risks of litigation resulting from implementation of the proposed Guidelines Update not been disclose to the public?

Response 51.8

The commenter claims without evidence that the proposed guidelines would require updates to general plans and local costal plans. Many general plans already require revisions. There is no evidence that the proposed Guidelines themselves would hasten updates beyond existing pressures for revisions. Please also see Master Response 20 regarding broad policy matters.

Comment 51.9

Impact on certified CEQA documents: A number of concerns were expressed that this update will invalidate the transportation impact sections of existing certified EIRs or adopted NDs/MNDs due to a change in circumstances (CCR§15162).

Response 51.9

A subsequent or supplemental environmental document would still be required under the same circumstances as prior to this regulatory update and both a subsequent and a supplemental environmental document require a public review period. (See Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162, 15163.)

Comment 51.10

Need to resize infrastructure and its environmental effects: We would like to express our concerns regarding the need to resize existing and planned infrastructure and the effect on groundwater recharge within urbanized areas from the cumulative effects of in-fill development. In-fill development includes construction of ADUs pursuant to AB 2299. The cumulative impact of increased impervious surfaces from in-fill development in built-out urbanized areas is significant. Infrastructure facilities include storm drains, flood control channels, bridges and utility drainage crossings. The cumulative effects from in-fill could impact projected 100 year
flood levels, and existing development. The cumulative effects have the potential to increase runoff (volume and velocity) and impact the rate of erosion, water quality resulting in the potential to impact public health and safety, sensitive/protected species and their habitats within stream channels and coastal resources.

Response 51.10

The Agency is not making any changes in response to these comments. The commenter's concerns would presumably be addressed by local agencies and their environmental review process for projects. The commenter also does not propose any specific revisions to the rulemaking package, and discusses topics that are outside the scope of the proposed rulemaking package. Thus, the Agency declines to comment further upon the merit of this comment and to make any changes in response. (Gov. Code, § 11346.9(a)(3).)

Comment 51.11

Entities that have not commented: Notably missing from the written comments provided on the Resources Agency's website are comments from the U.S. Army Corps, RWQCB, and public utility and service entities. We suggest they be contacted and asked if they care to provide comments on the cumulative effects of in-fill within built-out urban areas prior to any action on the CEQA Guidelines Update.

Response 51.11

The Agency is not making any changes in response to this comment. The Agency has solicited input from the public in general, including public agencies, as part of this rulemaking process. Additionally, the Agency, OPR, or both have gathered input from close to 200 stakeholder meetings, presentations, conferences, and other venues, prior to the rulemaking process. The Agency does not have control over whether certain agencies have chosen to comment on the proposed Guidelines revisions. The Agency did receive comments from various service providers, however, including water districts, as well as entities whose membership includes utilities, such as CCEEB and SMUD.

Comment 51.12

Statutory Authority: A number of commenter's expressed written concerns to OPR that it was exceeding its statutory authority under the Administrative Procedures Act requiring regulations to be clear, necessary and legally valid. It is clear the proposed CEQA Guidelines Update is anything but clear! Commenter's also questioned OPR authority to eliminate reference in CEQA to voter approved legislation (example: Congestion Management Programs) and the need to mandate a VMT Metric.

Response 51.12

The Agency is not making any changes in response to this comment. The comment appears to be directed at OPR. The Agency, not OPR, has the obligation to certify and adopt the proposed Guidelines revisions pursuant to the Administrative Procedure Act. (Pub. Resources Code, § 21083(e).) The commenter also makes a general claim about the Administrative Procedure Act, but does not point to a specific example. The Agency's authority to make these changes is set forth in detail in the Initial Statement of Reasons.

To the extent that the commenter raises concerns about the proposed changes to Appendix G and revisions to the question about congestion management programs, Appendix G is merely a sample format that a lead agency has discretion to modify. Please see Master Response 18 regarding Appendix G. Regarding the comment about vehicle miles traveled, Public Resources Code section 21099 requires OPR to develop a new metric for transportation impacts, which OPR did with significant public input.

Comment 51.13

CEQA was intended as an evaluation document not a document intended to promote a political agenda. In this regard the state legislature, the Resources Agency and OPR have each engaged in social engineering. The legislature has passed Bills (one example being AB 2299) exempting activities from CEQA that will result in potentially significant adverse physical impacts to the environment. The Resources Agency and OPR have previously updated the CEQA Guidelines to exempt or streamline projects (such as affordable housing project density bonus units and in-fill projects) which could result in potentially significant adverse physical impacts to the environment. Previous OPRs Guideline updates have had a relatively minor effect on
the environment and have not generated significant controversy.

Response 51.13

The Agency is not making any changes in response to this comment. The commenter does not propose any specific revisions to the rulemaking package, and only presents generalized comments without specific examples. The last comprehensive update to the CEQA Guidelines occurred in the late 1990s. The proposed rulemaking includes proposed changes to many different topics, rather than responding ad hoc to legislative directives or legal opinions, and thus this package is more robust than those proposed in the recent past.

Comment 51.14

In this case, OPR is attempting to radically change the way Californian's live through provisions incorporated throughout the proposed Guidelines Update. None are more evident than the "presumptions" included in evaluating thresholds of significance designed to encourage in-fill development, or the proposed elimination of Traffic (LOS) analysis from CEQA and the shift to Transportation analysis (VMT) to allow in-fill development to be streamlined through the CEQA process. To support its decision OPR has cherry picked analysis not representative of the conditions existing throughout California. OPR acknowledges their presumptions may not be correct, and are subject to rebuttal, but believes it is within their authority and appropriate to include presumptions in the proposed CEQA Guidelines. However, the presumption that
development located near transit may cause less than significant transportation impacts is inconsistent with public resources code section 21099(b)(e)'s prohibition on creating a presumption for anything other than "automobile delay'. OPR's presumption in section 15064.3(b)(1) that development near

transit may be presumed to create less than significant transportation impacts is inconsistent with the Legislature's prohibition on creating a presumption "related to air quality, noise, safety, or any other impact associated with transportation." Numerous written concerns were expressed to OPR about the appropriateness of the state establishing this type of presumption and the need for any presumptions to be established by the lead agency, not the state. One example being written comments submitted to OPR by the **City of Los Angeles** in 2016. The City concluded: *"Presumption of Less than Significance of Projects Near High Quality Transit While OPR has made substantive improvements to the Guidelines that clarify the lead agencies ability to develop significance thresholds, we continue to have reservations with the language as proposed in Section 15064.3(b)(1), which provides presumption of less than significant solely based on project proximity to existing major transit stops and stops along high quality transit corridors (HQTC). Based on data acquired from the Southern California Association of Governments (SCAG), staff found that qualifying areas around HQTC and major transit stops constitute 80 percent of the urbanized area within the City of Los Angeles boundaries. The qualifying areas included large sections of the city with very low residential density and low transit utilization, though by definition would qualify for a presumption of less than significance based on proximity of a transit stop with a corresponding bus service that operates within minimum 15-minute peak headways. An evaluation that concludes that large scale development project in such locations would result in a less-than-significant transportation impact would be hard to defend to the public solely based on qualifying service, rather than transit utilization or other land use factors associated with low vehicle miles travelled (VMT). We continue to affirm that lead agencies should be allowed to make the determination when a project would be presumed to be less than significant based on supporting evidence."* The inclusion of presumptions exceeds the provision of PRC § 21083.1 which states, the guidelines shall not "imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines." While the proposed presumptions are rebuttable, they are intended to influence/bias the decision making of the lead agency and the public. If the state feels presumptions are appropriate for inclusion in the Guidelines, they should be neutral, rules/guidelines for the lead agency to use in determining presumptions if it so chooses. Any changes to the Guidelines should be guided by the fundamental principle of CEQA, that being, when there is controversy supported by fact over one or more potentially significant adverse physical effects of a project on the environment, the lead agency should proceed cautiously and error on the side of the environment. In this case the OPR in its development of the proposed OPR Final Guidelines Update has not following this fundamental principle. Presumptions by definition are biased. Presumptions are not neutral or independent. OPRs proposed statewide presumptions have not evaluated their potential adverse impacts on the environment. There is a high level of controversy supported by facts from numerous organizations expressing concern, questioning OPRs interpretation of SB 743 and legal authority, recommending OPR seek legal counsel over the potential adverse physical impacts to the environment from the elimination of Traffic (LOS) analysis from CEQ (eliminating evaluation of traffic delay/congestion and its secondary effects on the environment). This path of transforming CEQA from a neutral, independent, non-biased evaluation tool to a tool encouraging a political agenda through social engineering is wrong and increases the risk of litigation to the state (i.e., the tax payers) and lead agencies when preparing CEQA documents. The Untied State is a country of laws. Our state agencies should implement the law not use their positions to interpret the law to establish policy. The building community should be provided a clear set of rules. If they follow the rules they should be allowed to build without undue regulatory delay. Not only does OPR fail to comply with the Administrative Procedures Act by not creating clear, necessary and legally valid Guidelines, but OPRs biased presumptions and provisions allowing interpretation of its Guidelines by lead agencies will lead to uncertainty and inconsistent application of standards which equals litigation.

Response 51.14

The Agency is not making any changes in response to this comment. The comment appears to be directed at OPR. The Agency, not OPR, has the obligation to certify and adopt the proposed Guidelines revisions pursuant to the Administrative Procedure Act. (Pub. Resources Code, § 21083(e).) The commenter also makes a general claim about the Administrative Procedure Act, but does not point to a specific example. Please see Master Response 4 regarding the presumption of less than significant impact for projects located near transit.

Comment 51.15

Tension Between the State, Local Governments and the Public: The Resources Agency needs to be cognizant of the existing tension between the state legislature, local governments and the public when considering updates to the CEQA Guidelines. While numerous organizations have interacted with and submitted comments to OPR the general public has no idea whatsoever of what is being considered and its potential effect the proposed CEQA Guidelines Update will have on their livelihood. Given the state legislatures goals for the future and the lack of progress in meeting those goals, the legislature believed it needed to intervene and did so by passing bills to help meet the state's housing shortage and increase housing affordability. There are many that believe additional intervention is needed to affect a transformation from individual mobility to accessibility oriented transport planning with the focus of development concentrated in in-fill areas. There is no one step to accomplish this paradigm shift. There are many that disagree with the states goals and are resisting. The legislative has taken steps and is proposing additional steps (SB 827) to accomplish its goals, focused on in-fill within build-out communities.

Response 51.15

The Agency is not making any changes in response to this comment. The commenter does not propose any specific revisions to the rulemaking package. Please also see Master Response 20 regarding broad policy matters.

Comment 51.16

One of the proposed steps in this transformation is the reliance solely on a VMT metric. Experts agree the VMT metric has great potential for transportation planning and agree it does not evaluate traffic delay. The experts point out the VMT metric appears best suited to regional programmatic analysis and is not well suited to individual project analysis. Its results can vary dramatically between rural areas and urban area. When the metric is properly tuned, the VMT metric can be an important tool in calculating GHG emissions, noise levels and air quality emissions. OPRs justification for this proposed shift at this time is OPRs interpretation of SB 743. There are many commenters' who submitted written comments to OPR who disagree with OPRs interpretation. One this is clear, SB 743's intent. SB 743 stated intent is:

"it is the intent of the Legislature to balance the need for level of service standards for traffic with the need to build infill housing and mixed use commercial developments within walking distance of mass transit facilities, downtowns, and town centers and to provide greater flexibility to local governments to balance these sometimes competing needs."

OPRs proposed CEQA Guidelines Update do not contain provisions which "balance the need for level of service standards for traffic with the need to build infill housing and mixed use commercial developments within walking distance of mass transit facilities, downtowns, and town centers and to

provide greater flexibility to local governments to balance these sometimes competing needs" OPRs proposal simply proposes to eliminate the need for LOS from CEQA to accommodate in-fill housing.

Response 51.16

Please see response 51.14.

Comment 51.17

Because of this failure, numerous comments were submitted expressing concerns to OPR that its proposal failed to include some other metric to evaluate the physical environmental impacts caused by traffic delay. OPR responded that LOS would remain a metric used for Traffic analysis, but would not be part of CEQA. This position has increased tension because publicly funded planning studies, such as traffic analysis used in general plan circulation elements, are part of CEQA. OPRs position clearly raises the risk of litigation for local governments.

Response 51.17

Please see response 51.14. The comment does not address any specific provision in this proposed rulemaking, and so the Agency will not make any changes in response to this comment. Please also see Master Response 20 regarding broad policy matters.

Comment 51.18

Traffic congestion on major roadways can impact nearby roadways and neighborhoods as drivers seek alternative routes to reach their destinations. The effects of traffic congestion are similar to temporary road/lane closures caused by construction or and accidents, except they are not temporary. In addition to impacting emergency response times, traffic delay impacts the time of those people affected by the delay and business, including trucking and freight movement which are responsible for a large part of the state's economy. Delay affects the quality of life and a host of other environmental factors. It has been long said that time equals money. Transportation delay places pressure on those caught in the delay to make up for lost time (talking and texting while driving) increasing health and safety risks. This is the today's reality. These concerns were raised by organizations in their written comments to OPR, but not disclosed in OPRs thematic responses. Projects proposing increased urban densities in built-out cities result in increased traffic congestion and other secondary impacts with little to no benefits seen by local residents. These types of projects are increasingly resulting in voter initiatives to take the power away from local governments. Project approvals occur only after a public vote of approval. This voter initiative process costs the city (tax payers) money. Developers and decision makers recognize this cost, the increased tensions associated with voter initiatives and their decisions are influenced by the likelihood of a project being approved by a vote of the public.

Response 51.18

Please also see Master Responses 9, addressing planning for congestion, and 20, regarding broad policy matters.

Comment 51.19

Many communities built-out since the 1980's employ the planned community, mixed use land use model. Infrastructure is sized and balanced for the ultimate build-out of the planned community.

Appropriately sized open space areas, parks, schools and environmental preserves are established. The planned community is consistent with the regional jobs/housing balance. Infrastructures, including roads, storm drains sewer and domestic water needs are sized to meet the planned community's needs. They are consistent with air quality management plans and a host of other plans designed to reduce their impact on the environment. Infrastructure is not overbuilt or upsized beyond the projected need upon build-out. There is no anticipation that significant additional density or urban intensity will occur. Significant financial investments are made in these communities based on the general plan and its master plans. State mandated residential in-fill legislation is not wanted in many built-out communities because it upsets this balance. State mandated in-fill is seen as big brother trying to impose/force social engineering. This is a recipe for litigation in many parts of California. The state's policies of accommodating unlimited population growth within the California which has finite resources is kicking the can down the road; and concentrating new development in in-fill areas and proposed legislation like SB 827 are seen as government trying to force social engineering within built-out communities.
Many local governments are caught in the middle between constituents favoring "no-growth", "not in my backyard" or those for "responsible development" and the cities desire to do their part to meet the state's environmental goals. Local governments are also a business providing necessary public services and to protect the public's health and safety. Local governments don't want conflict, especially with the state where the state can use the threat of cutting off funding. Historically, local governments have had the ability of negotiating solutions. A compromise between state policy directives and community desires. Now through bills like AB 2299 and proposed SB 827 the state legislature has taken discretionary authority away from local governments, severely limiting their ability to find solutions increasing the risk of litigation. The legislatures past and proposed actions are forcing the cities to rethink their ability to accommodate future population growth beyond the level anticipated in their general plans.

Response 51.19

Please also see Master Responses 9, addressing planning for congestion, and 20, regarding broad policy matters.

Comment 51.20

While the intent of the legislature, the Resources Agency and OPR is commendable, (to solve the housing shortage, increase efficiency, dramatically reduce GHG emissions and create a transformation from individual vehicles to mass transit) the manner in which the legislature is implementing its goals is facing resistance by local governments and their constituents throughout the state, increasing tensions and the risk of litigation. The potential impacts to jobs and state's economy from the increased risk of CEQA related litigation is significant. Business associations throughout the state have submitted written concerns to OPR warning of dyer economic impact should the proposed Guidelines Update be adopted as written. Yet OPRs thematic responses to comments fail to express the gravity of these concerns. In considering the proposed CEQA Guidelines Update, OPR received comments from numerous organizations and legal professionals warning against proceeding along the proposed course of action. While OPR has tried diligently to find solutions to comments received from the public, organizations and stakeholders many of the major concerns identified early in the CEQA Guidelines Update process remain unresolved. In addition, recently adopted legislation, including AB 2299, throws fuel on the fire, increasing tensions and inviting litigation. The proposed updates to the CEQA Guidelines are front and center in this debate.

Response 51.20

The commenter does not propose any specific revisions to the rulemaking package. The comment disagrees with OPR's characterization of comments it received on early drafts. The Agency recognizes that this rulemaking package has generated controversy. Nevertheless, for the reasons set forth in the Initial Statement of Reasons and these responses to comments, the Agency will proceed. The comment also appears to be partly directed at the Legislature and thus this comment is outside the scope of the proposed rulemaking. Thus, the Agency declines to comment further upon the merit of this comment and to make any changes in response. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 51.21

Independent Review: The thematic responses prepared by OPR to written comments received throughout the CEQA Guidelines Update process do not adequately describe the range of concerns or characterize the gravity of the concerns expressed to OPR. The thematic responses appear to gloss over the seriousness of many concerns. An independent review and analysis should be conducted. Independent review is the heart of CEQA and should be applied to the Guidelines amendment/update process, particularly involving controversial issues.

Example: OPR stated:
 "Some comments suggested that changes in CEQA analysis may become an issue in future litigation, and that the proposal should reduce litigation risk to the extent possible." You may recall the group of lawyers who provided written comments to OPR and met with OPR in April 2015 following their independent review of the proposed CEQA Guidelines Update. They concluded: *"The Proposal intentionally makes traffic congestion levels worse in the hope of persuading California drivers to stop or substantially curtail driving automobiles."*
The "Proposal does not reduce CEQA compliance costs and litigation risks."
Nowhere in the thematic responses is this topic addressed even thought this opinion was expressed in numerous others in written comments submitted to OPR.

Response 51.21

The commenter does not propose any specific revisions to the rulemaking package. OPR prepared the thematic responses to comments as part of its pre-rulemaking process. OPR is not required to prepare such responses but did so for purposes of transparency. Because those responses were thematic in nature, they could not specifically address each individual comment in depth. Moreover, OPR's pre-rulemaking activities are not subject to the APA. This comment is outside the scope of the proposed rulemaking. Thus, the Agency declines to comment further upon the merit of this comment and to make any changes in response. (Gov. Code, § 11346.9(a)(3).)

Comment 51.22

Another example is the disregard for the conclusions of the **Institute of Traffic Engineers**, the preeminent authorities on traffic and transportation engineering in their February 14, 2013 written comment to OPR. ITE states: *"VMT analysis is a useful tool that is applied in many transportation applications. However, VMT analysis requires estimates of both trip generation and trip length. Neither of these performance measures can be easily calculated or predicted with a high degree of accuracy. It is*

recommended that both roadway capacity/LOS analysis and VMT analysis continue to be used in various aspects of transportation analysis."
One of the many concerns raised by a number of commenter's was the inability of the VMT metric to accurately predict results. VMT analysis presents different results at the local, county-wide and regional levels. It was demonstrated by example in written comments to OPR how working with averages can lead to misleading results, depending on how the averages are used. The thematic responses mischaracterized the written recommendations submitted to OPR. The maintenance of both LOS and VMT metrics is a common recommendation expressed by numerous transportation engineers, municipalities, organizations and legal professionals in written comments to OPR. Many expressed concerns citing instances where VMT analysis would not be appropriate and expressed concerns over the assumptions to be used. These comments did not recommending a "phase in" period as OPRs thematic response indicate, but rather, questioned the fundamental feasibility of deleting the LOS metric and converting solely to a VMT metric and the feasibility of implementing a uniform statewide standard given the diverse conditions existing throughout the state.

Response 51.22

See response 51.21. The Agency is not making a change in response to this comment. The comment points to early comments submitted on OPR's early drafts of the proposal. Please see Master Response 2 explaining why vehicle miles traveled is the most appropriate measure of transportation impacts. Regarding the commenter's quote of ITE, level of service analysis requires modeling that inherently features greater uncertainty than modeling for vehicle miles traveled, first because trip generation must also be assessed for a level of service analysis, and second because level of service also requires both trip routing and microsimulation modeling at assessment location, both of which add not only substantial error but also cost and time to an assessment. The commenter claims without evidence that "VMT analysis presents different results at the local, county-wide and regional levels," but does not request a specific change to the proposal.

Comment 51.23

Another example is the disregard for the conclusions of the **California State Association of Counties** in their February 14, 2014 written comment to OPR. CSAC states:
"CSAC recognizes the limitations of LOS analysis in certain instances; however, we believe that roadway capacity analysis still has a role in the CEQA Guidelines and in the design, planning, and operations of roadways." This concern was expressed by numerous others who provided written comments to OPR. OPR responded agreeing that LOS analysis is still needed, but proposes it will no longer be a part of CEQA. This position is taken for one reason, to allow in-fill projects to be streamlined through CEQA. This position increases the risks of litigation to cities and counties. However, this fact, (the increased risk of litigation from the omission of LOS in CEQA documents), is not included in OPRs thematic responses.

Response 51.23

See response 51.21. The Agency is not making a change in response to this comment. The comment points to early comments submitted on OPR's early drafts of the proposal. Please see Master Response 2 explaining why vehicle miles traveled is the most appropriate measure of transportation impacts.

Comment 51.24

Yet another example is the disregard for the conclusions of the **Orange County Transportation Authority** in their February 14, 2014 written comment to OPR3 which state:

"Additionally the legal issues raised with replacing LOS with other measures could introduce major legal risks into the CEQA process. For instance consideration should be given to how LOS is used in federal law, especially as it relates to National Environmental Policy Act analysis and transportation reporting requirements. We encourage OPR to consult with legal experts on this matter." Many commenters's requested OPR conduct a pilot program prior to taking any action on the CEQA Guidelines Update. The comments cited circumstances where VMT analysis was not appropriate or concerns over the applicability modeling assumption for range of land use conditions existing within the state. Other commenter's raised concerns about the time and cost of converting from an LOS metric to a VTM metric. Local agencies commented they may have neither the requisite skill nor the funding to undertake this approach. Local agencies cited the need to amend their general plans and economic hardship of this approach. The skill sets needed and funding to implement this approach and the need to update general plans and its economic impacts were not included in OPRs thematic responses. The California Coastal Commission cited in their written comments to OPR the need for jurisdictions within the Coastal Zone to update their Local Coastal Plans. Still others raised concerns over the legal exposure from such amendments. These concerns were also not included in OPRs thematic responses. Based on a review of the public records, many organizations submitted detailed written comments expressing concerns over major provisions of the proposed Guidelines Update recommending against OPRs proposed approval unless the Guidelines were modified. OPRs proposed Final CEQA Guidelines Update have not resolved the underlying major concerns. The fact that these concerns remain unresolved is not reflected in OPRs thematic responses to comments received.

Response 51.24

See response 51.21.

The comment points to early comments submitted on OPR's early drafts of the proposal. Please see Master Response 2 explaining why vehicle miles traveled is the most appropriate measure of transportation impacts.

Comment 51.25

Based on the many unresolved issues and inconsistencies with the Proposed Guidelines Update many expressed concerns about the increased risk of litigation and the effect to the state's economy. The **Association of California Cities Orange County** provided written comments to OPR in 2015. ACCOC concluded: *"Most poignantly, these rules would threaten the General Plans of the more than 400 cities in California. These publicly developed plans contain significant congestion relief and mobility strategies to achieve existing state mandates. It is our belief that eliminating Level of Service in favor of Vehicle Miles Traveled as the standard of performance will threaten these policy documents. Our jurisdictions have studied, funded and approved projects that improve mobility and decrease VMT through local program, not state mandates. It is counterproductive to move the goal posts at this time. The legal exposure to cities is also enormous and potentially crippling. Active approved environmental impact reports would be challenged based on these new rules. Approved projects would be placed on hold and economic progress halted. Transportation improvements as part of those plans would stall, which would have the exact opposite impact desired by SB 375 and SB 743. We had hoped that CEQA reform for smart transit projects would be included as part of this implementation and rule making. Alas, the opposite is true: good projects will take longer, cost more and ensure future congestion. These rules are self defeating."*

Response 51.25

See response 51.21. The comment points to early comments submitted on OPR's early drafts of the proposal. Please see Master Response 2 explaining why vehicle miles traveled is the most appropriate measure of transportation impacts.

Comment 51.26

Based on OPR's thematic responses the public and decision makers would have no indication of the seriousness of concerns expressed to OPR regarding the proposed Guidelines Update unless they reviewed every written comment submitted to OPR.
A partial list of these organizations included the following:
Partial list of organizations, transportation engineers and legal experts recommending against the wording included in OPR's proposed CEQA Guidelines Update
Adams Broadwell Joseph & Cardozo
American Planning Association California Chapter
Association of California Cities, Orange County
Automobile Club of Southern California
Bat Area Council
Building Industry Association
Building Industry Association of Southern California Inc
BIZFED, the Los Angeles County Business Federation
Brandt Hawley Law Group
CALCHAMBER, et. al.
California Chamber for Environmental and Economic Balance
California Coalition of California Neighborhoods
California Department of Fish and Wildlife
California Economic Summit
California Infill Federation
California Manufacturers & Technology Association
California Rural Counties Task Force
California State Association of Counties
California Unions for Reliable Energy
Central City Association of Los Angeles
Coalition for San Francisco Neighborhoods
Chatten-Brown & Carstens LLP
City/County Association of Governments of San Mateo County
City of Anaheim
City of Chula Vista
City of Corona
City of Cupertino
City of Escondido
City of Glendale
City of Goleta
City of Irvine
City of Irvine Chamber of Commerce
City of Laguna Hills
City of Los Angeles
City of Menifee

City of Mission Viejo
City of Moreno Valley
City of Napa
City of Oakland
City of Riverside
City of Redding
City of Roseville
City of San Diego
City of San Marcos
City of Santa Monica
City of Santee
City of Shafter
Coalition for San Francisco Neighborhoods
Council of INFILL Builders
County of Colusa Transportation Commission
County of El Dorado
County of Kings
County of Riverside Office of County Council
County of Riverside Transportation and Land Management Agency
County of Sacramento Department of Community Development
County of San Bernardino
County of San Diego
County of San Joaquin
County of San Mateo Joint Comments: Department Public Works and Planning & Building
County of Santa Barbara
County of Santa Clara Department of Planning and Development
County of Santa Clara Roads and Airports Division
County of Santa Clarita Office of the County Executive
County of Trinity
County of Tuilume
County of Ventura
County Sanitation Districts of Los Angeles County
Courtney Ann Coyle, Attorney at Law
Culver City
Environmental Defense Center
Federation of Hillside and Canyon Associations
Gatzke Dillon & Balance LLP
Gibson Transportation Consulting Inc
Institute of Traffic Engineers
Kern Council of Governments
KOA Corporation
League of California Cities
Los Angeles Area Chamber of Commerce
Mary Miles, Attorney at Law
Mono County Community Development Department
NAIOP Commercial Real Estate Development Association
On Track North America and California Clean Energy Committee
Orange County Business Council

Orange County Council of Governments
Orange County Transportation Authority
PAH Transportation Consultants
Planning & Conservation League
Port of Long Beach
Public Counsel
Richmond Community Association
Riverside County Transportation Commission
Rural County Representatives of California
Sacramento Area Council of Governments
San Bernardino Association of Governments
San Diego Association of Governments
San Diego Regional Chamber of Commerce
San Francisco Planning Department
Santa Barbara County Association of Governments
Serra Club & Center for Biological Diversity
Sharks Sports & Entertainment
Sonoma County Transportation Authority/Regional Climate Protection Authority
Southern California Association of Governments
Southern California Leadership Council
State Building and Construction Trade Council of California
Studio City Neighborhood Council
Sunset-Parkside Education and Action Committee
Thomas Law Group
Transolutions Inc.
Transportation Agency for Monterey County
Transportation Corridor Agencies
Valley Industry and Commerce Association

Response 51.26

The Agency is not making any changes in response to this comment. The commenter does not propose any specific revisions to the rulemaking package. The Agency, OPR, or both have solicited input from the public multiple times since 2013, and have considered and incorporated public comments in this proposal. The Agency disagrees with the commenter's characterization of both the early comments submitted to OPR and OPR's response. All of those documents are included in this rulemaking record, and were made available for public review. The Agency recognizes that some of the proposed changes have been controversial. It has set forth its reasons for proceeding in the Initial Statement of Reasons and these responses to comments. Please see Master Response 1-11 explaining how this CEQA Guidelines responds to the legislative mandate in SB 743, why this proposal is expected to result in substantial cost savings and public health and environmental benefits, and why vehicle miles traveled is the most appropriate measure of transportation impacts, among others.

Comment 51.27

None of the above have stated their belief more clearly or bluntly than the **Building Industry Association of Southern California** (BIASC) in their October 12, 2015 written comment to OPR. To put CIASC's comments into context, the southern portion of the state is projected to accommodate the largest share of the projected increase in population and development. The Building Industry

Association (BIA) of California represents businesses that would profit from in-fill development and permit streamlining. For the past 44 years my business has been dependent on development for its lively hood. I could not agree more with the BIASC's conclusions. BIASC stated: *"BIASC believes there is an absolute need for a comprehensive overall of the CEQA Statue and Guidelines, as over the decades it has been amended and "updated" and as a result strayed into areas of nonenvironmental impact relevance including attempts at social engineering" "BIASC suggests that what is needed to re-invigorate this vital California environmental protection statute is a complete intensive overhaul and cleansing for original intent and purpose"*

Response 51.27

The Agency is not making any changes in response to this comment. The last comprehensive update to the CEQA Guidelines occurred in the late 1990s. The proposed rulemaking includes proposed changes to many different topics, rather than responding ad hoc to legislative directives or legal opinions, and thus this package is more robust than those proposed in the recent past. The proposed rulemaking is a balanced package that is intended to make the CEQA process easier and quicker to implement, and better protect natural and fiscal resources. The proposed revisions provide greater clarity in the interpretation of the Guidelines, and are consistent with existing case law and legislative directives. Please also see Master Response 20 regarding broad policy matters.

Comment 51.28

Businesses organizations throughout the state expressed grave concerns. One such organization **BIZFED, the Los Angeles County Business Federation** eloquently reflected the private business sectors concerns. BIZFED is an organization in the southern portion of the state standing to profit from in-fill development and permit streamlining. BIZFED represents 170 business organizations representing 390,000 employers with 3.5 million employees throughout LA County. BIZFED states: *"The vast majority of the OPR proposal shows neither "common sense" nor the "practical experience of processing land use applications." Together with OPR's 2014 proposal to define the act of riding or driving a vehicle for each and any mile – any type of vehicle, including electric scooters and cars – as a new environmental "impact" under CEQA, and to impose elaborate new analytical and unprecedented new mitigation requirements on California projects based on this new "vehicle mile travel impact" - this proposal demonstrates a fundamental misunderstanding of how CEQA is used in practice to delay and derail public and private sector projects that are critical to solving the economic, equity, and environmental challenges of our time." "OPR's proposal to expand CEQA, and increase CEQA's compliance costs, delays, and litigation risks, is also entirely at odds with the Governor's frequent criticism of CEQA and his characterization of CEQA reform as the "Lord's work."* This general sentiment was expressed in written comments to OPR by numerous private sector business organizations like a the chamber of commerce and other legal professionals who expressed concerns OPR was exceeding its scope of authority and the effect of the proposed CEQA Guidelines Update if approved would be detrimental to jobs and the state's economy. Yet these concerns were not stated in OPRs thematic responses.

Response 51.28

The Agency is not making any changes in response to this comment. The comment reiterates early comments on an early draft of OPR's proposal. Please also see Master Response 20 regarding broad policy matters.

Comment 51.29

The **Automobile Club of Southern California** provided written comments to OPR in 2015. The Automobile Club concluded: *"We believe that the proposal exceeds the legislative intent and authority of SB 743 and will result in adverse impacts on the development and delivery of needed transportation improvement projects with long term negative consequences for mobility, safety, economic growth, and quality of life in California."* Given such overwhelming opposition it is unclear why OPR choose to forward to the Resources Agency the proposed Final CEQA Guidelines without first resolving the grave concerns expressed by the commenter's. The consequences identified in comments received on the Guidelines Update are known to OPR, and therefore the consequences resulting from the proposed Final CEQA Guidelines Update are not unintended. Since the majority of projected population growth and development will occur in the southern portion of the state, we caution that if the CEQA Guidelines Update is approved without first resolving in-fill and traffic congestion concerns it could have a divisive effect statewide, throwing fuel on the fire of those wanting a two state solution!

Response 51.29

Please see response 51.28.

Comment 51.30

OPR has received a wide range of comments from the public and stakeholders on the content and direction of the proposed CEQA Guideline Update. There are a number of common concerns including the potential for an increased risk of litigation, potential adverse impacts to the state's economy, feasibility of replacing a Traffic LOS metric with a Transportation VMT metric, the feasibility of establishing a singular statewide transportation metric, the desire to initiate a pilot test program to explore the feasibility of replacing the LOS metric with a VMT metric or other metric prior to updating the Guidelines, and the desire to comprehensively
re-evaluate the CEQA statute and Guidelines. Based on these common concerns, the following recommendations are provided.

 It is recommended the Resources Agency inform the legislature of the increased compliance costs and risks of litigation resulting from recent rule making (example AB 2299), the need for cities and counties to update their general plans and future planning documents to comply with this rulemaking and the potential effects such litigation could have on jobs and state's economy.
 The Resources Agency recommend to the legislature it takes immediate steps to rescind legislation responsible for any potential increased risk of litigation, until solutions are developed,

Response 51.30

The Agency is not making any changes in response to this comment. The comment also appears to be partly directed at the Legislature and thus this comment is outside the scope of the proposed rulemaking. Thus, the Agency declines to comment further upon the merit of this comment and to make any changes in response. (Gov. Code, § 11346.9(a)(3).) Please also see Master Response 20 regarding broad policy matters.

Comment 51.31

It is recommended the Resources Agency re-evaluate the proposed CEQA Guidelines Update and not act at this time or if it does act, make the necessary updates and maintain Traffic LOS metric.

Response 51.31

The Agency is not making any changes in response to this comment. The Agency has already made a round of revisions to the proposed rulemaking in response to public comments, including Guidelines section 15064.3 related to transportation impacts (see the Notice of Public Availability of Modifications to Text of Proposed Regulation, dated July 2, 2018). The Agency further notes that pursuant to Public Resources Code section 21099(b)(2), level of service shall not be considered a measure of significant impact upon the Secretary of the Agency's certification of the Guidelines.

Comment 51.32

It is recommended the Resources Agency conduct case studies on the effects of changing the CEQA Guidelines from a LOS metric to a VMT metric prior to any action approving the proposed Guidelines Update. The case studies should include a number of common examples of projects including a residential in-fill project within built-out communities. The case studies should provide required methodologies and compare the identified significant impacts between the two metrics for each case study. The case studies should include a monitoring program over time to determine feasibility, effectiveness and enforceability.
 In addition to case studies, it is recommended the Resources Agency conduct pilot test programs at locations throughout the state to determine the appropriate transportation metric(s) in compliance with SB 375.

Response 51.32

The Agency is not making any changes in response to this comment. This comment does not propose any specific revisions or recommendations for the proposed rulemaking itself. The Agency also notes that OPR has already prepared a non-binding technical advisory, which includes case studies on using the vehicle miles traveled metric in different land use scenarios.

Comment 51.33

It is recommended the Resources Agency obtain a court opinion confirming their statutory authority make the decisions contained in the proposed CEQA Guidelines Update.

Response 51.33

The Agency is not making any changes in response to this comment. This comment does not propose any specific revisions or recommendations for the proposed rulemaking itself. The proposed revisions are consistent with existing case law and legislative directives for the reasons set forth in the Initial Statement of Reasons.

Comment 51.34

It is recommended the proposed text of the CEQA Guidelines Update, all public comments and records be subjected to review by a qualified panel of independent experts and their findings and recommendations be circulated for public review and comment prior to final action in the CEQA Guidelines Update. It is recommended the panel include members representing both the private and public sectors with knowledge of all industries who submitted comments including legal, transit, transportation engineering, transportation logistics, air quality/GHG emissions, municipal representatives, planning, business, economists, etc. Based on the independent panel's findings and

recommendations it is further recommended the Agency conduct an independent assessment of the burden, cost and legal exposure to cities, counties metropolitan planning organizations and regional governing authorities from implementation of the proposed CEQA Guidelines Update and this assessment be circulated for public review and comment
prior to final action updating the CEQA Guidelines.

Response 51.34

The Agency is not making any changes in response to this comment. During the pre-rulemaking phase, both the Agency and OPR solicited input from the public numerous times since 2013. OPR has also presented at numerous conferences and workshops since 2013 to discuss the Guidelines package, with specific emphasis on the vehicle miles traveled metric. As part of the rulemaking process, the Agency has now solicited two rounds of public comments. The Agency received comments from many experts and has considered those comments in this rulemaking process. The Agency has also prepared a Statement of Regulatory Impact Assessment analyzing the rulemaking's potential financial and economic impacts.

Comment 51.35

As of this time, the general public has no idea of these proposed changes or what LOS or VMT is or its affects on their lifestyle. Given the radical changes in lifestyle resulting from the proposed CEQA Guidelines Update, it is recommended that prior to the adoption by the Resource Agency of any CEQA Guidelines Update involving the deletion of Traffic LOS analysis and replacement with Transportation VMT analysis the Resources Agency initiate a public awareness campaign to insure that each SB 743 requirement, including the VMT metric is understandable to elected officials, local/regional stakeholders and the public.

Response 51.35

Please see response 51.34.

Comment 51.36

It is recommended the Resources Agency comply with PRC § 21083.1 and make available to the public a guidance document on key court decisions identifying issues raised and providing guidance on the changes necessary in preparing and certifying CEQA documents.
 It is recommended the Resources Agency publish Technical Advisories to provide additional detail not suited to the CEQA Guidelines.
One such Technical Advisory would detail the optional use of Transportation VMT analysis in CEQA analysis containing recommended approaches, methodology, and case studies.

Response 51.36

The Agency is not making any changes in response to this comment. This comment does not propose any specific revisions or recommendations for the proposed rulemaking itself. The commenter suggests the Agency provide technical guidance. The Agency also directs the commenter to the documents in the rulemaking package, which explain the legal bases for the proposed revisions and the Agency's interpretation of how the proposed guideline is intended to operate.

Comment 52 - Environmental & Regulatory Specialists, Inc. (3)

Comment 52.1

EARSI intends to submit written comments to the Agency. It would be helpful to know if the Agency has made changes to OPRs proposed Final Guidelines Update, and if so what those changes are. Can you please clarify.

Response 52.1

Since the January 2018 posting of the Notice of Proposed Rulemaking and the Proposed Regulatory Text, the Agency has prepared further revisions to some of the proposed Guidelines sections. The Agency published those revisions in July 2018 (see Notice of Public Availability of Modifications to Text of Proposed Regulation, including the Proposed 15-Day Revisions). These documents are available on the Agency's website, http://resources.ca.gov/ceqa/.

Comment 53 - EMC Planning Group

Comment 53.1

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.

Response 53.1

The Agency is not making any changes in response to this comment. This comment is introductory and general in nature. Specific responses are provided below for the more specific comments that follow.

Comment 53.2

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.

Response 53.2

The Agency declines to make any changes in response to this comment. The Agency's proposal to replace the phrase "general rule" with the phrase "common sense exemption" is consistent with *Muzzy Ranch Co. v. Solano County Airport Land Use Com*. (2007) 41 Cal.4th 372, 389. The Agency also declines to replace "activity" with "project" in Guidelines section 15061(b)(3) because the word "project" is used later in the subdivision. Replacing the word "activity" would make the subdivision less clear.

Comment 53.3

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.

Response 53.3

As reflected in the 15-day language, the Agency proposes further revisions to Guidelines section 15062(a)(6). The Agency proposes to replace "an activity" to specifically refer to "a project." This is a non-substantive change in response to comment to improve clarity.

Comment 53.4

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.

Response 53.4

The Agency is not making any changes in response to this comment. The commenter merely repeats the Agency's proposal to add Guidelines section 15064.3.

Comment 53.5

(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."

Response 53.5

The Agency declines to make any changes in response to this comment. The comment suggests defining several terms. The Agency declines because further definition is not necessary. The terms "land use projects" and "project area" are either commonly used, self-explanatory, or both. "Major transit stop" is defined in Public Resources Code section 21064.3. "High quality transit corridor" is described in Public Resources Code section 21155. "Existing conditions" are addressed in CEQA Guidelines section 15125.

Comment 53.6

(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.

Response 53.6

The Agency declines to make any changes in response to this comment. Proposed Guidelines section 15064.3 does not modify the existing definitions for "less than significant" impact and does not create a specific definition in the context of transportation impacts. Regarding the commenter's suggestion about OPR's Technical Advisory, the Agency will share this comment with OPR. The Technical Advisory is non-regulatory guidance and is not part of the proposed rulemaking.

Comment 53.7

(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.

Response 53.7

Please see response 53.6.

Comment 53.8

(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.

Response 53.8

As the 15-day language reflects, the Agency has made further revisions in response to comments. The Agency proposes to add "regional transportation plan EIR" as an example of programmatic analysis from which agencies may tier analysis of transportation projects.

Comment 53.9

(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 (1st two sentences) and another paragraph for the *construction* traffic sentence.

Response 53.9

The Agency declines to make any revisions in response to this comment. The Agency concludes the proposed revisions are not necessary to create additional clarity.

Comment 53.10

(c) Why July 1, 2019? The previous version was January 1, 2020, which represents 2 years from the proposed new rulemaking.

Response 53.10

Please see Master Response 7.

Comment 53.11

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*.

Response 53.11

The Agency is not making any change in response to this comment. For projects of statewide, regional, or areawide significance, Public Resources Code section 21092.4(a) requires that lead agencies consult with transportation planning agencies and public agencies that have transportation facilities within their jurisdictions that could be affected by the project. The Public Resources Code does not expressly mandate that lead agencies "shall consult" with public transit agencies with facilities within one-half mile of the proposed project. The proposed revision to Section 15072(e) states that lead agencies "should also consult with public transit agencies with facilities within one-half mile of the proposed project." The Agency believes that the proposed revision is consistent with the CEQA statute itself, found in the Public Resources Code.

Comment 53.12

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.

Response 53.12

As reflected in the 15-day language, the Agency proposes further revisions to Guidelines section 15075(b)(8). The Agency proposes to replace “an activity” to specifically refer to “a project.” This is a non-substantive change in response to comment to improve clarity.

Comment 53.13

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 onehalf 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*.

Response 53.13

Please see response 53.11.

Comment 53.14

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.

Response 53.14

As reflected in the 15-day language, the Agency proposes further revisions to Guidelines section 15094 (b)(10). The Agency proposes to replace “an activity” to specifically refer to “a project.” This is a non-substantive change in response to comment to improve clarity.

Comment 53.15

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.

Response 53.15

As reflected in the 15-day language, the Agency proposes further revisions to Guidelines section 15125. The Agency proposes to add "provide" in subdivision (a). The Agency also proposes revisions to clarify that the procedural requirement to justify a baseline other than existing conditions does not apply to reliance on historic conditions.

Comment 53.16

(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.

Response 53.16

As reflected in the 15-day language, the Agency proposes further revisions to Guidelines section 15125. The Agency also proposes revisions to clarify that the procedural requirement to justify a baseline other than existing conditions does not apply to reliance on historic conditions. Please see Master Response 14 regarding Guidelines section 15125.

Comment 53.17

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.

Response 53.17

Please see responses 53.15 and 53.16.

Comment 53.18

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.

Response 53.18

The Agency declines to make any changes in response to this comment. The Agency finds that making a specific reference to Guidelines section 15125 is not necessary because that section already controls the lead agency's selection of the environmental setting. Section 15125 would apply regardless of its mention in Guidelines section 15126.2.

Comment 53.19

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 i 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.

Response 53.19

The Agency is not making any changes in response to this comment. The commenter merely repeats the Agency's proposal to revise Guidelines section 15182.

Comment 53.20

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.

Response 53.20

The Agency declines to make any changes in response to this comment. The Agency finds that the proposed changes are not necessary. Subdivision (a) is a general description of the subject matter and also points to the more specific provisions in subdivisions (b) and (c). As the proposed changes make clear, certain types of projects are exempt from CEQA if they meet the listed criteria, but such projects may require additional environmental review consistent with Guidelines section 15162.

Comment 53.21

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.

Response 53.21

The Agency declines to make any changes in response to this comment. Regarding subdivision (b)(1), the eligibility criteria are drawn direction from Public Resources Code section 21155.4(a). Regarding subdivision (b)(1)(B), the Agency finds that the change from "environmental impact report" to "EIR" is not a necessary change. Regarding subdivision (b)(2), the proposed changes implement existing Public

Resources Code section 21155.4 and Government Code sections 65456 and 65457. The commenter's proposed language does not appear in those existing provisions.

Comment 53.22

(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 i 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.

Response 53.22

Please see responses 53.20 and 53.21.

Comment 53.23

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 quality for a negative declaration or mitigated negative declaration.

Response 53.23

As the 15-day language reflects, the Agency has made further revisions to Guidelines section 15357. The Agency proposes to replace the sentence beginning with "The key question . . . ." The revised language is consistent with the definition of "ministerial," non-discretionary actions: "A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out." (CEQA Guidelines, § 15369; see *Friends of Westwood v. City of Los Angeles* (1987) [lead agency's employees were "empowered by ordinance to use largely subjective criteria to create individualized standards as to a vast array of important issues"].)

Comment 54 - Environmental Defense Center

Comment 54.1

Thank you for this opportunity to submit comments regarding the proposed amendments and additions to the CEQA Guidelines. The following comments are submitted on behalf of the Environmental Defense Center ("EDC"). EDC is a public interest law firm that protects and enhances the environment through education, advocacy, and legal action. EDC was founded in 1977 to represent organizations dedicated to environmental protection. In our more than forty years of operation, we have worked on many cases involving the enforcement of the California Environmental Quality Act ("CEQA"). We have also worked

on legislative and regulatory proposals pertaining to CEQA. Our comments focus on the Environmental Setting, Project Description, Mitigation Measures, and Exemptions.

Response 54.1

The Agency is not making any changes in response to this comment. This comment is introductory and general in nature. Responses are provided below for the more specific comments that follow.

Comment 54.2

I. Section 15125 Should be Amended to Exclude Illegal and Unpermitted Uses in the Environmental Setting. Our foremost concern relates to the need to exclude illegal and unpermitted uses from the Environmental Setting for purposes of environmental review. The purpose of the Environmental Setting is to establish the baseline from which a project's environmental impacts will be evaluated. (See CEQA Guidelines § 15126.2(a).) Therefore, it is critical that the Environmental Setting provide a meaningful basis from which to ascertain a project's impacts. We have encountered several instances in which a landowner or applicant undertakes illegal or unpermitted activities and then, when required to apply for a permit, asks the lead agency to March 15, 2018 Proposed Amendments to CEQA Guidelines Page 2 of 3 evaluate impacts in comparison to the modified setting – or simply points out that no environmental review is warranted because there is no physical change to the baseline conditions. As such, the illegal or unpermitted activities completely avoid environmental review, and there is no opportunity to consider impacts, mitigation measures, or alternatives. In fact, this practice encourages landowners and applicants to undertake activities without permits so that they can avoid environmental review altogether. Therefore, Section 15125(a)(4) should be amended as follows: "A lead agency shall not use a conditions baseline that resulted from illegal or unpermitted activities."

Response 54.2

The Agency declines to make any revisions to CEQA Guidelines section 15125 based on the comment regarding illegal and unpermitted uses. The Agency is sympathetic to the comment and the concern that some illegal and unpermitted activities avoid environmental review by virtue of being part of the existing conditions. The Agency does not condone a landowner's or applicant's actions to make illegal or unpermitted modifications to their property prior to seeking relevant permits and undergoing CEQA review. Courts have held, however, that the environmental baseline under CEQA properly includes conditions that may have resulted from prior illegal activity, and that CEQA is not the proper forum to address such illegal conduct. (*Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1451; *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1233; *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1277.) Thus, the Agency declines to adopt the commenter's suggestion. Please also see Master Response 14 regarding baselines.

Comment 54.3

II. Section 15124(b) Should be Limited to a Description of the Project's Characteristics, Location, and Objectives, and Not Include Alleged Benefits. The proposed amendment to Section 15124(b) would allow a discussion of project benefits within the Project Description. Benefits are subjective and, if proposed by an applicant, may be incomplete or misleading. In addition, this discussion could impede the consideration of a reasonable range of alternatives, in the same way a narrow project objective might. The purpose of the Project Description should be to provide factual information necessary to enable the lead agency to accurately and completely evaluate the potential impacts of a proposed project. Expanding the scope of the Project Description to include benefits will not enhance the analysis

of impacts and may unnecessarily and inappropriately constrain the scope of alternatives. In any event, an applicant has ample opportunity to assert project benefits during review of a proposed Statement of Overriding Considerations. This phase of CEQA review is more appropriate for weighing potential project benefits. Finally, this amendment is not responsive to any recent legislative or judicial directive. Therefore, the amendment to add project benefits to Section 15124(b) should be deleted.

Response 54.3

The Agency declines to omit the proposed revision to CEQA Guidelines section 15124(b) regarding project benefits. The Agency's purpose in amending section 15124 is to clarify that the project description may also discuss the proposed project's benefits to ensure the project description allows decision makers to balance the project's benefits and environmental costs. This clarification is necessary to ensure that the CEQA Guidelines are consistent with case law. (See *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192 (determined an accurate project description allows decision makers to balance the proposal's benefit against its environmental cost).) Additionally, the legislature recently added Public Resources Code Section 21082.4, which expressly authorizes a discussion of project benefits.

Comment 54.4

III. Section 15126.4 Should Only Allow Deferral of Mitigation Measures if it is Infeasible to Formulate Measures in the EIR. The proposed amendment to Section 15126.4 allows the lead agency to defer formulation of mitigation measures when it is "impractical or infeasible" to include details during the project's environmental review. It is important that mitigation measures be specified during the environmental review process so the lead and responsible agencies can make accurate findings as to whether project impacts will be avoided or substantially lessened. CEQA requires that mitigation measures be implemented and enforceable when feasible. Federation of Hillside and Canyon Assns v. City of Los Angeles (2000) 83 Cal.App.4th 1252, 1261, relying on Pub. Res. Code §§ 21002.1(b), 21081.6(b). To satisfy these requirements, the formulation of mitigation measures should only be deferred if it is "infeasible" to include details during the project's environmental review. Feasibility is a known term in CEQA practice, whereas "impracticality" is March 15, 2018 Proposed Amendments to CEQA Guidelines Page 3 of 3 vague and open to abuse. Therefore, Section 15126.4 should be amended to delete the phrase "impractical or".

Response 54.4

Please see Master Response 15 regarding CEQA Guidelines section 15126.4 and mitigation measures. Please also note, the term "impractical" was drawn from the caselaw addressing this issue.

Comment 54.5

IV. Section 15269 Should be Revised to Ensure that the Expansion of the Emergency Exemption does not Exceed the Definition of Emergency. CEQA defines "emergency" as "a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. []" CEQA Guidelines § 15359. The proposed amendment to the Guidelines would expand the exemption for emergencies to include "emergency repairs…that require a reasonable amount of planning." This expansion is vague and overbroad, and appears inconsistent with the definition of emergency. In fact, this expanded exemption could easily swallow the rule. The proposed amendment should be eliminated, or at least clarified to ensure that it is consistent with the definition of "sudden, unexpected occurrence."

Response 54.5

The Agency declines to make a change based on this comment regarding the emergency exemption in CEQA Guidelines section 15269. As the commenter notes, the CEQA Guidelines include definitions for a number key words, including "emergency." (Guidelines, § 15359.) This definition already applies in the context of section 15269 and the Agency finds that it is not necessary to add language making the exemption consistent with the definition. That said, case law states that "the anticipation of [an occurrence] does not prevent it from being an emergency." (*CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal.App.4th 529, 537.) Thus, as the 15-day language reflects, the Agency made further revisions to Guidelines section 15269 to be consistent with case law.

Comment 54.6

V. Section 15301 Should be Revised to Exclude Former Uses from the Exemption for Existing Facilities. The proposed amendment to Guidelines Section 15301 would add "former" use of an existing facility. This change conflates the Environmental Setting with the allowance of an exemption. If the Environmental Setting is changed (e.g., a use is increased or expanded), that may result in new or increased impacts on the environment. Allowing an exemption to be based on a prior condition ignores this important requirement of CEQA and circumvents necessary environmental review. Therefore, the reference to "former" use should be eliminated from this proposed amendment.

Response 54.6

The Agency declines to make a change based on this comment regarding CEQA Guidelines section 15301 and the existing facilities exemption. The proposed change to section 15301 would exempt operations and minor alterations of existing facilities where those projects involved "negligible or no expansion of existing or former use." The Agency proposes this change to allow for situations where the facility was vacant even if it had a history of productive use. Precluding vacant facilities from using this exemption would be inconsistent with California's policy goals of promoting infill development. The Agency also believes that the revisions to section 15301 appropriately reflects recent case law on the environmental setting, which allow lead agencies to look back at historic conditions to establish a baseline where existing condition fluctuate. (*Communities for a Better Environment v. South Coast Air Quality Management Dist*. (2010) 48 Cal.4th 310, 327-328; *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.) Moreover, baseline cases are relevant to the analysis of the applicability of the existing facilities exemption, as illustrated in *World Business Academy v. California State Lands Commission* (2018) 24 Cal.App.5th 476. Please also see Master Response 16 regarding the existing facilities exemption.

Comment 54.7

Conclusion Most of the proposed CEQA Guidelines amendments appropriately implement new statutory requirements or judicial interpretations. Some, however, go beyond this direction and allow lead agencies and applicants to avoid environmental review, especially by expanding exemptions and changing the Environmental Setting. These proposals will deprive the public and decision makers of the information necessary to make informed determinations, and to comply with the essential goal of CEQA to prevent environmental damage. Pub. Res. Code § 21000; Guidelines § 15002(a). We therefore urge the Office of Planning and Research to modify its proposal consistent with the recommendations set forth in this letter.

Response 54.7

The Agency is not making any changes based on this comment. This comment merely summarizes the previous comments. The Agency disagrees that the revisions will deprive the public and decision makers of information and that the revisions do not comply with the goal of CEQA to prevent environmental damage. As the Agency stated in the Notice of Proposed Rulemaking, the goals for the proposed rulemaking included facilitating better environmental outcomes. (Notice of Proposed Rulemaking, p. 4.) Additionally, the Initial Statement of Reasons explained that the revision to section 15301 was "necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA. (Initial Statement of Reasons, p. 62.)

Comment 55 - Michael G. Burns, ESA

Comment 55.1

Please consider the following suggested revisions to the Appendix G Checklist.

Section VII. Geology and Soils Criterion d):

The currently proposed text reads:

"Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?"

However, the California Building Code (CBC), based on the International Building Code and the now defunct Uniform Building Code, no longer includes a Table 18-1-B. Instead, Section 1803.5.3 of the CBC describes the criteria for analyzing expansive soils. In addition, the criterion does not include corrosive soils. I suggest the following revised proposed text:

"Be located on expansive or corrosive soils creating direct or indirect substantial risks to life or property?"

Response 55.1

The Agency declines to make any change based on this comment. Appendix G is merely a sample initial study format that a lead agency can tailor to address local conditions and project characteristics. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).)

Comment 55.2

Section IX. Hazards and Hazardous Materials Criterion e): The currently proposed text reads:

"For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety ha zard or excessive noise for people residing or working in the project area?" The underlined "or excessive noise" is text proposed for addition into this criterion. However, Appendix G has an entire set of noise cr iteria under Section XIII. Noise. The addition of a noise element to the Hazards section creates unnecess

ary redundancy. I recommend deleting noise from the Hazards criterion because noise is better analyzed within the Noise section.

Response 55.2

Please see response 55.1.

Comment 56 - Institute of Transportation Engineers

Comment 56.1

Thank you for the opportunity to provide comments and suggestions regarding the proposed amendments and additions to the State CEQA Guidelines dated January 26, 2018. Our comments are focused on the proposed new Section 15064.3 Determining the Significance of Transportation Impacts and issues related to the implementation of Senate Bill 743 (Steinberg 2013). We represent over 2,000 California members of the Institute of Transportation Engineers (ITE), an international society of transportation engineers and planners. These members prepare transportation analysis for environmental documents under CEQA, and in some cases the National Environmental Policy Act (NEPA), and we understand the purpose of these analyses to identify potential environmental impacts. Our comments below include comments on the proposed new Section 15064.3 followed by an overall comment on the implementation process for SB 743.

Response 56.1

The Agency is not making any changes in response to this comment. This comment is introductory and general in nature. The Agency acknowledges with gratitude the assistance provided by member of the commenter's organization in developing the update to the CEQA Guidelines address transportation analysis. Responses are provided below for the more specific comments that follow.

Comment 56.2

1. Page 11, (c) Applicability: The date of application statewide is stated as July 1, 2019, not January 1, 2020. We are assuming this was a minor error and the intent was to be consistent with the Governor's Office of Planning and Research recommendation that the statewide application date would be January 1, 2020. 2. Page 11, (c) Applicability: If any unexpected delays occur, we would request that the implementation date be no sooner than one year after the CEQA adoption process concludes. In order to minimize disruption related to the implementation of SB 743, lead agencies will require at least a one-year period from the adoption of the new CEQA guidelines to the required implementation date. This could potentially lead an extension of the required implementation date beyond January 1, 2020 if the CEQA adoption process is not concluded in 2018.

Response 56.2

Please see Master Response 7 regarding Guidelines section 15064.3.

Comment 56.3

3. Page 11, (b) (1), Criteria for Analyzing Transportation Impacts - Land Use Projects: The last sentence states that "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." The word

"existing" should be changed to "baseline" to allow for lead agencies to choose an appropriate baseline other than existing conditions.

Response 56.3

The Agency declines to make any changes in response to this comment. Replacing the word "existing" in the third sentence of Guidelines section 15064.3(b)(1) for the words "baseline conditions" is not necessary. The Agency acknowledges that "existing" conditions may be represented by historic or future conditions, and use of "existing" is consistent with the Agency's proposed addition of the following sentence to Guidelines section 15125(a)(1):

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, or both, that are supported with substantial evidence.

Comment 56.4

4. Page 11, (b) (1), Criteria for Analyzing Transportation Impacts - Land Use Projects: Similar to the comment above, the word "existing" should be deleted when talking about projects within one half mile of a major transit stop or a high quality transit corridor. The appropriate baseline for determination of this exemption may be something different than the existing condition.

Response 56.4

The Agency is not making any changes in response to this comment. The word "existing" in the second sentence of Guidelines section 15064.3(b)(1) is not meant to refer to the environmental baseline requirement in section 15125. Use of the word "existing" in this sentence is appropriate and refers to whether a project is located near a major transit stop or along a high quality transit corridor. This is necessary to distinguish existing stops and stations from "planned" stopped and stations. See also Master Response 4 regarding the presumption of less than significant impacts for projects located near transit.

Comment 56.5

We believe that the proposal to exclude automobile delay or congestion from constituting a significant environmental impact should be applicable (at least initially) only in transit priority areas (areas within one-half mile of either a major transit stop or a stop along a high quality transit corridor). Outside these areas, lead agencies should have the discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements. We recognize that this recommendation is inconsistent with the Technical Advisory on Evaluating Transportation Impacts in CEQA prepared by OPR dated November 2017. Therefore, our comment could not be implemented through a simple change in the language of Section 15064.3. This would require a delay in the adoption of Section 15064.3 and a revision to the Technical Advisory. On an overall basis, we expect the implementation of SB 743 to be accompanied by a period of significant disruption in the analysis of transportation impacts for CEQA projects. This disruption could be greatly minimized by limiting the initial implementation of SB 743 to transit priority areas as described above.

Response 56.5

Please see Master Response 3 regarding the geographic applicability of the changes.

Comment 56.6

However, regardless of whether SB 743 is implemented initially in transit priority areas or statewide, there are inherent difficulties in applying the analysis of vehicle miles traveled (VMT) to individual CEQA projects. VMT is difficult to measure and report on a localized basis and there are inherent difficulties in determining appropriate significance thresholds and mitigation measures for individual land use and transportation projects. While OPR and various

Response 56.6

The Agency is not making any changes in response to this comment. The commenter asserts that there are "inherent difficulties in applying the analysis of vehicle miles traveled (VMT) to individual CEQA projects. VMT is difficult to measure and report on a localized basis…." Analysis of vehicle miles traveled is already performed in CEQA to analyze project-level, localized impacts associated with greenhouse gas emissions, energy, and air quality. Thus, there is existing evidence that vehicle miles traveled analysis can be successfully performed and used to analyzed localized impacts. The commenter also states that there are inherent difficulties in determining appropriate significance thresholds and mitigation measures for individual land use and transportation projects. The Agency points the commenter to OPR's Technical Advisory, which provides detailed non-regulatory guidance on determining significance thresholds. A number of resources exist for choosing and assessing the efficacy of mitigation, several of which are provided on OPR's webpage in the "Key Resources" section, available at http://opr.ca.gov/ceqa/updates/sb-743/. Finally, the Agency notes that several jurisdictions already measure vehicle miles traveled in evaluating project-level transportation impacts. Several of those jurisdictions participated in this rulemaking process, and their comments suggest not only that analysis is feasible but also that the analysis is faster and less expensive than traditional level of service analysis. (See, e.g., Comments from the City of San Francisco, City of Long Beach, et al.)

Comment 56.7

Stakeholders (including ITE) will continue to work toward a successful implementation process, there will be many challenges to face once implementation occurs. This letter was prepared by the California SB 743 Task Force, a task force appointed by the Western District of the Institute of Transportation Engineers. The Western District oversees the thirteen Western states, including California. Within California, the Institute of Transportation Engineers is represented by seven sections throughout the state. The Officers representing the seven California ITE Sections have supported the task force in preparing this letter. Representatives of each ITE Section and their names and contact information are shown below. Future correspondence should be directed to Erik Ruehr, Chair of the California SB 743 Task Force, who can represent the California ITE Section Presidents for correspondence purposes. Thank you again for the opportunity to provide comments.

Response 56.7

The Agency is not making any changes in response to this comment. This comment provides the conclusion to the commenters' letter. The Agency thanks the commenters for their comments.

Comment 57 - Kern Water Bank Authority

Comment 57.1

This letter provides the comments of the Kern Water Bank Authority ("Authority") regarding the above-referenced proposed amendments to the California Environmental Quality Act ("CEQA") Guidelines ("Amendments") . The Authority is a public joint powers authority that owns and operates the Kern Water Bank- a 20,000 acre groundwater banking project in Kern County, California. The Kern Water Bank is critical to management of the State's water resources - particularly in drought conditions such as California has experienced over the last decade. The Kern Water Bank stores water underground in wet years for recovery and use in dry years for agriculture, urban (in the Kern County area) and environmental purposes. The Kem Water Bank provides the California Central Valley with an insurance policy against drought, reduces demands on the State Water Project ("SWP") and surface reservoirs, reduces use of native groundwater, and provides over seven thousand acres of wetland habitat for migratory birds and other wildlife, including several threatened and endangered species. The Kern Water Bank is recognized as one of the most successful and important groundwater banking projects in the western United States.

Response 57.1

The Agency is not making any changes in response to this comment. This comment is introductory and general in nature. Responses are provided below for the more specific comments that follow.

Comment 57.2

The Authority requests that the Natural Resources Agency delete proposed section 15234 from the Amendments. Section 15234 is inconsistent with the Public Resources Code section 21168.9, and the cases interpreting section 21168.9. Section 15234 violates the "clarity" and "consistency" standards of the Administrative Procedure Act. It is in conflict with the common law governing the equitable discretion of California courts, and violates the separation of powers provisions of the California Constitution. Section 15234 will add to the enormous confusion and complexity of CEQA litigation, and thereby increase the enormous costs associated with CEQA compliance. The history of the twenty-three years of CEQA litigation regarding the Kern Water Bank and the Monterey Amendments to the State Water Project water delivery contracts is evidence of the enormous cost of CEQA litigation. In 1995, the Department of Water Resources and 27 of 29 state water contractors signed the "Monterey Amendments" to the State Water Project water delivery contracts. The 23 years of litigation that followed includes five trial court judgments, a decision of the Court of Appeal, years of mediation, a settlement agreement, dismissal of two reverse validation lawsuits, three Environmental Impact Reports ("EIR"), a final judgment dismissing prior CEQA challenges, and two CEQA lawsuits notwithstanding a final judgment that Department of Water Resources complied with CEQA. (See, *Central Delta Water Agency v. Department of Water Resources* (California Court of Appeal, Third Appellate Dist. Case No. C078249; *Center for Food Safety v. California Department of Water Resources* (California Court of Appeal, Third Appellate District Case No. C086215.)

The experience with CEQA litigation regarding the Monterey Amendments is replicated in other critical infrastructure projects in California. One need look no further than the decades- long CEQA compliance and litigation regarding Governor Brown's two signature infrastructure projects - the

High Speed Rail Project and the California WaterFix. The Amendments should seek to simplify and streamline the CEQA compliance and litigation process - not make it more complex.

Response 57.2

The Agency declines to delete proposed Guidelines section 15234 from the rulemaking package. The Agency disagrees that proposed section 15234 is inconsistent with Public Resources Code section 21168.9, other laws, and the separation of powers doctrine. The Agency further notes that it proposes additional revisions in response to comments, as reflected in the 15-day language. First, the Agency proposes to remove a provision suggesting that a court may only leave approvals in place if doing so would benefit the environment because that factor does not exist in statute. Second, the Agency proposes to clarify that, generally, additional review is limited to what a court might require. The Agency believes that these are clarifying revisions and are not intended to make CEQA litigation more complex. Rather, the Agency believes the proposed revisions would create more certainty in the CEQA process. Moreover, the regulation itself explicitly states in subdivision (a) that "Courts may fashion equitable remedies in CEQA litigation." Please see Master Response 13.

Comment 57.3

Proposed Section 15234 Conflicts With the Text and Judicial Interpretations of Public Resources Code Section 21168.9.

Section 15234 should be deleted from the Amendments because the section:

(1) Is inconsistent with Public Resources Code section 21168.9;

(2) Is inconsistent with judicial interpretations of section 21168.9;

(3) Purports to narrow the equitable discretion of California courts in violation of the California Constitution; and

(4) Violates the "clarity" and "consistency" standards of the Administrative Procedure Act.

Proposed section 15234, subdivision (b) is inconsistent with subdivisions (b) and (c) of Public Resources Code section 21168.9 and the court decisions interpreting these subdivisions. Public Resources Code section 21168.9 reserves to the courts broad equitable discretion to fashion an appropriate CEQA remedy. Section 15234 purports to limit the courts' equitable discretion and to impose limitations on agency actions notwithstanding a court's exercise of its equitable discretion.

Subdivision (b) of Public Resources Code section 21168.9 provides that:

> (b) An order pursuant to subdivision (a) **shall include only those mandates** which are necessary to achieve compliance with this division, **and only those specific project activities in noncompliance with this division**

(Pub. Resources Code, § 21168.9, subd. (b).) Thus, the "default" under section 21168.9 is that CEQA remedies are **required** be limited to those necessary to achieve compliance with CEQA and **shall** be limited to activities found not to be in compliance. One of the mandates expressly authorized by subdivision (a) of section 21168.9 is that "an agency take specific action as may be necessary to bring the determination, finding or decision into compliance with [CEQA]." Thus, the statutory text leaves broad discretion to courts to limit a CEQA mandate to revisions to the agency's CEQA findings without requiring any changes to an EIR or other CEQA document, or any changes to the project activities. Proposed section 15234 turns the text of the statute on its head to limit an agency action on remand to those that satisfy all three of the criteria in subdivision (b).

A long line of CEQA cases holds that courts retain broad equitable discretion to fashion an appropriate remedy where the court finds a CEQA violation - including allowing project activities to continue even where the agency did not make a severability finding. *(Laurel Heights Improvement Assn. v. Regents of Univ. of Cal. ("Laurel Heights* f') (1988) 47 Cal.3d 376, 422-424 [Authorizing construction and operation of university research facility notwithstanding CEQA violation]; *Golden Gate Land Holdings LLC v. East Bay Regional Park Dist. ("Golden Gate")* (2013) 215 Cal.App.4th 353, 374; *Preserve Wild Santee v. City of Santee,* (2012) 210 Cal.App.4th 260, 288; *POET LLC v. Cal. Air Resources Bd. ("POET")* (2013) 218 Cal.App.4th 681, 760-762; *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern ("County Sanitation")* (2005) 127 Cal.App.4th 1544, 1605; *Schenck v. County of* Sonoma (2011) 198 Cal.App.4th 949, 960-961; San *Bernardino Valley Audubon Society v. Metropolitan Water Dist. of* So. *Cal.* (2001) 89 Cal.App.4th 1097, 1103-1105; *Californians for Alternatives to Toxics v. Dept. of Food and Agriculture ("Californians for Alternatives to Toxics")* (2005) 136 Cal.App.4th 1, 22.)

Golden Gate discusses the legislative history of section 21168.9 and concludes that this too indicates that the Legislature did not intend to foreclose court's broad equitable discretion to fashion an appropriate remedy based on the facts and circumstances of each case. *(Golden Gate, supra,* 215 Cal.App.4th at p. 372, fn. 12.) Interpreting the original version of section 21168.9, the California Supreme Court held that courts retain broad equitable discretion to fashion an appropriate remedy in CEQA cases. *(Laurel Heights Improvement Assn. v. Regents of Univ. of Cal. ("Laurel Heights* f') (1988) 47 Cal.3d 376, 422-424 [Authorizing construction and operation of university research facility notwithstanding CEQA violation].) *Golden Gate* concludes that the 1993 amendments expanded the trial court's discretionary authority:

> The 1993 amendments to section 21168.9 expanded the trial court's authority and 'expressly authorized the court to fashion a remedy that permits some part of the project to go forward while an agency seeks to remedy its CEQA violations. In other words, the issuance of a writ need not always halt all work on a project.'

(Golden Gate, supra, 215 Cal.App.4th at p. 372, quoting Remy et al., Guide to the Cal. Environmental Quality Act (10th ed. 1999).) The above cited cases decided after the 1993 amendment also conclude that trial courts have discretion to keep the agency approval in effect where the court found a CEQA violation.

Section 15234, subdivision (a) purports to restrict the equitable discretion of courts "where the court has exercised its equitable discretion to permit project activities to proceed ... because the environment will be given a greater level of protection if the project remedies

remains operative than if it were inoperative during that period." The Resources Agency's explanation of subdivision (c) of section 15234 claims that the subdivision "codifies the outcome" in *POET, LLC v. State Air Resources Board, supra.* The language in *POET, LLC* relied upon is at best *dicta,* is limited by the facts in *POET, LLC,* and is certainly not the holding of the court. No California court has **held** that the courts' equitable discretion in CEQA cases is limited to circumstances where "the environment will be given a greater level of protection if the project remedies remains operative than if it were inoperative during that period." The Resources Agency does not have the authority to adopt a regulation of general applicability based on *dicta* in one court decision that reflects the particular facts of one case, and that is inconsistent with the **holdings** of numerous court decisions.

In *POET* the Court found that the Air Resources Board violated CEQA by approving an air quality regulation before complying with CEQA, by improperly delegating CEQA compliance to the Air Resources Board's Executive Officer, and by deferring adoption of required mitigation measures. *(POET, supra,* 218 Cal.App.4th at pp. 725-726, 731, 740.) Nevertheless, the Court declined to vacate the air quality regulation or to enjoin the regulation. *POET* expressly affirmed the conclusion in *County Sanitation* that courts have discretion under section 21168.9 to preserve the status quo as reflected in the choice of the parties in a settlement agreement. *(POET, supra,* 218 Cal.App.4th at p. 763, fn. 56.)

The plaintiffs in *POET* argued that CEQA required the Court to vacate the approval of the regulation because the Court could not make the severability findings in section 21168.9, subdivision (b). Indeed, the Court acknowledged that it could not separate the part of the regulation that complied with CEQA and the part that violated CEQA. *(POET, supra,* 218 Cal.App.4th at pp. 760-761.) Nevertheless, the Court did not vacate the Air Resources Board's approval of the regulation, concluding that courts retained the equitable discretion to keep project approvals and the regulation in place - even in circumstances where the court could not make severability findings of section 21168.9, subdivision (b):

> Another question of statutory interpretation is whether section 21168.9, either expressly or impliedly, prohibits courts from allowing a regulation, ordinance or program to remain in effect pending CEQA compliance. We have found no express prohibition. In addition, we conclude that such a prohibition
>
> should not be implied because section 21168.9, subdivision (c) states that the equitable powers of the court are subject only to limitations expressly provided in section 21168.9. We interpret the reference in subdivision (c) to "equitable powers" to include "the court's inherent power to issue orders preserving the status quo." Thus, under section 21168.9, subdivision (c), courts retain the inherent equitable power to maintain the status quo pending statutory compliance, which permits them to allow a regulation, ordinance or program to remain in effect.

(Id. at p. 761 [citations omitted]; quoting *Morning Star* Co. *v. State Bd. of Equalization* (2006) 38 Cal.4th 324, 341.) The attempt in section 15234 to limit the court's equitable discretion to

circumstances where the court makes the severability finding is flatly contrary to the acknowledgement in *POET, LLC* that the courts retain **"inherent power** to maintain the status quo pending statutory compliance" (emphasis added.)

Response 57.3

Please see response 57.2.

Comment 57.4

Section 15234 is also invalid because it violates the principle of separation of powers established in the California Constitution. (Cal. Const., Art. Ill, § 3 ["The power of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."]; *Serrano v. Priest* (1982) 131 Cal.App.3d 188, 201; *Mandel* v. *Myers* (1981) 29 Cal.3d 531.)

Response 57.4

Please see response 57.2.

Comment 58 - Los Angeles County Business Federation

Comment 58.1

On behalf of BizFed, a grassroots alliance of more than 170 business organizations that represent 390,000 employers with over 3.5 million employees in LA County we are celebrating our tenth anniversary with a mission to lift one million people out of poverty in the next decade. One of the many opportunities to lift and prevent poverty in LA County are providing solutions that end litigation abuse of the California Environmental Quality Act (CEQA). Since 2013, the Los Angeles region accounts for 38% of all CEQA lawsuits statewide. Within those lawsuits; 40% of these lawsuits dealt with residential development and transportation infrastructure. Driving up the costs of building new housing or transportation infrastructure exacerbating our housing crisis where the production of new housing in the region has been significantly reduced. Coupling this reduction with the cost of litigation further drives up the cost of housing which prohibits occupations like teachers, nurses, public safety officers and younger professionals the ability to afford owning a home, essential for building generational wealth, incubating a stronger, vibrant and more resilient economy.

BizFed supports strong environmental and public health laws, and California's climate leadership. We also believe that our housing crisis, transportation gridlock, expanding homeless population, poverty and economic hardship that warrants urgent attention and creative solutions that must be implemented by all state agencies, including the Office of Planning and Research (OPR). BizFed solutions fall under four themes that create the necessary reforms needed to improve compliance with CEQA and streamline the process; (1) Prohibit anonymous CEQA lawsuits allowing petitioners to conceal their identities and economic interests; (2) Prohibit duplicative CEQA lawsuits allowing parties to repeatedly sue over the same plan, or projects implementing a plan, for which CEQA compliance has already been completed, should be prohibited; (3) Establish a "mend it, not end it" approach of directing corrections to any deficient environmental study rather than vacating project approvals; and (4) Prohibit CEQA lawsuits against voter-approved infrastructure projects, and against projects receiving voter-approved approved funding (e.g., for homeless housing).

We have a stellar record of locally endorsing and supporting measures to fund homeless and affordable housing in Measure H, streamline housing approvals and production through local projects such as NetZero Newhall and stopped efforts from well funded donors to freeze plans in the city of Los Angeles in opposing Measure S. However, these projects and plans to provide desperately needed housing in existing communities is the top litigation target of CEQA lawsuits, compounding the unavailability and unaffordability of housing has been well documented by numerous studies including several reports from the non-partisan Legislative Analyst's Office with the state having a housing deficit of over 1 million homes. Virtually all CEQA lawsuits targeting housing in LA County are aimed at stopping infill, multi-family, transit oriented housing: 98% of anti-housing CEQA lawsuits in the SCAG region targeted infill housing, more than 70% of such lawsuits targeted multi-family housing near transit, nearly 80% of these lawsuits targeted housing in wealthier and healthier parts of the County.

In LA County, BizFed members and voters supported and approved Measure M which is a $120B transportation sales tax to fund and accelerate completion of a comprehensive multimodal transportation plan as well as supported and now protecting SB1 funds which are being used to support the improvement and modernization of our streets and highways. Unfortunately, transportation infrastructure is another top target of CEQA lawsuits that will hinder the completion of vital projects that create jobs and improve safety and efficiency of moving people and goods in LA County. A sobering fact that nearly half of all Caltrans EIRs are challenged based on a 2017 California Senate Committee study, and more transit system projects were targeted by CEQA lawsuits than highways and roadways combined in a statewide study examining all CEQA lawsuits filed between 2010-2012. Commuter gridlock has worsened, and people have been forced to drive ever longer distances to afford housing they can rent or buy, resulting in recent increases in vehicle miles travelled with corresponding increases in transportation emissions even as traditional pollutants from cars have fallen 99% below 1960's fleet averages. Major transportation projects area must be in regional plans for which EIRs have already been prepared, the California Air Resources Board reviews and approves such plans for compliance with SB 375 climate requirements.

Response 58.1

These paragraphs include introductory comments. These paragraph also do not include specific proposed revisions to the Agency's rulemaking package. The comments suggest changes to CEQA that are more appropriate as legislative proposals and thus are outside the scope of this package. For those reasons, the Agency is not making any changes in response to these comments. Please also see Master Response 20 regarding broad policy matters.

Comment 58.2

Abuse of CEQA for non-environmental purposes by business competitors, NIMBYs opposed to change, and certain construction trade unions, has been well documented, and includes both threatened and filed CEQA lawsuits. CEQA fundamentally is biased in favor of stopping changes to the status quo. CEQA's status quo preservation bias has a disparate effect on minority communities, as well as younger Californians such as millennials, who are most urgently in need of more housing – and the transportation, infrastructure, and public services needed accommodate new housing. The 2017 proposals constitute discrimination in violation of federal and state law. To remedy these deficiencies, OPR must revise and re-issue modified proposed amendments to the CEQA Guidelines, correct its economic assessment, fully disclose the effects of its proposal to the environment and to the disparate impacts that CEQA's status quo bias has on minority and low-income communities, and prioritize drafting clear, unambiguous, and practical regulations to minimize CEQA's compliance costs and

litigation risks. These modifications to the OPR 2017 Proposals are necessary to comply with law, and to address the housing and poverty crisis, and expedite completion of transportation and other critical infrastructure projects that have already had at least one completed round of CEQA compliance as well as voter and initial agency approvals. No state agency should hide within a silo of vague legalese to promote increased litigation risks and delays and do further harm to hard working minority and millennial families suffering from California's housing, poverty and transportation crises.

While making some improvements to the regulations implementing CEQA, many of the proposed guidelines introduce vague and expansive new requirements into CEQA that will increase litigation and litigation risks. None of the proposed new guidelines advance efforts in job creation, housing affordability or accelerating project delivery. Business is what makes our economy work and CEQA guidelines should reward instead of impeding that progress to help our economy and our environment thrive. Litigation abuse is one of the unattended consequences that negatively affects our economy because it introduces uncertainty which creates confusion with CEQA instead of compliance. Should you have any questions, please contact Jerad Wright, BizFed Policy Manager, at (323) 919-9424.

Response 58.2

The Agency declines to make any changes in response to these comments. The Agency disagrees with the comment. The proposed rulemaking is a balanced package that is intended to make the CEQA process easier and quicker to implement, and better protect natural and fiscal resources. The proposed revisions provide greater clarity in the interpretation of the Guidelines, and are consistent with existing case law and legislative directives. The commenter does not propose any specific revisions to or recommendations for this rulemaking package. Please also see Master Response 20 regarding broad policy matters.

Comment 59 – Arthur F. Coon, Miller Starr Regalia

Comment 59.1

As you probably know, I follow CEQA developments closely and with concern. I have a comment for the record that I previously made to OPR, but I notice that the problematic proposed updated provision hasn't yet been corrected, so I will reiterate it here to the Resources Agency and you before I forget.

Proposed section 15125(b)(2)'s first sentence regarding a "historic conditions baseline" conflicts with (1) the preceding subdivision (b)(1)'s recognition that an "existing conditions" baseline may properly reference historical conditions (i.e., to most realistically reflect "existing conditions" of a project where conditions and impacts change and fluctuate over time) if supported by substantial evidence; and (2) case law saying the same thing (see, e.g., Association of Irritated Residents v. Kern County Board of Supervisors (2017) 17 Cal.App.5th 708). Proposed (b)(2) would purport to extend the judicial scrutiny specified in the Supreme Court's Neighbors for Smart Rail decision for sole future baselines to the inapposite context of existing conditions baselines grounded in historical conditions, in direct conflict with the holding of the case cited above on that very issue. This is a flat-out misstatement of CEQA which would be invalid as written if challenged in court, and would also lead to much needless mischief for lead agencies attempting to follow the law if it remains as presently proposed.

Fortunately, the "fix" for this error is very easy: simply delete "either a historic conditions baseline or" from proposed (b)(2)'s first sentence. Hopefully, this will get corrected before the error finds its way into the final revised Guidelines.

Response 59.1

As the 15-day language reflects, the Agency has revised Guidelines section 15125, including subdivision (b)(2), in response to comments. Please see Master Response 14 regarding CEQA Guidelines section 15125.

Comment 60 - Orange County Business Council

Comment 60.1

Orange County Business Council (OCBC) is grateful for the opportunity to comment on the Proposed Updates to the CEQA Guidelines (Updates). OCBC represents the interests of America's sixth largest county by population. OCBC and its stakeholders are dedicated to promoting, protecting, and defending the region's environment, and to the economic development of Orange County. Our work, in part, includes growing a skilled workforce to fill high paying jobs, increase the supply, choices and affordability of workforce housing, and advance concurrent infrastructure improvements.

Without an adequate supply of housing-and the necessary traffic improvements required as mitigations for approvals of that housing--Orange County will continue to lose its skilled workers and young talent

Response 60.1

The Agency is not making any changes in response to this comment. The comments are introductory in nature. The Agency thanks the commenter for its comment letter.

Comment 60.2

The proposed Guidelines serve to complicate the CEQA review process where traffic analysis is concerned. Despite statements to the contrary, lead agencies will have to analyze traffic impacts in the context of both LOS and VMT creating significant uncertainly and enough opportunities for dispute to result in more challenges to land-use approvals based on findings and conclusions derived from arbitrary thresholds. California has a 3.5 million home shortfall today. The proposed rules are likely to exacerbate that crisis.

Response 60.2

The Agency declines to make any revisions in response to this comment. The comment asserts that the changes related to transportation will create uncertainty and may lead to litigation. The Agency notes, however, that the agencies that have implemented similar changes on the local level have found that project approvals are moving forward more quickly and with less expense. (See, e.g., Comments from the City and County of San Francisco ("Two years later, we are seeing the benefits of this change as numerous transportation projects and infill developments that previously would have gone through time-consuming, costly vehicular level of service analysis with no beneficial environmental outcomes, are on the ground, approved, or under construction").) The Agency finds those comments, which are based on experience, to be more credible than comments presenting only fear, speculation and unsubstantiated opinion.

Comment 60.3

Delayed or overturned in-fill housing projects result in higher home prices and rents, thus pushing moderate-income workers to outlying communities. This, of course, will result in more traffic, not less,

as these workers--priced out of the local housing market--will be forced to "drive until they qualify" for housing, then back to their jobs. In the end, the effects will be exactly the opposite of what the legislature and the Governor intended. And Orange County loses a skilled, young workforce to ever longer commutes.

Finally, with great respect, Mr. Calfee, you were the skilled architect of SB 743 proposed guidelines at OPR and are now leading rule-making at Natural Resources (a single-focus agency generally not interested in increased state housing production). We contend that another state agency, with independent, neutral eyes, such as Department of Housing and Community Development, be charged with developing rule-making. A quarterback should not be throwing the football to himself. Due process requires transparency and independent review.

Response 60.3

The Agency declines to make any revisions in response to this comment. The comment asserts, without evidence, that the proposed changes will increase housing prices and increase vehicle miles traveled. Streamlined infill development would allow Orange County to house more of its workforce close to their jobs, reducing commute distances, traffic, greenhouse gases, air pollutant emissions, energy use, land consumption, and placement of impervious surfaces (see Fang et al., *Cutting Greenhouse Gas Emissions Is Only the Beginning: A Literature Review of the Co-Benefits of Reducing Vehicle Miles Traveled*), as well as facilitate economic growth (see Mondschein et al., *Congested Development: A Study of Traffic Delays, Access, and Economic Activity in Metropolitan Los Angeles*). As noted in Response to Comment 60.2, above, credible evidence in the record contradicts the unsupported claims in the comment.

The comment further asserts that Agency staff that previously worked on the CEQA Guidelines proposal at OPR should not be involved in this rulemaking, and further suggests that some other agency should conduct this rulemaking. The comment ignores the provisions of the Public Resources Code that specifically provide roles for OPR and the Agency in the development of the CEQA Guidelines, as well the long-standing practice of the Agency and OPR to cooperate closely, often with shared staff. (See Public Resources Code §§ 21083, 21099.) Moreover, the Public Resources Code does not provide a role for the Department of Housing and Community Development.

The comment urges transparency and independent review. Both OPR and the Agency have solicited extensive public input into the Guidelines, and all comments have been publicly posted. The Administrative Procedures Act process ensures independent review.

Comment 60.4

In sum, OCBC urges rulemaking apply the original legislative intent of SB 743 to Transit Priority Areas, and not to all communities in California. Furthermore, the Guidelines and their interpretation have changed more than four times. We request that they be implemented two years after final adoption by the Administrative Law Agency in order to give the regulated community time to prepare.

Response 60.4

Please see Master Responses 1, 2, 3 and 7.

Comment 61 - Paleo Solutions, Inc.

Comment 61.1

[Comment 61.1 consists of a copy of Comment 71.]

Response 61.1

Please see responses to letter number 71 from the San Diego Natural History Museum. The comments numbered as 61.1 are the same as those contained in letter number 71, and are also from the San Diego Natural History Museum. Paleo Solution had attached the San Diego Natural History Museum's March 9, 2018, letter to its own comment letter.

Comment 61.2

I am writing to provide input on proposed updates and changes to the CEQA review process. The CEQA process with regard to paleontological resources is a topic I have been tracking and discussing with colleagues for many years.

I realize you have lots of comments to sift through, so rather than writing you a lengthy letter, I am attaching a letter that has already been submitted to you by Dr. Thomas A. Deméré, Curator of Paleontology at the San Diego Natural History Museum. I have discussed the topic of paleontological resources under CEQA with my colleague Dr. Deméré on many occasions, and I am in 100% agreement with his letter dated March 9, 2018, which is attached hereto.

Response 61.2

The Agency is not making any changes in response to this comment. This comment is introductory and general in nature. Additionally, please see responses to letter number 71 from the San Diego Natural History Museum.

Comment 61.3

I am also attaching a PDF of the first edition of a publication outlining best practices in mitigation paleontology that my coauthors and I have recently revised with input in the form of over 3,000 individual comments from paleontologists representing government agencies, museums and environmental consulting firms. The expanded and improved second edition will be published this spring as a volume of the Proceedings of the San Diego Natural History Museum. My purpose in showing you this publication, entitled A Foundation for Best Practices in Mitigation Paleontology, is to demonstrate that paleontological resources are unique, non-renewable environmental resources distinct from cultural, geological, or biological resources. This publication clearly demonstrates that the evaluation and impact mitigation process for paleontological resources is unlike that for other resources, so combining them with and under another resource category is not sound science. In fact, the existing CEQA checklist language has contributed to numerous documented cases of paleontological resources being damaged, destroyed or completely disregarded during the environmental review and impact mitigation process in California.

Response 61.3

The Agency is not making a change to Appendix G based on this comment. This comment does not propose specific amendments to Appendix G. Please see Master Response 18 regarding the

environmental checklist in Appendix G. The Agency thanks the commenter for the attached publication written by the commenter. The Agency does not dispute that paleontological resources are unique, non-renewable environmental resources.

Comment 61.4

1. Paleontological Resources should be included as a standalone resource category in the CEQA checklist of Appendix G.

Response 61.4

The Agency declines to place Appendix G question related to paleontology into a separate, stand-alone section. The Agency does not dispute that paleontological resources are unique resources. The Agency finds that creating a distinct section for paleontological resources is not necessary in Appendix G. Agency notes that three key points remain unchanged by this proposed rulemaking package and would not change even if paleontological resources were moved into a separate section. First, a lead agency must adequately analyze and mitigate all of a project's potentially significant impacts, including impacts to paleontological resources. Second, a lead agency also has the discretion to establish the thresholds of significance for use in reviewing a project's environmental impacts. (See CEQA Guidelines, § 15064(b).) Finally, Appendix G is merely a sample initial study format that a lead agency can tailor to address local conditions and project characteristics. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).) Thus, the Agency finds that it is not necessary to create a stand-alone section in Appendix G for paleontological resources. Creating a stand-along section does not expressly achieve the Agency's stated goals of making the CEQA process more efficient and resulting in better environmental outcomes.

Comment 61.5

2. The existing language in the CEQA checklist for paleontological resources should be separated from "geologic features" and the word "unique" should be removed. The language should be revised as follows: "Would the project directly or indirectly cause a substantial adverse effect on a paleontological resource or site?"

Response 61.5

The Agency declines to make a change based on this comment regarding Appendix G. The commenter suggests that Appendix G's new Question VII.f. should separate out and remove mention of geologic features, thus creating a question solely about paleontological resources. The Agency declines to make this change because it would be inconsistent with the Agency's general goal for this rulemaking, which includes streamlining Appendix G. (Initial Statement of Reasons, pp. 69-70.)

Comment 62 - Paleo Solutions, Inc. (2)

Comment 62.1

I am writing your office to comment on the proposed updates to the CEQA review process. My primary concern is on how the proposed changes affect the treatment and protection of California's Paleontological Resources under CEQA, and I would like to recommend that they be treated separately as a standalone issue in the CEQA checklist of Appendix G. Until recently Paleontological Resources,

which consist of the remains and behavioral traces of ancient organisms (fossils), were addressed in Appendix G as part of the Cultural Resources issue.

This lumping of Paleontological Resources with Cultural Resources (prehistoric and historic) has often caused confusion to agency personnel and citizens alike, and this confusion is in part what ultimately lead to the removal of Paleontological Resources from Cultural Resources with the passage of AB-52. While this change will most likely have a positive effect on the treatment of Cultural Resources, the decision to shoehorn consideration of Paleontological Resources into the Geology and Soils issue will not significantly improve the treatment of Paleontological Resources and may make matters worse.

Response 62.1

The Agency declines to place Appendix G question related to paleontology into a separate, stand-alone section. The Agency does not dispute that paleontological resources are unique resources. The Agency finds that creating a distinct section for paleontological resources is not necessary in Appendix G. Agency notes that three key points remain unchanged by this proposed rulemaking package and would not change even if paleontological resources were moved into a separate section. First, a lead agency must adequately analyze and mitigate all of a project's potentially significant impacts, including impacts to paleontological resources. Second, a lead agency also has the discretion to establish the thresholds of significance for use in reviewing a project's environmental impacts. (See CEQA Guidelines, § 15064(b).) Finally, Appendix G is merely a sample initial study format that a lead agency can tailor to address local conditions and project characteristics. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).) Thus, the Agency finds that it is not necessary to create a stand-alone section in Appendix G for paleontological resources. Creating a stand-along section does not expressly achieve the Agency's stated goals of making the CEQA process more efficient and resulting in better environmental outcomes.

Comment 62.2

Although Paleontological Resources are preserved and found in geological rock units, they are not related in any way to the environmental concerns traditionally addressed under the Geology and Soils issue; namely earthquake rupture, seismic ground shaking, unstable land surfaces and geologic units, expansive soils, and soil erosion. The treatment of paleontological resources, including the types of data gathered during the assessment phase of resource evaluation, the content and structure of the environmental documents produced, and the types of mitigation strategies employed, differs greatly from that of Geology and Soils. Another issue is that the Geology and Soils sections often need to utilize state maps/soil maps for their analyses, which are often at a lower resolution (1:500,000) than other maps that are available. Paleontological studies, on the other hand, always want to use the highest resolution maps available (preferably 1:24,000) since the paleontological analysis requires a detailed breakdown of the named geologic units within a given project area in order to tie the units to the paleontological locality records and literature, for the purpose of providing the temporal framework which is critical to understanding evolutionary patterns. The fact that different geologic maps are being used to complete the Geology and Soils vs. Paleontology analyses causes confusion for reviewers when the Environmental Document combines them in the same chapter (based on our experience with documents that have adopted a combined Geology/Paleontology section). It also requires extra time and coordination for the geological and paleontological consultants to reconcile the differences in

geologic terminology used in the separate studies, which is counter to the streamlining process CEQA is striving to achieve.

Response 62.2

Please see response 62.1.

Comment 62.3

In addition to the difficulties associated with combining two very separate studies, it is also a concern that the disciplines will be intermingled in the attempt to save budget/time. For example, geological firms may use unqualified staff who lack the technical paleontological background to complete a thorough paleontological analysis, which may result in paleontological resources not being properly mitigated under CEQA. This has been a problem in the past with paleontology being lumped under the cultural resource section of Appendix G and cultural resource firms being imposed with completing the paleontological analysis for cost savings, despite lacking the proper qualifications.

Considering Paleontological Resources as their own section under the Appendix G checklist would help minimize poor mitigation measures proposed by unqualified professionals from other resource disciplines. Not considering Paleontological Resources separately will potentially add another layer of confusion.

Response 62.3

Please see response 62.1. The Agency further notes that addressing the technical expertise of staff and scopes of work of consulting firms is outside the scope of the Agency's proposed rulemaking, and the Agency declines to comment further upon its merit and to make any changes in response. (Gov. Code, § 11346.9(a)(3).)

Comment 62.4

I realize that one of the goals of the proposed updates to CEQA is to streamline the review process. However, it seems that another goal of the updates is to clarify the environmental issues under consideration and to recognize the changes in our understanding of these issues since the original passage of CEQA in 1970. This need for clarification and recognition of changes in understanding is apparently the reason that four new environmental issues have been added to the Appendix G checklist in the proposed updates, including Energy, Greenhouse Gas Emissions, Tribal Cultural Resources, and Wildfire. It is in this spirit of clarification and recognition that I recommend that Paleontological Resources be added to the Appendix G checklist as another new, standalone environmental issue.

Thank you for the opportunity to comment on the proposed updates to the CEQA review process.

Response 62.4

Please see response 62.1. The Agency further notes that legislative directives had prompted the addition of Appendix G questions on greenhouse gases, tribal cultural resources, and wildfire. Further, the questions regarding energy are not new; rather, they are being restored to the checklist in an effort to reduce litigation over the topic.

Comment 63 - F & F GeoResource Associates, Inc.

Comment 63.1

I have reviewed the “Proposed Updates to the CEQA Guidelines” and have the following comments:

First, I applaud the proposal to separate the consideration of paleontological resources from cultural resources and instead include consideration of paleontological resources among the relevant sample questions related to geology. Paleontological resources are not cultural resources and including the question regarding potential impacts to paleontological resources in Guidelines section VI. Cultural Resources has created confusion in the past. Hopefully by including consideration of paleontological resources in Guidelines section VII. Geology and Soils, this confusion can and will be avoided in the future.

Response 63.1

This comment expresses support for the proposed revision of Appendix G. Thus, the commenter does not propose any changes. The Agency thanks the commenter for its support.

Comment 63.2

Second, in his State of the State address given 24 January 2013, Governor Jerry Brown called specifically for “consistent standards” within CEQA. Of course, consistency is emphasized throughout the rulemaking process. One place where both the old and the proposed new CEQA Guidelines are not consistent (but easily revised to be consistent) is in the severity of impacts before mitigation of those impacts are required. Specifically, CEQA Guidelines apply unequal criteria regarding the severity of potential impacts to biological, cultural, and paleontological resources before those resources are considered adversely impacted. For biological and cultural resources, the criteria are "have a substantial adverse effect on" biological resources or "cause a substantial adverse change" to cultural resources. In stark contrast, for paleontological resources the criteria are "destroy a unique paleontological resource". In other words, to be considered a potentially significant impact, paleontological resources must not be just adversely affected as must biological resources or adversely changed as must cultural resources; instead they must be destroyed before the impact is considered significant!

Response 63.2

The Agency declines to make any changes in response to this comment. The Agency agrees that consistency is emphasized throughout this rulemaking, but further notes that three key points remain unchanged by the proposal. First, a lead agency must adequately analyze and mitigate all of a project’s potentially significant impacts, including impacts to paleontological resources. Second, a lead agency also has the discretion to establish the thresholds of significance for use in reviewing a project’s environmental impacts. (See CEQA Guidelines, § 15064(b).) Finally, Appendix G is merely a sample initial study format that a lead agency can tailor to address local conditions and project characteristics. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).) Thus, the Agency finds that it is not necessary to further revise Appendix G questions regarding paleontological resources, and declines to do so.

Comment 63.3

In addition, the only impacts to be considered are impacts to "unique" paleontological resources [undefined in CEQA], rather than impacts to paleontological resources in general. For biological and cultural resources, CEQA considers impacts to all resources, not just those that are "unique". To be consistent, the Guidelines simply need to be revised as proposed below.

Response 63.3

The Agency declines to make any changes in response to this comment. The Agency does not dispute that paleontological resources are unique resources. The Agency notes that three key points remain unchanged by this proposed rulemaking package and would not change even if paleontological resources were moved into a separate section. First, a lead agency must adequately analyze and mitigate all of a project's potentially significant impacts, including impacts to paleontological resources. Second, a lead agency also has the discretion to establish the thresholds of significance for use in reviewing a project's environmental impacts. (See CEQA Guidelines, § 15064(b).) Finally, Appendix G is merely a sample initial study format that a lead agency can tailor to address local conditions and project characteristics. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).) Thus, the Agency finds that it is not necessary to further revise Appendix G questions regarding paleontological resources, and declines to do so.

Comment 63.4

Third, CEQA Guidelines section VII. Geology and Soils item f. deals with two separate, unrelated, and distinctly different issues -- paleontological resources and geologic features. These should be separated into two questions as proposed below.

Proposed revisions:

Would the project:

f. Directly or indirectly cause a substantial adverse effect on a paleontological resource or site?

g. Directly or indirectly destroy a unique geologic feature?

Thank you for considering my suggested revisions above. I would be pleased to have the opportunity to discuss these proposed revisions further with persons involved in amending the CEQA Guidelines.

Response 63.4

Please see responses 63.2 and 63.3 where the Agency has addressed the commenter's proposed revisions.

Comment 64 – Protecting Earth and Animals with Compassion & Education

Comment 64.1

On a negative note. We have commented on CEQA projects where the lead agencies are within CA's Natural Resources Agency, yet neither we nor many of the other environmental and stakeholder

organizations were ever noticed. The preponderance of those who were noticed appear to be developers or consultants. The only way we heard of this CEQA Update was via word of mouth. This is unacceptable. To compensate for this disadvantage, we strongly request that the comment deadline be extended for at least another 15 to 30 days to formally notice all the environmental and other organizations who have commented on Natural Resources division projects in the past; and (2) to allow them enough time to properly review the hundreds of update project pages in order to comment effectively.

Response 64.1

The Agency thanks the commenter for providing a public comment. Notice was provided for this regulatory update in the California Regulatory Notice Register, as required by the Administrative Procedures Act. Additionally, the Agency mailed notice to those entities that signed up to receive notices from the Agency or, earlier in the process, from the Governor's Office of Planning and Research. The Agency also e-mailed notice to all those who signed up the CEQA Guidelines rulemaking listserv, and posted all materials on the Agency's website. Please also note, this update to the CEQA Guidelines has been discussed publicly in many forums across California since 2013. As ample public review time has been provided over the multi-year regulatory process, the Agency declines to extend the comment deadline at this stage.

Comment 64.2

To stay the course and work toward beneficial environmental outcomes that CEQA can accomplish, instead of "streamline" or "efficiency," any CEQA update's purpose should be to "strengthen" CEQA's influence with positive outcomes for natural resources and human welfare in final approvals. Instead of capitulating to power, politics and profit, we strongly urge the CNRA to step up and make CEQA work for citizens and natural resources first and foremost.

Response 64.2

The comment broadly objects to measures to streamline CEQA or to increase efficiencies in the process. This regulatory package seeks to make CEQA more intuitive for lead agencies, applicants, and the public. As explained in the Notice of Proposed Rulemaking:

> Beyond simply complying with the Public Resources Code, the Natural Resources Agency identified several policy objectives in assembling this package of CEQA Guidelines updates. First, because the CEQA Guidelines are intended to assist agencies' compliance with CEQA, in 2013, the Agency invited practitioners and other stakeholders to identify changes that would be most useful to them. Many of the changes that are now proposed were suggested by those stakeholders. In inviting stakeholder input, the Agency and the Office of Planning and Research, which develops changes to the CEQA Guidelines, specifically solicited changes that would (1) make the CEQA process more efficient, (2) result in better environmental outcomes, consistent with other adopted state policies, and (3) that are consistent with the Public Resources Code and the cases interpreting it.

The Notice further explained: "many of the changes are intended to make the CEQA process easier to navigate by, among other things, improving exemptions, making existing environmental documents

easier to rely on for later projects, and clarifying rules governing the CEQA process." Please note, these objectives are consistent with the legislative policy embedded in CEQA. See, for example, Public Resources Code Section 21003, subdivision (f), which describes the Legislature's intent that: "All persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment."

The comment does not raise specific objections to any particular portion of the update, and so no changes are necessary in response to this comment.

Comment 64.3

They already can change their plans without the public's knowledge with "Subsequent" or "Supplemental" environmental reports. They'll initiate amending projects for profit, but when environmental conditions change, there should be no built in "exemption" as if they have been granted priority "right to incur and impose significant impacts" on the community at a later date.

Response 64.3

Similar to the objection to efficiency, the comment objects broadly to reliance on prior environmental analysis for later project approvals. Please see Response to Comment 64.2, above. Please also note, as explained in the Notice of Proposed Rulemaking, the changes related to later use of a program EIR are drawn from cases interpreting CEQA. Please also note, this rulemaking package does not change the requirements to prepare a subsequent or supplemental environmental document that would require a public review period. See PRC § 21166; CEQA Guidelines, §§ 15162, 15163. Therefore, because the comment does not raise specific objections to any particular portion of the update, no changes are necessary in response to this comment.

Comment 64.4

The FEIR has been legally challenged by Citizens' Voice, but the developer began clear- cutting oaks two days ago—before there's been any court action! This is what citizens have to deal with and why any CEQA update must ratchet down, hard, on lead agencies and applicants. Instead of streamlining, CNRA should be looking at every piece of litigation to amend loopholes and tighten the requirements in favor of environmental protection—not more impacts.

Response 64.4

The comment broadly suggests that the CEQA Guidelines update should favor environmental protection. As noted in the Notice of Proposed Rulemaking, one of the Agency's objectives is to develop changes that "result in better environmental outcomes, consistent with other adopted state policies[.]" Examples of such changes include, among others, additions related to the analysis of greenhouse gas emissions, energy, water supply, transportation and wildfire risk. The comment provides an example of a project clearing trees during litigation. That comment appears to concern the standard for obtaining an injunction during litigation; however, that is beyond the scope of this regulatory package. Therefore, the Agency declines to make any changes in response to this comment.

Comment 64.5

We urge the CNRA to amend CEQA to put strong safeguards in place to prevent any potential skullduggery. One example in such instances might include a mandate for oversight by an outside, third party, possibly from the CNRA to review and monitor every activity.

Response 64.5

One of the main purposes of CEQA is to require an agency to review information on the potential environmental impacts of a discretionary decision before taking action. Essentially, CEQA requires the agency to look before it leaps. In every CEQA situation, the agency is reviewing its own discretionary decision to either undertake a project or to permit another entity to undertake a project. Notably, a key feature of CEQA is the requirement for public review, and oversight by courts if necessary. Therefore, no further changes are necessary in response to this comment.

Comment 65 - Perkins Coie LLP

Comment 65.1

Members of Perkins Coie's CEQA group- specifically, Julie Jones, Stephen Kostka, Barbara Schussman and Marc Bruner- submit the following comments on the Resources Agency's proposed amendments to CEQA Guidelines section 15125(a). These amendments are intended to implement recent case authority regarding the lead agency's choice of the baseline against which a project's environmental impacts will be compared. In most respects, the proposed amendments to section 15125(a) would accomplish that goal.

Response 65.1

This comment is introductory in nature, and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 65.2

However, in their treatment of "historic conditions," subsections 15125(a)(l) and 15125(a)(2) would impose restrictions on lead agency discretion that are contrary to the case law and would create an internal inconsistency in the Guideline. The erroneous text was not included in OPR's August 11, 2015 Preliminary Draft Updates and is not addressed either by OPR's November 2017 explanatory notes on its Final Proposed Updates or by the Resources Agency's Initial Statement of Reasons for Regulatory Action. This text should be deleted to avoid imposing a new and unwarranted restriction on the lead agency's ability to use historic conditions as a CEQA baseline.

The proposed amended version of section 15125(a), with the erroneous text highlighted in bold, states:

(a) An EIR must include a description of the physical environmental conditions in the vicinity of the project. 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.

Response 65.2

The potential issue with the treatment of historic conditions as an existing conditions baseline has been addressed. Please see Master Response 14.

Comment 65.3

1. Subsection (a)(l): In subsection (a)(l), the phrase "and where necessary to provide the most accurate picture possible of the project's impacts" has been inserted as a special prerequisite to the lead agency's ability to define existing conditions in terms of either historic or opening-day conditions. As stated, however, in Neighbors for Smart Rail v. Exposition Metro Line Construction Authority (2013) 57 Cal.4th 439, 455, and quoted in OPR's November 2017 notes on its Final Proposed Updates (p. 92), any baseline a lead agency selects must strive to meet the goal of providing the most accurate picture possible of the project's impacts. Neighbors for Smart Rail states: "The public and decision makers are entitled to the most accurate information on project impacts practically possible, and the choice of a baseline must reflect that goal." 57 Cal.4th at 455. The last sentence of the opening paragraph of proposed section 15125(a) makes exactly this point with respect to all baseline determinations. The bold text introduced into subsection (a)(l), on the other hand, treats this obligation as a heightened standard governing only the use of a historic conditions or opening day baseline. The latter idea is found nowhere in Neighbors for Smart Rail or other case law, and should not be added to section 15125. This bold text should be deleted from subsection (a)(l).

Response 65.3

The requested change has not been made. The Agency agrees with the commenter that agencies should always select a baseline that provides the most accurate picture possible of the project’s impacts, as

discussed in Section 15125, subdivision (a). Accordingly, the quoted language requiring the same standard for the use of a historic baseline is not in error.

Comment 65.4

2. Subsection (a)(2): The first reason the bold text in subsection (a)(2) should be deleted is that it would create inconsistent and confusing terminology when compared to subsection (a)(l). Subsection (a)(l) states that "a lead agency may define existing conditions by referencing historic conditions ... that are supported by substantial evidence." This text is consistent with the case law, which treats a "historic conditions" baseline as one way of describing "existing conditions," and holds that a lead agency's selection of such a baseline is valid if it is supported by substantial evidence. Association of Irritated Residents v. Kern County Board of Supervisors (2017) 17 Cal.App.5th 708, 727-729 (upholding lead agency's selection of historic conditions baseline because it was supported by substantial evidence of past operational levels at oil refinery). See also Communities for a Better Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal.4th 310, 328. The first sentence of proposed subsection (a)(2), however, treats a "historic conditions baseline" as an entirely different category from an "existing conditions" baseline, and would impose special restrictions on the use of a historic conditions baseline. The sentence states: "A lead agency may use ... a historic 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 (emphasis added)." This text contradicts subsection (a)(l) and sows confusion where none exists in the case law.

More importantly, subsection (a)(l) would impose an unjustified new obstacle to a lead agency's use of historic conditions in its baseline for CEQA review. Neighbors for Smart Rail holds that where a lead agency relies solely on a future baseline - i.e., "conditions predicted to prevail in the more distant future, well beyond the date the project is expected to begin operation" - the agency "must justify its decision by showing an existing conditions analysis would be misleading or without informational value." 57 Cal.4th at 453, 457. Nothing in Neighbors for Smart Rail or other case law states, or suggests, that this unique requirement should be extended to a lead agency's election to use a historic conditions baseline.

Moreover, the policy concerns underlying the Supreme Court's special rule for a CEQA analysis that relies solely on a future baseline do not apply to a CEQA analysis that uses a historic conditions baseline. First, the Court noted that a project's short- and medium-term environmental impacts would not be accounted for in an EIR that used only the distant future as its baseline for environmental review. 57 Cal.4th at 455. Second, a future environmental baseline depends on predictive models, which may be inaccurate, as opposed to direct measurement of existing conditions. Id. A third and related concern is that decisionmakers and the public can more readily understand an existing conditions baseline and may not be technically equipped to assess the soundness of technical projections into the distant future. 57 Cal.4th at 456. None of these concerns applies to the use of a historic conditions baseline, which is an existing baseline that allows the lead agency to capture near-term and medium-term environmental impacts; relies on historic facts rather than predictive models; and is readily understandable by the public and decisionmakers.

Finally, the proposed imposition of this new hurdle to a lead agency's use of a historic conditions baseline is not only unsupported by case law; it is contradicted by the law, which holds that use of a historic conditions baseline is valid if it is supported by substantial evidence and that no additional requirements apply. Indeed, the court in Association of Irritated Residents, supra, 17 Cal.App.5th at 730-731, quoting Neighbors for Smart Rail, squarely addressed the "strict test" created by that case for use

of a future baseline and specifically held that test did not apply to an existing conditions baseline which incorporates historic conditions. As the court stated, the Supreme Court "intended a future conditions baseline to be subject to a more rigorous judicial scrutiny than the scrutiny applied to the choice of measurement for an existing conditions baseline, a choice that is a factual finding reviewed under the substantial evidence standard."

(emphasis in original). The court further explained that "the stricter principles" that apply to future conditions baselines are not needed when a baseline relies on actual historical conditions. Id. at 731. In that situation, "the principles set forth in Communities for a Better Environment establish the substantial evidence standard as the applicable standard of judicial review." Id. Accordingly, the Resources Agency should delete the phrase "either a historic conditions baseline or" from subsection 15125(a)(2), in order to avoid an inconsistency with subsection (a)(l), a conflict with controlling case law, and an unjustified burden on lead agencies' discretion to use historic conditions, supported by substantial evidence, when selecting a CEQA baseline.

Response 65.4

The potential issue with the treatment of historic conditions as an existing conditions baseline has been addressed. Please see Master Response 14.

Comment 66 - Phillips 66 Company

Comment 66.1

Phillips 66 Company ("Phillips 66”) appreciates the opportunity to provide comments on the proposed updates to Title 14 of the California Code of Regulations implementing the California Environmental Quality Act (the CEQA Guidelines). Phillips 66 owns and operates numerous manufacturing, transportation, and other industrial facilities in California and many of the projects it undertakes are subject to California Environmental Quality Act review.

Response 66.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 66.2

The Office of Planning and Research ("OPR") proposes to update sections 15064 and 15064.7 to address when regulatory standards may be used as significance thresholds. We first address new proposed language in section 15064.7(d), and address section 15064 in Part II of this letter below. Section 15064.7(d) proposes new language that allows lead agencies to adopt or use an "environmental standard" as a threshold of significance, provided that the agency explain how the requirements of the environmental standard avoid project impacts, and why the environmental standard is relevant to the project. The criteria for establishing an "environmental standard" under this new provision include the requirement that it be a rule of general application, adopted by a public agency through a public review process.

Response 66.2

This is background information and no change is required.

Comment 66.3

We agree that regulatory standards can be appropriate significance thresholds. We also believe that where an agency has gone through a public review process to adopt a standard that meets these criteria, an agency evaluating the project under CEQA should be able to reference the documents associated with that review process for the explanation required. Rules, policies or requirements established pursuant to the public review process are often the results of months of solicitation and consideration of public input.

Response 66.3

The comment appears to object to the statement in Section 15064.7 that an agency relying on an environmental standard as a threshold of significance should explain how the particular requirements of that standard reduces project impacts and why the environmental standard is relevant to the analysis of the project under consideration. Instead, the comment appears to suggest that an agency should just be able to rely on the fact that another agency underwent a public process to adopt the standard. The Agency declines to adopt this suggestion. Other provisions of the existing CEQA Guidelines require a "brief explanation" for a determination that impacts are less than significant. (See, e.g., § 15128 ("An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR").)

Comment 66.4

Even where a regulatory standard does not form the basis for a significance threshold, compliance with existing environmental regulatory programs should be reflected in the environmental analyses. The Guidelines or the Statement of Reasons should state that environmental analyses and s1gn1f1cance conclusions should assume that a proposed project will be carried out consistent with existing regulatory programs. This concept should be clearly stated in the guidelines, as it affects the analysis of every environmental topic. It also plays a role in several of our comments on the proposed amendments, as noted in the succeeding sections of this letter.

California has invested decades and substantial resources in developing sophisticated programs regulating every environmental medium. These programs are diligently enforced at the state and local levels. In some cases, these programs will altogether prevent significant adverse effects from a project, as was found in Tracy First v. City of Tracy (2009) 177 Cal.App.4th 912, 934 (compliance with applicable regulatory standards can provide a basis for determining that a project will not have a s1gn1f1cant environmental impact). In other cases the existing environmental programs will reduce the severity of s1gnif1cant impacts that warrant additional mitigation. However, in all cases, the EIR analysis should take compliance with these programs into account in assessing a project's impacts. Indeed, it would be convoluted and misleading for an EIR to analyze impacts as if the project could operate outside the law, and then describe the theoretical "impacts" as mitigated through compliance with the law. For example, if applicable air quality rules mandate that a certain stack be equipped with a diesel particulate filter in order to obtain the necessary permit to operate, then the project's air emissions should not be analyzed without the filter in the first instance. Rather, the potential air impacts should be analyzed with the

legally mandated control device in place. We understand that lead agencies may choose to include language requiring compliance with the law, which is permissible but not required under CEQA. As the court explained in Oakland Hentage Alliance v City of Oakland (2011) 195 Cal.App.4th 884, 906, 11 a condit1on requiring compliance with regulations Is a common and reasonable mitigation measure and may be proper where It is reasonable to expect compliance." However, CEQA does not require a lead agency to ignore existing regulatory requirements that limit or avoid project impacts. To do so would have the effect of undermining the informational value of the EIR by unnecessarily evaluating impacts that will not be significant due to existing regulatory programs, thus failing to follow the mandate In Guidelines section 15126.2 to concentrate the EIR on potentially significant impacts. As such, compliance should be assumed in the environmental analysis.

Response 66.4

The comment broadly suggests that the Guidelines should require lead agencies to consider the role of environmental regulations in an environmental analysis. As explained in the Initial Statement of Reasons:

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

The proposal, therefore, encourages lead agencies to use environmental standards as thresholds. The Agency cannot require agencies to do so, however. Therefore, the Agency declines to make any changes to the proposal in response to this comment.

Comment 66.5

Proposed revisions to section 15125 support to bring it in line with recent caselaw, but the changes misstate the Supreme Court authorities. The correct reading was articulated most recently in *Association of Residents v. Kern County Board of Supervisors,* 17 Cal.App 5th 708 (2017) ("AIR"). The AIR opinion may have been overlooked because it was filed only days before the proposed Guidelines were published, but the Agency should take the opportunity now to revise the proposed language to reflect this important recent holding, which is consistent with the Supreme Court authorities already cited by the proposal.

OPR explained that it is revising section 15125 to make it consistent with the baseline holdings of two cases: *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439 *("Neighbors")* and *Communities for a Better Environment v. South Coast Air Quality Management 01st.* (2010) 48 Cal.4th 310 *(CBE's).* But the proposed Guidelines language would mistakenly apply the standard for a hypothetical, future conditions baseline to an agency's decision about how to measure an existing conditions baseline when the activity creating these conditions has fluctuated over time.

The correct approach is reflected in *AIR,* where the court of appeal directly answered the question of whether the *Neighbors* standard for a hypothetical, future conditions baseline also applied to agency's decision about how to measure an existing conditions baseline based on actual operations: It does not. Yet, as currently drafted, the proposed changes would import that onerous requirement even for an existing conditions baseline based on actual historical operations: *"A lead agency may use either a historic conditions base/me or a projected future conditions base/me as the sole base/me for analysts 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."* (Emphasis added.) But neither *Neighbors* nor *CBE* provides authority for adding a new standard for a historic conditions baseline.

The *Neighbors* holding took great pains to articulate the limited application of the extra burden when using a hypothetical, future baseline. The court explained: "The need for justification arises when an agency chooses to evaluate *only* the impacts on future conditions, foregoing the existing conditions analysis called for under the CEQA Guidelines." *(Id.* at 454) (italics in original). There, the court addressed the circumstances under which an agency could employ a hypothetical future conditions baseline in place of a baseline that was based on existing physical conditions. The court held that an analysis based *only* on *hypothetical, future* conditions baseline was subject to a more rigorous judicial standard than the scrutiny applied to the choice of measurement for an ex1sting conditions baseline. *(Neighbors, supra,* 57 Cal.4th at 451-452.)

Similarly, in *CBE,* the court had invalidated the environmental review for a project at an oil refinery because the air district analyzing the project's air quality impacts used a hypothetical baseline based on permit limits that did not reflect the level of actual and historical operations at the refinery.

In *AIR,* the lead agency had selected a baseline for a refinery that was experiencing a lull in operations at the time environmental review was commenced, and so the baseline activity levels were based on historical activity levels which were representative of the operating refinery during the period prior to the lull. In this context, the court upheld the selected baseline after considering the standards articulated in *Neighbors* and *CBE.* The *AIR* court, in a lengthy and well-reasoned opinion, provided further clarification of the factors that should be considered when determining a baseline for a project that builds on an existing facility that has a long history of operations, including some lulls, as well as prior CEQA review.

The use of an existing conditions baseline Is fundamentally different from the use of a hypothetical set of physical conditions that might exist in the future. (AIR, supra, 17 Cal.App.5 t h at 730.) Existing physical conditions are referred to in CEQA's statutory text. (Pub. Resources Code§§ 21060.5, 21100, subd. (d), 21151, subd. (b).) In contrast, in comparison based on hypothetical future conditions are not referenced in CEQA. Thus, the principles set forth in Neighbors relating to hypothetical future conditions baselines are not needed when a baseline using actual conditions at a time other than the NOP date Is used to address the problem of defining an existing conditions baseline In circumstances where the existing conditions themselves change of fluctuate over time." *(Neighbors, supra,* 57 Cal. 4th at 449.)

Furthermore, the *AIR* court held that a baseline based on historical operations was consistent with the principles In *Neighbors* and *CBE,* as well as the more recent case of *North County Advocates v. City of Carlsbad* (2015) 241 Cal.App.4th 94 *(North County").* In *North County,* in connection with a project to

renovate an existing shopping center, the lead agency had adopted a traffic baseline that treated a department store space as being fully occupied, even though It had been largely vacated. The court upheld the lead agency's determination of the traffic baseline, concluding substantial evidence supported the determination because it was based on recent historical use and was consistent with [project applicant's] right to fully occupy the [retail] space without further discretionary approvals." *(North County, supra,* 241 Cal.App.4th at 97; see also *AIR, supra,* 17 Cal.App.5th at 729.)

Given the expansive discussions in the recent caselaw, it is clear that a baseline based on achieved, historical conditions Is not subject to the "misleading and without informational value" standard applicable solely to hypothetical, future baselines. The proposed Guidelines language can easily be revised to comport with these principles by deleting the reference to the historical conditions baseline as follows:

> *A lead agency may use ~~either a historic conditions baseline o~~r a projected future conditions baseline as the sole baseline for analysts 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.*

Response 66.5

This change has been addressed. Please see Master Response 14.

Comment 66.6

Additionally, the Guidelines or the Statement of Reasons should make clear that these revisions to the baseline doctrine do not undermine the equally important principles applicable to subsequent CEQA review set forth In Public Resources Code section 21166. That section provides that where a project has gone through a prior CEQA review and been evaluated in an EIR or negative declaration, subsequent review can only be triggered if certain standards are met. In other words, where a prior environmental review has analyzed activities, operations and equipment, new projects that employ the same activities or equipment, in the way designed and analyzed in the prior review, do not trigger new review. This is consistent with the principles espoused in *North County* and *AIR,* where the historical activity levels were reasonable baselines because the facilities could operate at that same level of activity without any new discretionary approvals.

Response 66.6

This suggestion is beyond the scope of this regulatory package. The Agency does not propose to make any changes to the Guidelines implementing Public Resources Code Section 21166.

Comment 66.7

The *AIR* decision addressed an important issue of first Impression concerning a CEQA GHG emissions analysis under Cap-and-Trade and is illustrative of how lead agencies can analyze projects where GHG emissions are generated by Cap-and-Trade regulated entities (e.g., the project facility itself and/or the power plant supplying power to the project). There, the court upheld the

lead agency's determination that the refinery project's GHG emissions were not cumulatively considerable because its compliance with Cap- and-Trade meant that any GHG emissions it emitted must be counterbalanced by emissions reductions elsewhere.

In *AIR,* the court first addressed the question of whether the Cap-and-Trade program constitutes a "regulation[s] [or] requirement] adopted to implement a statewide...plan for the reduction or mitigation" of GHGs under 15064.4(b)(3), and concluded that because the program consisted of regulations, it did. *(AIR,* supra, 17 Cal.App.5th at 741-742.) Therefore, the lead agency for the refinery project was obligated to consider It under section 15064.4(b).

The court then asked whether consideration of the project's compliance with Cap-and-Trade allowed the lead agency to determine that impacts were less than significant. The court found that compliance with Cap-and-Trade did adequately address potential GHG emissions impacts. Highlighting this Court's decision in *Center for Biological Diversity v. Department of Fish* & *Wildlife* (2015) 62 Cal.4th 204, the Opinion stated:

The importance of the overall effect of a statewide plan, rather than the plan's specific effect on the particular project's emissions was illustrated in *Center for Biological Diversity.* There, our Supreme Court stated the significance of the environmental impact of greenhouse gases does not depend on where they are emitted because of the global scope of the climate change impact. *(Center for Biological Diversity,* supra, 62 Cal.4th at pp. 219- 220.) Thus, examining the amount and location of the refinery's emissions is too narrow of an inquiry when the ultimate question Is global climate change.

(AIR, supra, 17 Cal.App.5th at 742.)

The court concluded that, in the case of Cap-and-Trade and its "industry-wide perspective. It Is appropriate for a lead agency to conclude a project compliance with the cap-and-trade program provides a sufficient basis for determining the impact of the project's greenhouse gas emissions will be less than significant." *(AIR,* supra, 17 Cal.App.5th at 743.)

The court's holding Is entirely consistent with, and indeed furthers, the recent holding in Cleveland *National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 519 that as climate science advances, EIRs must "stay in step with evolving scientific knowledge and regulatory schemes." The Agency and OPR should further these important developments in GHG analysis under CEQA by emphasizing the importance of presuming compliance with these laws. In doing so, the public and the decision-makers gain a better understanding of the project's impacts within the context of the state's efforts to combat climate change as mandated by AB 32. This should be made clear In the Statement of Reasons.

Response 66.7

The Agency declines to make any changes in response to this comment. The decision in *Association of Irritated Residents v. Kern County Board of Supervisors* (2017) 17 Cal.App.5th 708 ("*AIR v. Kern*") is from one state appellate court and has not been consistently applied by any other appellate courts. The holding in that case is limited to its facts. That court held only that the CEQA Guidelines may authorize a lead agency to determine that a project's greenhouse gas emissions will have a less than significant

effect on the environment based on the project's compliance with the Cap-and-Trade program. The project in that case was directly regulated by the Cap-and-Trade program. The decision did not hold that all emissions from may be subject to the Cap-and-Trade regulation at any point in the supply chain are exempt from CEQA analysis, regardless of how those sources are used by the project.

The Agency notes that the California Air Resources Board (CARB) has prepared an extensive legal analysis setting forth why the Cap-and-Trade program does not excuse projects from CEQA's analysis and mitigation requirements, including emissions from vehicular trips or energy consumption from development projects. (This analysis, prepared by CARB as CEQA comments regarding a major freight logistics facility, is available at https://www.arb.ca.gov/ toxics/ttdceqalist/logisticsfeir.pdf.) The Agency further notes that CARB's analysis is consistent with this Agency's discussion of how greenhouse gas regulations factor into a CEQA analysis of greenhouse gas emissions. (See Final Statement of Reasons (SB 97), December 2009, at p. 100 ("Lead agencies should note … that compliance with one requirement, affecting only one source of a project's emissions, may not necessarily support a conclusion that all of the project's emissions are less than significant").)

The effect of existing regulations is addressed further in the updates to Sections 15064(b) and 15064.7 of the CEQA Guidelines.

Comment 66.8

The proposed new language in section 15064.4(b) discussing the determination of GHG emissions impacts adds the following sentence: *"The agency's analysis should consider a timeframe that 1s appropriate for the project."* The text that purports to explain the rationale for this addition cites to provisions of CEQA and the Guidelines that already require consideration, in a broader context, of "short-term and long-term" consideration of a project's potential impacts on the environment." (Explanation p.82.) Since CEQA reviews are already required to consider reasonably foreseeable potential impacts, the addition of an "appropriate timeframe" language is redundant and would only serve to increase ambiguity and potential for protracted litigation over what particular timeframes are "appropriate" in addition to what is reasonably foreseeable. Moreover, it does not make sense to apply this additional "timeframe" layer to GHG emissions, specifically. Mitigation and monitoring must already "be designed to ensure compliance during project implementation." (Pub. Resources §21081.6.) Lead agencies may already amortize construction emissions of GHGs. We request that the agency delete the sentence referring to the timeframe, so that the new language in subdivision (b) reads as follows:

In determining the significance of a project's greenhouse gas emissions, the lead agency should focus, its analysis on the reasonably foreseeable incremental contribution of the project1s emissions to the effects of climate change. The agency's ana!ys.is should consider a timeframe that .is appropriate for the project. The agency's analysis also must reasonably reflect evolving scientific knowledge and state regulatory schemes.

Response 66.8

The comment suggests deleting the sentence in Section 15064.4 relating to the timeframe for the project. This suggestion was considered but was not made. Given that climate change impacts can be on a more extended schedule than other environmental impacts considered under CEQA, it is necessary for lead agencies to consider an appropriate time frame. As explained in the Addendum to the Initial Statement of Reasons:

> CEQA requires agencies to consider a project's direct and indirect significant impacts on the environment, "giving due consideration to both the short-term and long-term effects." (CEQA Guidelines, § 15126.2, subd. (a); see Pub. Resources Code, § 21001, subd. (d) [state policy "[e]nsure[s] that the long-term protection of the environment . . . shall be the guiding criterion in public decisions"]; § 21001, subd. (g) [state policy requires "governmental agencies at all levels to consider . . . long-term benefits and costs, in addition to short-term benefits and costs . . . ."]; § 21083 [requiring preparation of an EIR for a project that "has the potential to . . . achieve short-term, to the disadvantage of long-term, environmental goals"].) In some cases, it would be appropriate for agencies to consider a project's long-term greenhouse gas impacts, such as for projects with long time horizons for implementation.

Additionally, the Agency notes that courts have looked to the timeframe of a project's implementation as being an important part of the environmental analysis. (*See, e.g., Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497 (noting that the project would govern infrastructure investments over the next half century).)

Comment 66.9

Proposed section 15126.4, subd1v1s1on (a)(l)(B), appears to conflate the concept of mitigation and compliance with the law by stating that the lead agency may "defer mitigation" where another agency will apply a regulatory permit process (and related performance standards). This change risks confusing the roles of the lead and responsible agencies, making lead agencies responsible for performance standards for later actions within the purview of a responsible agency (1.e. a later permit that would rely on the original CEQA review). The responsible agency permit process should not be confused with - or conflated with - mitigation. To do so would create new CEQA requirements that the lead agency must meet with respect to permit programs and compliance details that are - and should remain - under the jurisdiction of the responsible agencies. We suggest clarifying this issue In the Statement of Reasons.

Response 66.9

While it is unclear which regulatory language the commenter is referring to, this section has been clarified. Please see Master Response 15. Moreover, case law has established that compliance with a future regulatory process can appropriately be treated as mitigation. See *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 647, 648; see also *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 237 ("deferring the formulation of the details of a mitigation measure [is authorized] where another regulatory agency will issue a permit for the project and is expected to impose mitigation requirements independent of the CEQA process so long as the EIR included performance criteria and the lead agency committed itself to mitigation").

Comment 66.10

Proposed section 15126.4, subdivision (a)(l)(B), adds new text purportedly to clarify obligations of a lead agency when they defer mitigation. Based on OPR's explanatory text, the intent of this section Is to provide lead agencies with a menu of three independent choices for properly deferring mitigation. However, the proposed language conflicts with OPR's explanatory text by stating the three options for compliance must be followed by the agency The specific details of a mitigation measure/ however/ may be deferred when it 1s 1mpract1cal or 1nfeas1ble to include those details during

the environmental review and the agency (1) commits itself to the mitigation (2) adopts specific performance standards the mitigation will achieve/ and (3) lists the potential actions to be considered/ analyzed/ and potentially incorporated 1n the mitigation measure. As written, this does not agree with the authorities cited in the explanatory text *(Defend the Bay* v. *City of lrvine* (2004) 119 Cal.App.4th 1261 [allowing a lead agency to defer specifics of mitigation by providing a list of possible mitigation measures] and *Rialto Citizens for Responsible Growth* v. *City of Rialto* (2012) 208 Cal.App.4th 899 [allowing a lead agency to adopt performance standards in the environmental document.].) We suggest correcting this issue as follows:
The specific details of a mitigation measure/ however/ may be deferred when it is impractical or infeasible to include those details during the environmental review and the agency f4-}commits itself to the mitigation/ and either{1}{-2}-adopts specific performance standards the mitigation will achieve/ e-mi or (2) -lists the potential actions to be considered/ analyzed/ and potentially incorporated in the mitigation measure.

Response 66.10

This comment has been addressed in part. Please see Master Response 15.

Comment 66.11

Section 15082 proposes to add new language regarding the posting of the Notice of Preparation ("NOP"). Specifically, new language would mandate that the NOP be filed "with the county clerk of each county 1n which the project will be located." The stated rationale for this change 1s that 1t 1s needed to reflect the procedural requirement 1n PRC § 21092.3, which states, "The notices ... for an environmental impact report shall be posted in the office of the county clerk of each county in which the project will be located..." It would assist in the orderly evaluation of projects and preparation of EIRs, as provided in Public Resources Section 21083, if OPR would add language to Section 15082 or to the Final Statement of Reasons clarifying that the location of the project 1s not synonymous with the geographic scope of analysis of environmental impacts. We have observed that agencies occasionally confuse the location of the project with the location of the impacts. The two may be coterminous or overlapping but are not necessarily the same. The confusion can arise with respect to any of the environmental topics in an EIR, but the potential unintended consequences are illustrated most vividly with the topic of climate change: taken to an extreme, treating the location of the impacts as the location of the project could lead an agency to require posting of the NOP throughout the state. While we have not yet seen such a case, there have been instances in which agencies have viewed indirect impacts as part of the project description. In such a case, the new language in section 15082, without further clarification, could result in a misunderstanding that publication of the NOP is required far from the location of the project itself.

Response 66.11

The comment suggests clarifying the project location is not the same as the potential area of a project's impacts. The Agency disagrees that further clarification is necessary. Other portions of the Guidelines require identification of the project location as part of the project's description in environmental documents, for example. On the other hand, the definition of "effects" includes "effects which are caused by the project and are later in time or farther removed in distance[.]" (CEQA Guidelines § 15358.) Thus, it is already clear within the Guidelines that project location is not necessarily the same as the area of project impact.

Comment 66.12

Proposed new section 15064.3 would declare vehicle miles traveled ("VMT") as the most appropriate measure of transportation impacts. This change is prompted by SB 743, but goes far beyond that bill's focus on infill projects and direction to OPR to develop criteria for evaluating vehicle impacts "within transit priority areas." (Pub. Resources Code §21099(b)(1).) Notwithstanding OPR's rationale that uniform standards are less burdensome, OPR should not adopt a guideline that overrides the discretion that CEQA places in lead agencies to determine the appropriate significance thresholds outside of the areas addressed In SB 743.

Response 66.12

Please see Master Response 3. Additionally, please see Public Resources Code, § 21099, subd. (c)(1) ("The Office of Planning and Research may adopt guidelines pursuant to Section 21083 establishing alternative metrics to the metrics used for traffic levels of service for transportation impacts outside transit priority areas. The alternative metrics may include the retention of traffic levels of service, where appropriate and as determined by the office.")

Comment 66.13

In addition, by extending the SB 743 concepts beyond infill and transit priority projects, proposed section 15064.3 creates confusion. Depending upon the project, transportation impacts may not be restricted to issues of motor vehicle circulation and transportation. For some projects, the transportation issues may involve other modes of transportation such as rail, air, or marine vessel. Vehicle miles travelled Is *not* "the most appropriate measure of transportation impacts" for these projects. In sum, proposed section 15064.3 should be narrowed to simply satisfy the specific directive in SB 743.

Response 66.13

Please see Master Response 2 regarding vehicle miles traveled. Under the proposed regulations, vehicle miles traveled is replacing automobile delay analysis. It does not affect the analysis of other potential transportation issues that may be analyzed within an environmental document.

Comment 66.14

New proposed subsection 15126.2(b) seeks to provide further guidance to lead agencies with respect to the energy use analysis of a project. A few minor changes in to the language would improve this section. First, the new language states that where a project's energy use is considered a significant environmental effect, ''the EIR shall analyze and mitigate that energy use." To be consistent with CEQA, this should be revised to read: *"the EIR shall analyze and mitigate discuss feasible mitigation of that energy* use."

Response 66.14

For significant environmental impacts, CEQA requires that mitigation be imposed, not simply "discussed," if feasible. Public Resources Code, § 21002.

Comment 66.15

Second, proposed section 15126.2(b) acknowledges that the energy analysis need not be a standalone chapter of the EIR but may be included in related analyses. But the lead agency should not be limited to including an energy discussion in one of the three resource areas enumerated by the Guideline *("air quality, greenhouse gas emissions, or utilities").* The lead agency should have the discretion to decide where a discussion of project energy use makes the most sense for a given project. For example, for a project whose dominant energy consumption Is related to transportation, the lead agency may determine that energy use should be discussed in conjunction with transportation issues.

Response 66.15

This comment has been addressed by adding transportation to the list of sections in which an energy impacts analysis may appear.

Comment 67 - Planning and Conservation League

Comment 67.1

The Planning and Conservation League would like to complement and thank the Governor's Office of Planning and Research for its continuing efforts to help clarify and streamline the CEQA process. PCL has worked in recent weeks with a number of groups to help focus and refine comments on a number of specific, proposed update provisions. In addition to these efforts, we would like, in this correspondence, to commend OPR for its guideline proposals which reflect a continuing and fundamental focus upon and thoughtful adherence to state policies and laws that encourage, incentivize and facilitate infill development near public transit. We enclose with this letter a letter previously sent on our organizations behalf to OPR by the law firm Chatten-Brown & Carstens in 2015 regarding comments to revisions to CEQA.

Response 67.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment. The Chatten-Brown & Carstens letter referenced is addressed in response to Comment 68.

Comment 67.2

PCL remains firmly committed to Transit Oriented Development ("TOD") as the essential key to addressing not only climate change, wildfire and water supply problems, but also our state's affordable housing crisis. Please follow these links for articles discussing TOD development:

http://www.transformca.org/sites/default/files/CHPC%20TF%20Affordable%20TOD%20Climate%20Strateqy%20BOOKLET%20FORMAT.pdf

https: //www.curbed.com/2017 /12/5/16 738120/qoogle-san-jose-cam pus-silicon-valley

PCL is aware of course that some "stakeholders" would like to see laws and guidelines encouraging "greenfield" development under the rational that such development would help solve the affordable housing crisis in the State. In effect, these interest seek a short term solution for housing at the multi-generational expense of exacerbating our challenges with climate change, wildfire and water supply.

Thank you for the additional information on transit oriented development. The comment does not address any particular provisions of the proposal, and so no changes are required in response to this comment.

Response 67.2

Thank you for the additional information on transit oriented development. The comment does not address any particular provisions of the proposal, and so no changes are required in response to this comment.

Comment 68 - Planning and Conservation League (2)

Comment 68.1

We appreciate the opportunity to submit comments on the Proposed CEQA Guidelines. As an initial matter, CEQA must be interpreted to provide the fullest possible protection to the environment consistent with statutory mandates. *(Friends of Mammoth v. Board of Supervisors* (1972) 8 Ca1.3d 247, 259.) The Guidelines should promote public involvement in the environmental review process and ensure the protection of California's precious environment.

Response 68.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 68.2

We are concerned that many Guidelines proposals are setting a low bar or the lowest common denominator as the minimum requirements of CEQA rather than encouraging public agencies to provide more public involvement and greater environmental protections as they implement CEQA. On October 12, 2015, we sent a letter to the Office of Planning and Research on behalf of the Planning and Conservation League (2015 PCL Letter). (Enclosure 1.) A copy of that letter is attached because responses to many of the comments are not reflected in the proposed guidelines

Response 68.2

The Agency has reviewed the 2015 PCL Letter and the relevant sections addressed in the responses to comments below. The Agency disagrees that the proposal sets a low bar, and does not encourage public participation or environmental protection. On the contrary, as the Agency explained in its Notice of Proposed Rulemaking, the Agency solicited stakeholder input on what CEQA Guidelines changes "would (1) make the CEQA process more efficient, (2) result in better environmental outcomes, consistent with other adopted state policies, and (3) that are consistent with the Public Resources Code and the cases

interpreting it." The Agency and OPR then built a proposal based on that stakeholder input. The Agency could not accept every proposal suggested by stakeholders, including those suggested by the commenter, however, as some suggestions were at odds with the policies underlying this update. The Notice further explained:

> Several of those changes are intended to, both directly and indirectly, reduce greenhouse gas emissions and better enable communities to respond to the effects of climate change. Additionally, several changes should help agencies accommodate more homes and jobs within California's existing urban areas. Doing so should help people find homes and get to where they need to go more quickly and affordably while also preserving California's natural resources. Finally, many of the changes are intended to make the CEQA process easier to navigate by, among other things, improving exemptions, making existing environmental documents easier to rely on for later projects, and clarifying rules governing the CEQA process.

The Agency responds to specific comments on the proposal below.

Comment 68.3

The following are our comments on specific proposals:
15004- This proposal still suffers from the defects we identified in the attached 2015 PCL Letter. **We urge that further revisions be made as identified in the attached 2015 PCL Letter.**

Response 68.3

This regulation has been clarified. However, Commenter's suggested language has not been incorporated. The *Save Tara v. City of West Hollywood* decision is the most recent guidance provided on this topic by the California Supreme Court and forms the basis of this regulatory update.

Comment 68.4

15124 — Project Description: the proposal would include alleged benefits of the project so that decision makers could "balance, if needed, a project's benefits against its environmental cost." This is problematic since it could bleed into limiting project objectives and restraining the range of alternatives analyzed. The purpose of the project description is to provide factual information necessary to analyze potential impacts, not an advocacy statement of alleged benefits. Therefore, **the amendment to add project benefits to Section 15124(b) should be deleted.**

Response 68.4

The comment suggests that the project description should only include factual information needed to assess the project's environmental impacts. The Agency disagrees. Section 15124 currently suggests that the project description should include project objectives and such details as economic characteristics. Stakeholders suggested that a discussion of project benefits would also provide useful context. This is so particularly for projects such as renewable energy facilities and infill development that may have some adverse impacts, but are also key strategies to combatting climate change. The

Agency is aware of no authority, and the comment provided none, that would prohibit such discussion. On the contrary recent legislation makes clear that agencies may consider project benefits in the project description. Thus, the Agency declines to adopt the comment's suggestion.

Comment 68.5

15125 — Environmental Setting: this section suffers the same defects we identified in the attached 2015 PCL Letter. **Illegal and unpermitted activities should be accounted for and excluded from a baseline as suggested in the 2015 PCL Letter.**

Response 68.5

The comment recommends requiring agencies to exclude illegal activities from the description of the environmental setting. The Agency recognizes the policy concern that bad actors might benefit from undertaking illegal activities (such as unpermitted clearing of a lot) before environmental review and thereby reduce mitigation costs. However, a long line of cases have addressed this circumstance and have concluded that CEQA does not require agencies to analyze impacts from a baseline that does not exist on the ground. The following is a discussion from one of the more recent cases:

> For example, in Riverwatch v. County of San Diego (1999) 76 Cal.App.4th 1428, 91 Cal.Rptr.2d 322 (Riverwatch), the appellate court approved the county's chosen baseline which included illegal development that had occurred at a mining operation seeking a use permit. The respondents could not, said the court, essentially turn back the clock and insist upon a baseline that excluded existing conditions. (Id. at pp. 1452–1453, 91 Cal.Rptr.2d 322.) How present conditions come to exist may interest enforcement agencies, but that is irrelevant to CEQA baseline determinations—even if it means preexisting development will escape environmental review under CEQA. (Ibid.) In Fat, supra, 97 Cal.App.4th 1270, 119 Cal.Rptr.2d 402, the appellate court upheld the county's choice of a baseline reflecting present-day conditions to evaluate the impact of a proposed airport expansion. Even though "the Airport developed over a period of nearly 30 years without County authorization, there was evidence of environmental damage during that period, and the Airport had been the subject of at least two zoning enforcement actions," the county acted within its discretion using current airport operations as the baseline for CEQA review. (Id. at pp. 1280–1281, 119 Cal.Rptr.2d 402.) Similarly, in Eureka Citizens for Responsible Government v. City of Eureka (2007) 147 Cal.App.4th 357, 54 Cal.Rptr.3d 485, the Court of Appeal upheld a project description for CEQA purposes that took into account an existing playground built contrary to code. "While any alleged code violations in the construction of the playground may have been relevant to the City's consideration of the variance requested, it was not a CEQA consideration." (Id. at p. 371, 54 Cal.Rptr.3d 485, italics omitted; see also Fairview Neighbors v. County of Ventura (1999) 70 Cal.App.4th 238, 242–243, 82 Cal.Rptr.2d 436 [EIR prepared in conjunction for application to expand mining operation "properly discussed the existing physical condition of the affected area as including the long-operating mine"]; Bloom v. McGurk (1994) 26 Cal.App.4th 1307, 1312–1316, 31 Cal.Rptr.2d 914 (Bloom) ["existing facility" for categorical exemption purposes means a facility "as it exists at the time of the agency's determination, rather than ... at the time CEQA was enacted"; this is consistent "with cases that have required potential impacts to be examined in light of the environment as it exists when a project is approved"].)

(*Citizens for East Shore Parks v. State Lands Com*. (2011) 202 Cal.App.4th 549, 559-560.) Thus, because a long line of cases expressly allows lead agencies to include even illegal activities in the existing baseline, the Agency cannot in the Guidelines prohibit it.

Comment 68.6

15126.4 — Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects: we concerned about provisions allowing deferral of mitigation. The proposed amendment to Section 15126.4 allows the lead agency to defer formulation of mitigation measures when it is "impractical or infeasible" to include details during the project's environmental review. The various provisions appear to significantly weaken any assurance that mitigation measures will be known, effective, and enforceable. Therefore, **Section 15126.4 should be amended to delete the phrase "impractical or".**

Response 68.6

This regulation has been clarified. Please see Master Response 14. However, Commenter's suggested language has not been incorporated. While the regulation states that details of mitigation measures may be deferred when it is impractical to develop them prior to project approval, the regulation also provides requirements that ensure that the mitigation measures will be known, effective, and enforceable.

Comment 68.7

15269 — Emergency Projects: the proposal expands the exemption to include emergency repairs that require some planning. These would not really be emergencies for purposes of CEQA. Similarly, preventative work would not be an emergency condition. **We suggested an alternative version in the attached 2015 PCL Letter.**

Response 68.7

This regulation has been clarified to state that the planning must be required "to address an anticipated emergency." In regards to subdivision (c), the Agency disagrees that additional clarification is needed to ensure that this only subdivision applies to "serious" or "significant" risks.

Comment 68.8

15357- still problematic as identified in the attached 2015 PCL Letter.

Response 68.8

This regulation has been clarified. However, the regulation retains the language "or other fixed standards." This language is needed to capture situations in which permit requirements may not be contained in a statute, ordinance, or regulation.

Comment 68.9

Appendix G- Many of our comments in the attached 2015 PCL Letter still apply and we reaffirm those.

Response 68.9

Thank you for your comments on Appendix G. Appendix G is provided as a non-binding resource for agencies to use. Please see Master Response 18.

Aesthetics:

The Agency appreciates the comment's concern about the analysis of aesthetic impacts. As noted in the Initial Statement of Reasons, analysis of aesthetics is inherently subjective. Both the courts and the Legislature have limited the requirement to analyze aesthetics in urbanized areas. (See, e.g., Pub. Resources Code 21099 (limiting the analysis of aesthetics within "transit priority areas").) The Agency disagrees with the comment's interpretation of the proposed changes in Appendix G. Conflict with design guidelines or zoning requirements is not necessarily an environmental impact. As clarified elsewhere in the Guidelines, a conflict with a plan is only relevant to the extent that an adverse environmental impact results from the conflict.

The Agency proposes to recast the existing question on "visual character" to ask whether the project is consistent with zoning or other regulations governing visual character. This change is intended to align with the analysis of the aesthetics issue in the Bowman decision. (*Bowman v. City of Berkeley* (2006) 1222 Cal.App.4th 572.) The court in that case, which involved a challenge to a multifamily residential project in an urban area, noted:

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

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

Geology:

The comments related to geology were made to an early draft of OPR's proposal. Since that time, the Supreme Court ruled in BIA vs. BAAQMD. The Appendix G questions have been revised to recognize the holding in that case that CEQA requires analysis of impacts to project occupants where the project exacerbates those hazards.

Surface and Groundwater:

The Agency appreciates the comment's support for these changes.

Utilities:

The Agency appreciates the comment's support for these changes.

Water Supply:

The Agency appreciates the comment's support for these changes.

Wildfire:

The comment suggests that the questions regarding wildfire risk should not be limited to those areas that are classified as state responsibility areas or areas of very high fire hazard risk. As explained in the Initial Statement of Reasons, the wildfire questions implement SB 1241 (Kehoe, 2012), which does direct the questions to those specific areas. Please also note, however, Appendix G is a sample form, and lead agencies can tailor the questions as appropriate to their jurisdiction. Please also see Master Response 12 regarding wildfire.

Energy:

The Agency appreciates the comment's support for these changes.

Recreation:

The comment is directed at an early draft of OPR's proposal. OPR's final proposal, and this Agency's rulemaking, does not make the changes addressed in this comment.

Agricultural Resources:

The comment is directed at an early draft of OPR's proposal. OPR's final proposal, and this Agency's rulemaking, does not make the changes addressed in this comment.

Air Quality:

The comment is directed at an early draft of OPR's proposal. OPR's final proposal, and this Agency's rulemaking, does not make the changes addressed in this comment.

Biological Resources:

The Agency appreciates the comment's support for these changes.

Cultural Resources:

The Agency appreciates the comment's support for these changes.

Land Use:

The comment suggests that the proposal improperly limits consideration of conflicts with plans to those that are adopted for the purpose of mitigating an environmental effect. That particular language already exists in Appendix G and this rulemaking does not propose to change it. Therefore, the comment is beyond the scope of this rulemaking.

Noise:

The comment suggests that the change to the noise question puts too much burden on the public to demonstrate an increase in ambient noise. The Agency proposes the change because local noise standards vary, particularly construction noise. Also, the change is needed to accommodate infill projects, which might be located in areas that already have elevated noise levels. In such a case, the focus of the inquiry should be on whether that project would itself cause a substantial increase in noise in the area.

Managed Resources and Working Landscapes:

The comment is directed at an early draft of OPR's proposal. OPR's final proposal, and this Agency's rulemaking, does not make the changes addressed in this comment.

Jobs/Housing Balance:

The comment is directed at an early draft of OPR's proposal. OPR's final proposal, and this Agency's rulemaking, does not make the changes addressed in this comment.

Transportation:

The comment is directed at an early draft of OPR's proposal. This Agency's rulemaking has addressed most of the issues raised in the comment. Please see Response to Comment ___ for issues related to safety.

Mandatory Findings on Significance:

The comment objects to the word "substantial" in the questions related to mandatory findings of significance. The changes are being made for internal consistency.

Comment 68.10

Furthermore, encouraging infill rather than greenfield development is superior for the environment generally in terms of greenhouse gas generation and other environmental impacts. We urge you to consider the information at the following links:

--- "Why Creating and Preserving Affordable Homes Near Transit is a Highly Effective Climate Protection Strategy" (http ://www.transformca.orgsites/default/files/CHP C%20TF%20Affordabl e%20TOD%2Climate%20Strategy%20BOOKLET%20FORMAT.pdf)

---CAPCOA's "Quantifying Greenhouse Gas Mitigation Measures" (http ://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quanti fi cation-Report-9-14-Final.pdf) Infill appears to be taking off

in our major cities (see e.g., https://www.curbed.corn/2017/12/5/16738120/google-san-jose-campus-silicon-valley.) Therefore, approaches which encourage infill that is sensitive to the urban environment and promotes the health and welfare of existing communities should be promoted.

Response 68.10

Thank you for the additional information regarding infill development.

Comment 69 - Rural County Representatives of California

Comment 69.1

The Rural County Representatives of California (RCRC) appreciate this opportunity to comment on the Proposed Rulemaking for Amendments an Additions to the State California Environmental Quality Act (CEQA) Guidelines. RCRC is an association of thirty-five rural California counties, and the RCRC Board of Directors is comprised of an elected supervisor from each of those member counties.

The RCRC Board of Directors understands the need to promote sustainable growth, sustainable resources, and sustainable economic conditions in rural California. RCRC member counties are tasked with a variety of decision-making responsibilities related to development and land use in rural California communities and are challenged with environmental stewardship, economic vitality, and social equity at the local level. RCRC member counties are also committed to achieving realistic greenhouse gas (GHG) emission reductions through sustainable land use planning policies, facilitating infrastructure development, and services to provide alternative transportation modes and healthier behavior options. From this perspective, we would like to offer the following comments on the proposed CEQA Guidelines.

Response 69.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 69.2

The long-practiced use of level of service (LOS), or automobile delay, as a criterion for determining the significance of transportation impacts of a project is often a barrier to infill development and can contribute to discouraging other transportation modes. Senate Bill 743 required OPR to prepare proposed revisions to the CEQA Guidelines establishing alternative criteria for determining the significance of transportation impacts of projects *within transit priority areas within Metropolitan Planning Organizations (MPOs)*. SB 743 further *allows* OPR to establish alternative metrics for transportation impacts outside transit priority areas. SB 743 tacitly implies there may be a different implication for rural areas by not mandating a statewide application.

Our primary concern with the proposed addition is the mandated application of the proposed alternative metric, vehicle miles traveled (VMT), effective January 1, 2019. SB 743 clearly states “it is the intent of the Legislature to balance the need for level of service

standards for traffic with the need to build infill housing and mixed use commercial developments within walking distance of mass transit facilities, downtowns, and town centers and to provide greater flexibility to local governments to balance these sometimes-competing needs." RCRC does not believe the intent was to mandate a change in metrics statewide in every application of transportation projects.

Response 69.2

Please see Master Response 3 regarding the geographic scope of application of the vehicle miles traveled measure of transportation impacts. Additionally, please see Public Resources Code, § 21099, subd. (c)(1) ("The Office of Planning and Research may adopt guidelines pursuant to Section 21083 establishing alternative metrics to the metrics used for traffic levels of service for transportation impacts outside transit priority areas. The alternative metrics may include the retention of traffic levels of service, where appropriate and as determined by the office.")

Comment 69.3

We reiterate from our previous comments to OPR that RCRC believes that choosing any alternative metric at this point is likely to cause unintended consequences, such as a new onslaught of litigation due to new uncertainties and speculation. Even the relationship between the VMT metric for CEQA evaluation and the LOS metric for those counties that still may use LOS in their general plans or fee programs will add to the uncertainties. It will be important to ferret out the difficulties with implementation of the proposed VMT before extending into other areas of the State, especially in rural areas where transit priority areas do not exist and where transit options are limited.

RCRC believes the VMT metric should apply strictly *within transit priority areas within MPOs*. However, if it is to be applied statewide, we urge the Agency to allow more time for rural areas to address the challenges of implementation and transition to a new implementation process. It seems it would be valuable to test the VMT metric in the select areas of the State prior to its application in the more suburban and rural areas of the State where we know implementation may not make the most sense to achieve the State's goals and comes with significant costs and challenges.

Response 69.3

Please see Master Response 7. Additionally, note that the vehicle miles traveled metric will not be required until July 1, 2020. SB 743 was signed into law in the fall of 2013 and took effect January 1, 2014. Accordingly, there will be over 6 years from the date of the legislation to full implementation of the new metric. Several jurisdictions have already made the transition to the vehicle miles metric, and many will be making the transition soon. These can serve as the test case that the commenter requests.

Comment 69.4

RCRC also has a few technical suggestions we would like considered (see attached). There are several areas where proposed amendments either (1) convert *nonexclusive examples* of a permissible practice found in caselaw into the *exclusive* circumstances in which that practice is permissible, or (2) adapt the language from caselaw in a manner that could be (mis)interpreted more stringently than the courts intended (or would decide under existing law).

Response 69.4

Thank you for the technical suggestions. They are addressed individually in the comments below.

Comment 69.5

§ 15004. Time of Preparation
(b) (4) While mere interest in, or inclination to support, a project does not constitute approval, a public agency entering into preliminary agreements regarding a project prior to approval shall not, as a practical matter, commit the agency to the project. For example, an agency shall not grant any vested development entitlements prior to compliance with CEQA. Further, although not determinative, any such pre-approval agreement should:

(A) Condition the agreement on compliance with CEQA;

(B) Not bind any party, or commit to any definite course of action, prior to CEQA compliance; and

(C) Not restrict the lead agency from considering any feasible mitigation measures and alternatives, including the "no project" alternative.

This change is intended to clarify that each of these elements is recommended, but that not all elements are necessarily mandatory for every agreement.

Response 69.5

This comment has been addressed by accepting the proposed suggestion.

Comment 69.6

§ 15064.4. Determining the Significance of Impacts from Greenhouse Gas Emissions

(a) The determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in section 15064. A lead agency **should shall** make a goodfaith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the **significance** amount of greenhouse gas emissions resulting from a project. A lead agency shall have discretion to determine, in the context of a particular project, whether to:
The word "amount" necessarily implies that some *quantitative* determination is required, which is contrary to the remainder of the section. (This was less problematic when this section was a "should," but becomes very important with the transition to "shall.")

Response 69.6

No change is required. While the word "amount" may imply a quantitative determination, later subsections and applicable case law clearly state that a quantitative analysis may be appropriate in some situations. Some effort should be made to determine the potential volume of emissions, even if not precisely quantified, in order to determine the potential significance of those emissions.

Comment 69.7

(b) In determining the significance of a project's greenhouse gas emissions, the lead agency should focus its analysis on the reasonably foreseeable incremental contribution of the project's emissions to the effects of climate change. The agency's analysis should consider a timeframe that is appropriate for the project. The agency's analysis also must reasonably reflect be in step with evolving scientific knowledge and state regulatory schemes.

A lead agency should consider the following factors, among others, when assessing

"In step with" is the exact language from *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal. App. 5th 413, 422, and carries a less prescriptive connotation than "must *reflect*."

Response 69.7

No change is needed. The Agency finds that the term "reasonably reflect" provides the same level of flexibility as "be in step with."

Comment 69.8

§ 15125. Environmental Setting

(a) (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. The lead agency has discretion to decide how the existing physical conditions can most realistically be measured. Where existing conditions change or fluctuate over time, and recent or recurring historical conditions may constitute a realistic measure of existing conditions. 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.

The proposed regulations conflate *historic conditions* with *projected future conditions*, which the caselaw specifically cautions against. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 450.) Historic conditions are actually a means of measuring existing conditions, when those conditions fluctuate. The lead agency has substantial discretion to use historical conditions, subject to simple review for substantial evidence. (*Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 337; *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48

Cal.4th 310, 327-328; *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99.) By contrast, project future conditions are an alternative metric "use[d] in place" of existing conditions, only under the narrow circumstances set forth in the proposed regulations. (*Neighbors, supra,* 57 Cal.4th at pp. 451-452.) The limitations applicable to projected future conditions are inapplicable to the use of historic conditions as a realistic measure of the existing conditions on the ground. The proposed regulations consequently misstate the applicable law. The suggested language here is taken from the foregoing caselaw in order to correctly state the legal rule.

Response 69.8

This regulation has been clarified. Please see Master Response 14.

Comment 69.9

§ 15126.4. Consideration and Discussion of Mitigation Measures proposed to Minimize Significant Effects.

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should shall not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way. The specific details of a mitigation measure, however, may be deferred when it is impractical or infeasible to include those details during the project's environmental review for practical reasons, mitigation measures cannot be fully formulated at the time of project approval, and the agency (1) commits itself to the mitigation, and (2) adopts specific performance standards the mitigation will achieve, and (3) lists the potential actions to be considered, analyzed, and potentially incorporated in the imitation measure. Compliance with a regulatory permit process may be identified as a future action in the proper deferral of mitigation details if compliance is mandatory and would result in implementation of measures that would be reasonable expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards. A condition requiring compliance with regulations may be identified as a future action in the proper deferral of mitigation if (1) it is reasonable to expect compliance and (2) the regulations provide adequate assurance that the impact will be mitigated.

The broad references to "practical reasons" and "practical considerations" are virtually universal in the caselaw (see, e.g., *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 234 Cal.App.4th 214, 241; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 94) and do not require the lead agency to demonstrate that *each omitted detail* is infeasible to articulate at the time of project approval.

The deleted provision goes beyond the requirements of caselaw. Although formulation of the performance criteria required under the caselaw will *often* entail such a listing of potential actions, the contents of such performance standards will ultimately depend upon the circumstances of the project. Such a listing of specific actions may itself be infeasible (or uselessly vague or speculative) for a high-level programmatic environmental document. The proposed verbiage would inappropriately remove lead agencies' flexibility to address the full range of projects where this issue may arise. This formulation is taken directly from the caselaw (see, e.g., *Oakland Heritage Alliance v. City*

of Oakland (2011) 195 Cal.App.4th 884; *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036), and more accurately describes the correct legal standard. (For example, the caselaw does not require that the regulatory standards in question involve a "permit process.")

Response 69.9

This regulation has been clarified. Please see Master Response 15.

Comment 69.10

Article 20. Definitions
§ 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 would mitigate any environmental impact which might be raised identified 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).4 The vast majority of cases on this precise point use the definitive "would" rather than the speculative "could." (See, e.g., *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 117.) This language is taken directly from the most recent caselaw (e.g., *Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, 22-23), and reflects the correct legal standard more accurately than "respond to any of the concerns".

Response 69.10

This regulation has been clarified with language substantially similar to the suggestion.

Comment 70 - Sacramento Municipal Utility District

Comment 70.1

The Sacramento Municipal Utility District (SMUD) appreciates the opportunity to provide comments on the Notice of Proposed Rulemaking; Amendments and Additions to the State CEQA Guidelines. We commend the work that the Office of Planning and Research and the Natural Resources Agency has undertaken to review and provide the amendments and additions presented in this proposed rulemaking and are in support of all of the changes provided.

Response 70.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 70.2

In addition to the changes provided, SMUD would like to request an additional change to Section 15303, New Construction or Conversion of Small Structures, (d). It is our request that the last portion of this item be deleted – ",to serve such construction." SMUD undertakes projects regularly that it considers to fall under the definition of the Class 3 exemptions, a "limited number of new, small facilities or structures." While the list of examples is not inclusive, having this clause in part (d) seems to limit the applicability of utility extensions to those needed to serve the other small structures provided as examples.

Response 70.2

This suggestion is beyond the scope of this regulatory package. Moreover, the requested change is not necessary. As the comment notes, the examples in Section 15303 are non-exclusive. The phrase that the comment suggests deleting from the section is not a strict limitation.

Comment 71 - Thomas A. Deméré, Ph.D

Comment 71.1

I am writing your office to comment on the proposed updates to the CEQA review process. My primary concern is on how the proposed changes affect the treatment and protection of California's Paleontological Resources under CEQA, and I would like to recommend that they be treated separately as a standalone issue in the CEQA checklist of Appendix G.

Response 71.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 71.2

Until recently Paleontological Resources, which consist of the remains and behavioral traces of ancient organisms (fossils), were addressed in Appendix G as part of the Cultural Resources issue. This lumping of Paleontological Resources with Cultural Resources (prehistoric and historic) has often caused confusion to agency personnel and citizens alike, and this confusion is in part what ultimately lead to the removal of Paleontological Resources from Cultural Resources with the passage of AB-52. While this change will most likely have a positive effect on the treatment of Cultural Resources, the decision to shoehorn consideration of Paleontological Resources into the Geology and Soils issue will not significantly improve the treatment of Paleontological Resources and may make matters worse. Although Paleontological Resources are preserved and found in geological rock units, they are not related in any way to the environmental concerns traditionally addressed under the Geology and Soils issue; namely earthquake rupture, seismic ground shaking, unstable land surfaces and geologic units, expansive soils, and soil erosion. The treatment of paleontological resources, including the types of data gathered during the assessment phase of resource evaluation, the content and structure of the environmental documents produced, and the types of mitigation strategies employed, differs greatly from that of Geology and Soils. In fact, Paleontological Resources are really better thought of as ancient

Biological Resources. This does not mean that Paleontological Resources should be addressed under the Biological Resources issue, but rather emphasizes the unique aspect of Paleontological Resources and the need for them to be treated as a new and separate issue during the CEQA review process.

Response 71.2

The comment suggests creating a separate category for paleontological resources in Appendix G. The Agency appreciates the active participation of the paleontological community in this update process and for educating stakeholders regarding the nature of paleontological resources. Nevertheless, the Agency declines to create a separate category in Appendix G for several reasons. First, Appendix G is nonbinding guidance. It is a sample form only, and lead agencies may tailor it as they see fit for their jurisdictions. Second, as the comment notes, one of the Agency's objectives in this update was to consolidate questions and streamline the checklist. Please see Master Response 18.

Comment 71.3

I realize that one of the goals of the proposed updates to CEQA is to streamline the review process. However, it seems that another goal of the updates is to clarify the environmental issues under consideration and to recognize the changes in our understanding of these issues since the original passage of CEQA in 1970. This need for clarification and recognition of changes in understanding is apparently the reason that four new environmental issues have been added to the Appendix G checklist in the proposed updates, including Energy, Greenhouse Gas Emissions, Tribal Cultural Resources, and Wildfire. It is in this spirit of clarification and recognition that I recommend that Paleontological Resources be added to the Appendix G checklist as another new, standalone environmental issue. In making this request, I propose the following language:

Would the project:

Directly or indirectly cause a substantial adverse effect on a paleontological resource or site?

It is noteworthy that this suggested new question differs from that currently proposed for Paleontological Resources under Geology and Soils, which reads, "*Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?*" There are several problems with the current question. First, as written the question combines two separate, unrelated, and distinctly different resources -- paleontological resources and geologic features. It is critical that these unrelated issues should be decoupled, with geologic features remaining as a consideration under Geology and Soils, and Paleontological Resources being moved into its own issue. The second problem with the current question is the difference in impact criteria required for action relative to other resources. For Biological and Cultural resources, the criteria are "*have a substantial adverse effect on*" Biological Resources or "*cause a substantial adverse change*" to Cultural Resources. In contrast, for Paleontological Resources the impact criteria are currently "*destroy a unique paleontological resource*". Thus, to be considered a potentially significant impact, Paleontological Resources must not be just adversely affected or adversely changed, they must be destroyed before the impact is considered significant. And finally, as currently written the implication is that the only impacts to be considered for Paleontological Resources are impacts to "*unique paleontological resources*" [undefined in CEQA], rather than to Paleontological Resources in general. This leaves the potential significance of an impact up to

interpretation of what is meant by “unique.” For all these reasons and for the enhanced protection of California’s rich paleontological record, I strongly urge you to consider the above recommendations.

Response 71.3

Please see Response to Comment 71.2.

Comment 72 - San Diego Natural History Museum

Comment 72.1

I am writing to comment on the proposed updates to the CEQA review process. I would like to recommend that Paleontological Resources be treated separately as a standalone issue in the CEQA checklist of Appendix G, rather than being grouped together with the dissimilar field of Geology and Soils (or Cultural Resources, which Paleontological Resources have been grouped with previously).

Response 72.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 72.2

Specifically, I recommend that Paleontological Resources be added to the Appendix G checklist as a new, standalone environmental issue, with an amendment to the wording of the question:
Current question (under Geology and Soils):
Would the project: Directly or indirectly destroy a **unique** paleontological resource or site or **unique geologic feature**? Proposed modification to question (as a standalone issue):
Would the project: Directly or indirectly cause **a substantial adverse effect** on a paleontological resource or site?

Response 72.2

Please see Response to Comment 71.2.

Comment 72.3

There are four primary reasons for my suggested changes:
1.) The protection and management of Paleontological Resources, including the types of data gathered during the assessment phase of resource evaluation, the content and structure of the environmental documents produced, and the types of mitigation strategies employed, differs greatly from that of Geology and Soils. The Geology and Soils issue primarily addresses traditional environmental concerns, such as namely earthquake rupture, seismic ground shaking, unstable land surfaces and geologic units, expansive soils, and soil erosion, which are unrelated to paleontological resources.

2.) As written, the question for Paleontological Resources in Appendix G combines two

separate, unrelated, and distinctly different resources -- paleontological resources and geologic features. These issues should be decoupled, with geologic features remaining as a consideration under Geology and Soils, and Paleontological Resources being moved into its own issue.

3.) The impact criteria for paleontological resources should mimic the criteria for Biological and Cultural Resources. Currently, for an impact to Biological or Cultural Resources to be considered potentially significant, the impact must "*have a substantial adverse effect on*" Biological Resources, or must "*cause a substantial adverse change*" to Cultural Resources. In contrast, for an impact to be considered potentially significant to Paleontological Resources, the resource must be destroyed, rather than being adversely affected or adversely changed.

4.) CEQA does not provide a definition for "*unique paleontological resource*." The lack of definition leaves the potential significance of an impact up to an interpretation of what classifies as "unique." Not only does this ambiguity potentially endanger the resource, it also makes the determination of significance difficult for environmental planners.
For these reasons, and for the enhanced protection of California's rich paleontological record, I strongly urge you to consider the above recommendations.
Thank you for the opportunity to comment on the proposed updates to the CEQA review process.

Response 72.3

Please see Response to Comment 71.2.

Comment 73 - Santa Ana Active Streets Coalition

Comment 73.1

My name is Kristopher Fortin, and I'm a board officer with Santa Ana Active Streets coalition. This email I hope finds you well.

Response 73.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 73.2

I am emailing you to inform you of Santa Ana Active Streets Coalition support of CEQA changes, specifically the addition of VMT in new developments. Santa Ana and Orange County continue to widen its streets, with benchmark policy at our regional transit agency promoting said widenings. This has led a suburbanization of the county and making our roads less walkable and bike able, and stretching our bus system to the point that whole lines have been cut in large parts of the county. We feel that the inclusion of VMT when analyzing new developments will help to curb our area's greenhouse footprint.

Response 73.2

The Agency appreciates the comment's support. No change is needed.

Comment 73.3

We also wanted to voice our concern for the lack of support for VMT when measuring for transportation projects. As said, street widenings continue to happen in Orange County. They are invasive and short sided as the main impetus for doing them is to keep car traffic flowing. Instead of prioritizing public transit options, or light synchronization as potential solutions, street widening is the knee-jerk solution to these problems. We hope CEQA includes a VMT requirement for transportation projects.

Response 73.3

Please see Master Response 5 regarding the analysis of transportation projects.

Comment 73.4

We also support policies that protect communities against gentrification caused by new developments. While analyzing for VMT may lead to more infill developments and high-density projects, we want to make sure that any investment is mindful that the trend of change has often followed areas that have been variable forgotten or demonized. They are called low-income or disadvantaged communities, and they are the ones that suffer the most in the long term when new developments come in. They are often renters, and the increased investment brings higher rents and more evictions. There are no rent control laws in Santa Ana, so renters often have very few tools to try and stay if a landlord wants to profit. If analyzing VMT will spur economic growth by way of new developments, we want to ensure our communities that they will be protected and be allowed to stay and enjoy all the benefits that come with investment.

Response 73.4

Indirect displacement of residents is beyond the scope of this regulatory package. Please see Master Responses 8 and 20.

Comment 73.5

Our four-year-old organization is made of members from housing, public health, youth development and bicycle professionals.

We are a grassroots coalition that aims to get our community members involved to make Santa Ana streets safer and healthier for those that walk and bike. These issues impact our community greatly and we hope that the Office of the Governor heeds these remarks.

Response 73.5

Thank you for your comment.

Comment 74 - Santa Clarita Organization for Planning and the Environment

Comment 74.1

I spoke yesterday at the Los Angeles area public hearing regarding this matter, but now submit written correspondence on behalf of our organization re-stating and adding to our comments.

Response 74.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 74.2

Abuse of the Addendum Process by Local Governments

We realize that the addendum process was not addressed directly in the proposed guideline update, but ask that you consider adding this matter as it is important for meaningful public input, since it was obvious that several guideline changes where aimed at ensuring adequate public notice. Sadly, local agencies have begun to use the addendum process as a means of avoiding a supplemental or subsequent EIR, even when such a document is clearly warranted by the requirements of Section 15612 which specify which impacts require such a document.

As you are aware CEQA states:

Sec. 15164. Addendum to an EIR or Negative Declaration(a) The

lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred. This addendum document is not required to be circulated, nor must responses to public comments be prepared. However, normally, it appears on a noticed agenda where the public can be informed of the document. Recently, Los Angeles County has now twice to our knowledge used the addendum process to evade public comment and participation by approving the document in the “back room” with no public notice even though it approved massive an inappropriate change. Then they argued that there was no public comment (how could there be? (no one knew about it) and that the time to bring any legal challenge to the process had passed. I have attached 3 news articles regarding the waiver which was granted to the operators of the Chiquita Canyon Landfill with an addendum that was never disclosed to the public. The waiver and the addendum allowed the exceedance of 25% of the total landfill capacity, for which a condition of permit approval had specifically stated “shall not be exceeded”. This addendum did not comply with CEQA, but no one in the community was noticed of its existence, and plaintiff attorneys advised that it was too late to challenge it. The City of Santa Clarita has also abused the addendum process, by using the addendum for large scale changes that were clearly precluded by this process. While their addendums, to our knowledge, have appeared on a Board meeting agenda, this occurs without any prior notice that this document would be considered or approved. So, it was difficult to provide meaningful comment. **In**

these cases, the remedy is simply the requirement of adequate public notice, at least to all interested parties, and a penalty if notice is not given. We understand that such abuses are also taking place elsewhere. We therefore urge you to require public notice circulation for addendums with a 30 day time period for this process to ensure that the ability of residents to participate in the process is protected.

Response 74.2

The comment suggests adding a comment period for addenda. The Agency is not making any changes to Section 16164 regarding the use of an addendum, and so this comment is beyond the scope of this regulatory package. Moreover, please note, the section on use of an addendum reflects the Legislature's concern regarding finality in the CEQA process. Public Resources Code Section 21166 provides that no additional review should be required for a project that has undergone the CEQA process except in certain limited circumstances. An addendum is an optional mechanism whereby a lead agency can document its conclusion that none of the circumstances requiring additional review have been triggered. Many courts have recognized the validity of using an addendum for such purpose. Therefore, the Agency will not make a change in response to this comment.

Comment 74.3

Abuse of the Remand process to undermine

Your proposed guidelines also attempt to address how the remand process will proceed. We just wanted to share with you our recent experience in this area in the hopes that you will address it in the updated guideline changes. The traditional remedy when a court has found an Environmental Impact Report (EIR) to be inadequate was to order the EIR decertified and the project approvals set aside pending drafting and approval of a corrected EIR. In the case of the recent Newhall Ranch remand from the CA Supreme Court1 to which we are a party, the trial court's writ voided certification of portions of the EIR covering greenhouse-gas (GHG) emissions and two mitigation measures related to an endangered fish. The court didn't say exactly what portions of the text of the EIR were voided, and didn't make the finding required by Pub. Res. Code § 21168.9(b) that the voided portions were severable from the remainder of the EIR. The Court of Appeal decision affirmed the trial court's limited order. The CEQA remedy statute in Pub. Res. Code § 21168.9 requires that, for every decision or approval made in violation of CEQA, the court take one of three actions—setting aside the decision or approval, suspending related project activities, or mandating specific action to bring the decision or approval into compliance with CEQA. In this case, all of the project decisions, including findings, statement of overriding considerations, and mitigation monitoring program, and project approvals, including incidental take permits and a master streambed alteration agreement, were merely suspended. This remedy is inconsistent with the statute, but the Court of Appeal affirmed, creating a precedent for a very loose and flexible interpretation of the CEQA remedy statute. This interpretation should not be allowed to stand. We ask that you make clarifications in the guidelines so that Courts cannot bend the guidelines in ways that may undermine the mitigation process.

Response 74.3

The updated regulations provide additional guidance on remand. Please see Master Response 13.

Comment 74.4

But that concept doesn't bear close scrutiny—it's hard to know what that would mean. The Guidelines should clarify that, when § 21168.9 requires a portion of a decision or approval to be severable, it must be severable from the rest of the decision or approval, not from the project as a whole.

Response 74.4

This suggestion is beyond the scope of this regulatory package. The courts have discretion to determine the appropriate remedy as described in Public Resources Code Section 21168.9.

Comment 75 - Shute, Mihaly & Weinberger

Comment 75.1

Shute, Mihaly & Weinberger submits the following comments on the Natural Resources Agency's proposed amendments to the CEQA Guidelines. Because Shute, Mihaly & Weinberger represents both public agencies and environmental and community groups, we have a unique perspective on the CEQA process. We appreciate the level of work that went into this update and its comprehensive attempt to reflect the evolving case law and statutory changes that have occurred since the last major update. Although there are many proposed amendments to the Guidelines, these comments focus only on those amendments that are of particular importance or concern.

Response 75.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 75.2

We understand this amendment is designed to implement the provisions of Public Resources Code section 21155.4. We suggest that the reference to a "planned" transit stop include a reference to Public Resources Code section 21099 (a)(7), which identifies specific criteria for "planned" transit stops.

Response 75.2

This suggestion has been incorporated.

Comment 75.3

Section 15301.

The existing facilities exemption is designed to allow a narrow exemption for existing projects or minor expansions to such projects. For this reason, we agree that the change to allow for bicycle lanes and pedestrian improvements within existing roadways is consistent with the purpose of the exemption. As a general rule, these changes would not have significant impacts and are an improvement to the existing roadways which are often focused on vehicle traffic rather than pedestrian and bicycle safety.

Response 75.3

The Agency appreciates the support for the changes described in the comment.

Comment 75.4

However, we believe the deletion of the language "beyond that existing at the time of the lead agency's determination" and the addition of the word "former" would fundamentally change the existing facilities exemption and expand it beyond that which is supported by the statute. First, there is not support for the claim that these terms interfere with infill development. Existing facilities, by their nature, exist throughout the state and could include any number of operations, whether infill or not, including hazardous waste facilities, oil refineries, or oil and gas wells. Being "infill" does not make a use innocuous nor is there any state policy to encourage the use of such projects in populated areas. Moreover, it is not appropriate to conflate baseline case law with exemptions from CEQA, where no environmental review is conducted at all. Exemptions from CEQA should be narrowly construed. *Mountain Lion Foundation v. Fish & Game Com*. (1997) 16 Cal.4th 105, 125. The baseline case law discussed in the comments all involved cases for which environmental review was conducted and assessed how to establish a particular level of activity in an area. It did not sanction the use of an exemption for projects simply because they may have existed in the past. Yet, the amendments could exempt substantial projects with significant effects on public health—such as an oil refinery in a low income community—from any review at all. If the Resources Agency is concerned with efficiency of environmental review, former facilities—for which environmental review had been conducted in the past—may be able to rely on the provisions of Public Resources Code section 21166. However, they should not be exempt from CEQA altogether.

Response 75.4

Stakeholders recommended clarifying Section 15301 to ensure that projects to reuse vacant or non-operational buildings could potentially use the "existing facilities" exemption. The suggestion is consistent with state policy that favors infill development. (See, e.g., Gov. Code § 65041.1 ("The state planning priorities, which are intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety in the state, including in urban, suburban, and rural communities, shall be … [t]o promote infill development and equity by rehabilitating, maintaining, and improving existing infrastructure that supports infill development and appropriate reuse and redevelopment of previously developed, underutilized land that is presently served by transit, streets, water, sewer, and other essential services, particularly in underserved areas, and to preserving cultural and historic resources").) The Agency acknowledges commenter's concerns about potential misuse of the Class 1 categorical exemption. The exceptions to the exemptions will continue to provide a check to these potential abuses. In creating or amending the categorical exemptions, the Agency considers whether there will be an environmental impact under the typical situation. See Public Resources Code, § 21084; CEQA Guidelines, §§ 15300, 15300.2.

Comment 75.5

Modifications to CEQA Checklist.

The changes to the checklist to reflect the decision in *California Building Industry*

Association v. Bay Area Air Quality Management District (2015) 62 Cal.4th 369 ("*CBIA v. BAAQMD"*) do a good job of interpreting the decision and incorporating it into specific language. That decision specifically acknowledges that agencies are required to analyze the impacts of exposing people to hazardous conditions where the project will exacerbate these conditions. The proposed amendments appropriately reflect this holding.

Response 75.5

The Agency appreciates the support for the proposed changes described in the comment.

Comment 75.6

We have concerns about the elimination of the noise threshold providing that substantial increases in ambient noise levels may be potentially significant impacts. First, not every jurisdiction has quantifiable noise standards. Moreover, compliance with a specific noise threshold may not be adequate to demonstrate a project will not have a significant environmental impact. *Berkeley Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344.

Response 75.6

The threshold regarding ambient noise has not been removed, it has been relocated to Section XIII, subdivision (a).

Comment 75.7

Also, it's unclear why the amendments would delete provisions addressing impacts to projects located in the vicinity of an airport. Notwithstanding the decision in *CBIA v. BAAQMD,* CEQA specifically requires an analysis of locating development in close proximity to airports. Pub. Res. Code § 21096.

Response 75.7

The provisions addressing impacts to projects located in the vicinity of an airport have not been deleted, they have been moved to the Hazards Section (IX), in subdivision (e).

Comment 75.8

Section 15125.

We suggest revising Guidelines section 15125(a)(2) to clarify that agencies must consider the entire administrative record when selecting a future or historic conditions baseline in lieu of an existing conditions baseline. As currently drafted, subsection (a)(2) would allow lead agencies to exclude an existing conditions baseline only where the agency finds such a baseline would be misleading or uninformative. This is result is inconsistent with the standard established in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 448 ("*Smart Rail*"). There, the court found that the relevant question is "whether the administrative record here contains substantial evidence" to justify excluding an existing conditions baseline. Proposed

Guidelines section 15125(a)(1) also recognizes that a future conditions baseline must be supported "reliable projections based on substantial evidence in the record". By focusing only on whether the lead agency demonstrates that the existing conditions baseline would be misleading or uninformative, the revision suggests that the lead agency could ignore all available evidence when making its baseline determination, including evidence submitted by another agency or the public. Ultimately, requiring agencies to consider the full suite of evidence before them furthers the underlying policy of providing decisionmakers and the public information that most accurately reflects a project's potential impacts on the environment. *Smart Rail*, 57 Cal.4th at 453.

Response 75.8

The comment suggests requiring a lead agency to consider all evidence in its record before relying on a baseline other than existing conditions. The comment further suggests that lead agencies might ignore evidence presented to it by the public or other public agencies. The Agency appreciate the comment's concern; however, it disagrees that the proposed change is necessary. The Agency's proposed changes to this section include a caution that "purpose of this requirement [to describe the baseline] 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." Moreover, other provisions in the Guidelines ensure that lead agencies will consider all evidence presented to it. For example, Section 15064, on the determination of significance, states: "In determining whether an effect will be adverse or beneficial, the Lead Agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency." Section 15125 has been further clarified in the 15-Day revisions. Please see Master Response 14.

Comment 75.9

Additionally, as drafted, Guidelines section 15125(a)(3) creates uncertainty about when it is appropriate to use a future conditions baseline. By definition, future conditions are conditions that have never actually occurred. The Guidelines should be revised to clarify that projected conditions may be used to establish a future conditions baseline but not an existing conditions baseline. We recommend moving the proposed text from subsection (a)(3) to subsection (a)(1), and distinguishing hypothetical conditions from "conditions expected when the project becomes operation," which might otherwise be confused with hypothetical conditions. With that revision, it would be clear that subsection (a)(1) addresses standards for establishing existing conditions while subsection (a)(2) addresses departures from the existing conditions baseline.

Response 75.9

This regulation has been clarified. Please see Master Response 14.

Comment 75.10

In general, we support the use of VMT to address transportation impacts. This metric is consistent with SB 743 and it provides a more complete picture of both the increased transportation and potential air quality implications of a project. However, it is not appropriate to exempt transportation projects—particularly roadway capacity projects—from the obligation to determine if the induced traffic from the project will result in a significant increase in VMT. If the Guidelines intend to set a consistent standard

for evaluating transportation impacts, highway projects that increase VMT should be subject to the same standards as other projects. Moreover, it is important not to lose sight of the fact that even projects in urban areas close to public transit can have significant transportation impacts if not appropriately designed or mitigated. Rather than assume that projects located near transit will not result in increased VMT, the environmental documents should conduct the VMT analysis and conclude based on
evidence whether the impact will be significant.

Response 75.10

Please see Master Response 5. The Guidelines do not exempt roadway capacity projects from environmental review.

Comment 75.11

However, we do not believe that the amendment to section 15064.4 (b)— providing that an agency should focus on the incremental contribution of the project's emissions to the effects of climate change—effectively captures this goal. Because no single project is likely to have a significant effect on climate change, we are concerned that agencies could still dismiss project impacts if they focus on that project's contribution to the effects of climate change. We propose that the Guideline be modified to include the following language, which would more clearly state the intent of the amendment.

Response 75.11

This comment has been addressed by the inclusion of the following sentence: "A project's incremental contribution may be cumulatively considerable even if it appears relatively small compared to statewide, national or global emissions."

Comment 75.12

In addition, the language in section 15064.4 (b)(3) regarding consistency with the State's long-term climate goals does not capture the court's holding in *Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 62 Cal.4th 204.

Response 75.12

This comment has been addressed by the inclusion of the following phrase: "and its conclusion that the project's incremental contribution is not cumulatively considerable."

Comment 75.13

Although we understand the purpose of the addition to this section is to reflect *Friends of Westwood v. City of Los Angeles* (1987) 191 Cal. App. 3d 259*,* the language should not be limited to changes that could be effected by an environmental impact report because an EIR is only one form of environmental review that could result from the application of CEQA. Therefore we suggest amending the language to state: The key *question* is whether the approval process 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 document.

Response 75.13

This comment has been addressed. The Guideline now states: “The key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project.”

Comment 75.14

Section 15370.

We support the addition to subsection (e), which reflects the court’s decision in *Masonite Corporation v. County of Mendocino* (2013) 218 Cal. App. 4th 230 and the practice of many agencies with respect to mitigation of impacts to agricultural and environmentally sensitive land.

Response 75.14

The Agency appreciates the support for the changes described in the comment.

Comment 76 – Sierra Club California

Comment 76.1

Sierra Club California submits the following comments on the Office of Planning and Research’s (OPR) update on the Guidelines for Implementation of the California Environmental Quality Act (CEQA). CEQA is a critical law for California that mandates agencies publicly evaluate environmental impacts of their actions and mitigate these impacts. CEQA holds polluters responsible for harms on our communities and the environment and provides a voice for the public. We have identified several areas within the proposed update that we believe need to be addressed or highlighted.

Response 76.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 76.2

Section 15064.3 (b)(1)

We oppose a presumption that land use projects within one-half mile of transit have less than a significant transportation impact. There are numerous types of projects that could still induce traffic, such as projects that draw in people from areas not connected to the transit, or development of luxury housing where residents may not use transit.

Regardless, all projects must evaluate their transportation impacts, and a lead agency’s

determination as to whether or not an impact is significant is still a case-by-case basis. This presumption could have agencies believing they can ignore these impacts, causing unmitigated impacts to occur, in violation of CEQA. The presumption needs to be removed.

Response 76.2

Proximity to transit has been shown to decrease the vehicle miles travelled generated by a project. Please see Master Response 4. If there is substantial evidence that a project may still have a significant impact on transportation, despite its proximity to transit, that evidence can be used to rebut the presumption.

Comment 76.3

Section 15064.3 (b)(2)

We oppose allowing roadway capacity projects to continue to use Level of Service as an appropriate methodology to determine impacts. The switch to vehicle miles traveled as a methodology is part of California's recognition that reducing the amount of car trips taken is imperative to reducing greenhouse gas emissions in line with our goals. Types of projects should not be exempt from a stricter analysis, especially those types of projects like road widening **where the project can induce traffic and cause more vehicle miles traveled.**

Response 76.3

Please see Master Response 5.

Comment 76.4

Section 15126.2 (b)

We support the consideration of wasteful energy as a component of CEQA. The addition of this section will help California's existing efforts to reduce energy consumption, and prevent needless greenhouse gas emissions.

Response 76.4

The Agency appreciates the support for the changes described in the comment.

Comment 76.5

Appendix G X. Hydrology and Water Quality
We are concerned that the Appendix G change to groundwater impacts may miss numerous impacts throughout the state by limiting impacts to those interfering with sustainable groundwater management of a basin. The Sustainable Groundwater Management Act only covers alluvial sources of groundwater in the state and does not include fractured rock aquifers. For alluvial basins, only medium and high priority basins are required to conform to sustainability requirements.

OPR should revert to the previous language and add "or would the project impede sustainable groundwater management of the basin." This will prevent impacts from going unmitigated in areas not managed under the Sustainable Groundwater Management Act, and still prevent interference with the implementation of the Act.

Response 76.5

No change is necessary in response to this comment. Appendix G is non-binding guidance for lead agencies. Moreover, the question addressing groundwater is not limited to sources that are subject to the Sustainable Groundwater Management Act. Please see Master Response 18.

Comment 77 - Public Interest Coalition, *et al*.

Comment 77.1

Thank you for the opportunity to comment on the proposed CEQA Guidelines Amendments. CEQA is instrumental in protecting the environment, informing the public, and addressing comments to help make a proposed project better. With many amendments, being proposed and adopted in the past, we submit that CEQA is piece-by-piece being weakened. The California Natural Resources Agency (CNRA) should take steps to strengthen CEQA's mandates.

Response 77.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 77.2

One of our primary concerns with CEQA is that the CNRA divisions are what the public relies on for CEQA comment input. These governmental regulatory agencies are in effect the public's life jackets for environmental protection. Increasingly, regulatory governmental agency staffs, with all the required expertise and science, are not submitting comments at all—not weighing in on truly significant, dangerous, and unacceptable health and safety issues and impacts during the proposed project's CEQA comment period. These areas of agency silence include, but are not limited to, important natural resources conservation or protection, prehistoric sites, wildlife, and many other areas where specific agencies are created and supposedly operating for environmental protection. Thus, the CEQA comment burden is shifted to public citizens who are working eight hours a day in other areas, raising families, and lacking the expertise that the regulatory agencies are expected to provide. We submit that instead of a requirement of a set number of days for agencies to respond and weigh in with comments on a proposal, that the Guidelines be amended to state that no project may proceed without a comment as requested from a regulatory agency. Another option might be to allow any regulatory agency to submit at any time during the entire CEQA process before it is approved by the lead agency—instead of being curtailed after a specific number of comment days have passed. The regulatory agencies should be required to make at least some effort to address the most glaring impact that their agency oversees and be responsible for the consequences

of their comments.

Response 77.2

Thank you for the suggestion. The Agency agrees that regulatory agencies provide valuable information to lead agencies during the project review period. There are numerous provisions within the CEQA Guidelines that facilitate consultation with regulatory agencies that have special expertise concerning the environmental effects of the project. See, e.g., CEQA Guidelines, § 15082, 15083, 15086. A requirement that these agencies provide a public comment would exceed the scope of this regulatory process and would likely require statutory direction from the Legislature.

Comment 77.3

Another of our concerns is the apparent attempt to increase the already-too expansive "exempt from CEQA" umbrella. "Exempt" must be applied only in the most narrow and stringent of instances with a project proposal. Furthermore, when a project squeezes into the "exempt" category, there must be a remedy when either the project changes and/or its exempt impacts were not accurately identified by the lead agency. In such cases, a Guidelines Update amendment should address the erroneous "exempt" categorization; provide relief to the public with a meaningful consequence, such as a mandatory environmental analysis immediately upon discovery of such an error.

Response 77.3

It is unclear what commenter is requesting. The Agency only has authority over the scope of the categorical exemptions. The Legislature creates statutory exemptions. Categorical exemptions are limited by the exceptions to the exemptions. See CEQA Guidelines, § 15300.2.

Comment 77.4

Another of our concerns is in the creation of electronic CEQA documents. It is quite helpful to have electronic documents posted online. However, in addition to requiring every lead agency to have all CEQA documents available on line, the requirement should also include a mandate that they all be smaller than 3-4 MB for viewing and/or downloading by the public.

Response 77.4

This suggestion exceeds the scope of this regulatory package. Moreover, the Guidelines cannot require lead agencies to post documents online or limit the file sizes if they do unless the Legislature directs it in statute.

Comment 77.5

Another concern is the "functional equivalent" of CEQA that is allowed for a number of regulatory agencies. We request that the rules that regulate those agencies' compliance with CEQA be amended to not allow such deviations. Instead of an ISOR, require the usual IS checklist. Instead of a DED, require a Draft EIR followed by a Final

EIR. Since “consistency” is one of the stated goals of this Guidelines Update, we submit that “consistency” should start with the CNRA. Its regulatory lead agencies should all follow the same CEQA process. Otherwise, confusion may be the outcome and a lack of public participation.

Response 77.5

This suggestion exceeds the scope of this regulatory package. Certified regulatory programs are authorized by statute. See Public Resources Code, § 21080.5. Despite having different naming conventions, these programs remain subject to other provisions in CEQA, such as the policy of avoiding significant adverse effects on the environment where feasible.

Comment 77.6

We submit for CEQA to be more effective that penalties for non-compliance must be more easily and readily enforced. Once the landscape has been illegally destroyed and the impacts felt by all, sometimes in perpetuity, there has to be some kind of automatic, mandated remedy for the public. Otherwise, enforcement becomes a litigation responsibility of citizens when it would be more appropriately handled by regulatory agencies. Currently, in incidents we have observed, the regulatory agencies have either been reluctant to enforce or been curtailed in some manner. The CEQA Guidelines Update should provide more “teeth” as to the enforcement and consequences of CEQA violations.

Response 77.6

This suggestion exceeds the scope of this regulatory package. CEQA does not contain an enforcement mechanism beyond litigation. Irreparable harm can be prevented through the injunction process.

Comment 77.7

Last, we submit that providing the greatest possible environmental protection should be the end goal of all proposed projects. Because CEQA is the only buffer between those who avoid their responsibilities and later create significant impacts to citizens, amendments to the guidelines should focus on strengthening, not “easing” the process.

Response 77.7

The Agency has focused this regulatory package on updates that would (1) make the CEQA process more efficient, (2) result in better environmental outcomes, consistent with other adopted state policies, and (3) that are consistent with the Public Resources Code and the cases interpreting it.

Comment 78 - Society of Vertebrate Paleontology

Comment 78.1

We are writing on behalf of the Society of Vertebrate Paleontology (SVP) with comments on updates to the California Environmental Quality Act (CEQA) review process.

Response 78.1

The Agency thanks the commenter for providing a public comment.

Comment 78.2

The Society of Vertebrate Paleontology exists to advance the science and education of vertebrate paleontology and to serve the common interests of all members of our discipline. With over 2,500 members from every continent except Antarctica, we are the largest professional organization of paleontologists in the world. More than 200 of our members reside in the State of California and many more conduct research on the paleontological resources there.

Response 78.2

This is introduction and no change is required.

Comment 78.3

We welcome the revisions, which are long overdue. Because of their scientific importance and their value as national heritage, we would like to see paleontological resources placed in a category of their own in the CEQA checklist of Appendix G.

Response 78.3

Appendix G is provided as nonbinding guidance. Lead agencies have the authority to place impact analyses where appropriate for that particular project. Please see Response to Comment 71.2.

Comment 78.4

Fossils and traces are in many ways different from the geological units in which they occur and have distinct concerns. We recommend, therefore, that paleontological resources be given a category of their own in Appendix G with the language, "*Would the project directly or indirectly cause a substantial adverse effect on a paleontological resource or site*?"

Response 78.4

Appendix G is provided as nonbinding guidance. Lead agencies have the authority to determine the appropriate significance thresholds. Please see Response to Comment 71.2. Please also see Public Resources Code 21083.09, which required only that paleontological resources were considered separately from tribal cultural resources.

Comment 79 - South Coast Neighborhood Association

Comment 79.1

As a neighborhood leader in my community, I am concerned about maintaining the quality of life within our residential communities. Traffic is a major concern, in and around our neighborhood. I serve as a neighborhood leader and there are 66 additional organized Neighborhood Associations within our city.

Response 79.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 79.2

We have concerns that a large developer can take advantage of the limitations of these new guidelines and will be able to get easier approvals for massive projects that may put substantial new traffic (and congestion) into our neighborhoods and streets. Since the intersections are proposed to not be as closely analyzed and fixed (mitigated) as required today, we are concerned that our families and children may be adversely impacted. For example, if changed from Level of Service (LOS) looking at specific intersection impacts, and instead looking only at a broader VMT (Vehicle Miles Traveled) number, it seems that many considerations could be lost in the detail of a broader analysis. We have consistently worked so hard to keep parking intrusion and nuisance traffic away from our homes, kids, and community.

Response 79.2

Please see Master Response 9. Congestion management will continue to be performed pursuant to the Congestion Management Act.

Comment 79.3

We are very concerned that we have not been invited into this process to ensure that our interests are protected. Since we are not transportation or planning professionals, we are not necessarily a part of this process. I understand that this Bill was promoted to build an Arena up in Northern California and "create jobs." But if CEQA is changed (the way it appears it will be) communities and neighborhoods will be disregarded.

Response 79.3

This is the opportunity for all members of the public to provide feedback on the proposed changes. Please also note, the Initial Statement of Reasons described the extensive multi-year public outreach and stakeholder engagement that the Agency conducted together with OPR.

Comment 79.4

We would like to request that the deadline to comment be extended and an OVERT outreach to neighborhood leaders throughout the state of California be pursued before any new guidelines are approved to go forward.

Response 79.4

As noted above, the proposed changes have been publicly vetted for several years. The Agency cannot extend the comment deadline.

Comment 80 - State Building and Construction Trades Council of California

Comment 80.1

On behalf of the State Building and Construction Trades Council of California, an umbrella organization representing over 400,000 construction workers in California and their families, and California Unions for Reliable Energy, a coalition of labor organizations whose members encourage sustainable development of California's energy and natural resources, please accept these comments on the Natural Resources Agency's proposal to add, amend and adopt regulations implementing Title 14, Division 6, Chapter 3 of the California Code of Regulations, the Guidelines for implementation of the California Environmental Quality Act ("CEQA Guidelines").

Response 80.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 80.2

The Office of Planning and Research ("OPR") is authorized to propose, and the Natural Resources Agency ("Agency") is authorized to certify and adopt, a regulation only if it is consistent and not in conflict with CEQA.2 We reviewed the proposed amendments and find that while some of the changes are consistent with the statute and case law, other changes are not. Some changes would also result in confusion, increased litigation and, importantly, weakened environmental review of public health and environmental impacts contrary to the Legislature's intent in enacting CEQA. For these problematic proposals, we recommend not approving the amendments and revising the language to accurately reflect the plain language of CEQA, the Legislature's goals in enacting CEQA and case law interpreting the statute.

Response 80.2

The commenter’s individual comments are addressed below.

Comment 80.3

First, in proposed amendments to section 15064(b)(2), the word "should" fails to comply with CEQA and would result in internally inconsistent CEQA Guidelines. It states that an agency "should" briefly explain how compliance with a standard means the impact would be less than significant and "should" support this conclusion with substantial evidence. This proposed amendment is inconsistent with a public agency's "duty under CEQA to meaningfully consider the issues raised by the proposed project.""

The proposed amendment is also different from the language proposed in section 15064.7(d). Proposed amendments to section 15064.7(d) state that the agency "shall" explain the effect of using the standard. With regard to supporting the conclusion, section 15064(f) similarly states that the agency "shall" base its decision on substantial evidence. Therefore, without changing the word "should" to "shall," proposed section 15064(b)(2) is inconsistent with CEQA and the CEQA Guidelines.

Response 80.3

The comment suggests that use of the word "should" in the discussion of the use of thresholds of significance violates CEQA. The Agency disagrees. The comment does not support its assertion with any authority. Moreover, subdivision (b)(2) describes an optional method to determine significance of project impacts. Thus, it is appropriate to use the word "should" to signal encouragement based on policy. (See also CEQA Guidelines § 15005(b) ("'Should' identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations").) Therefore, no change is needed.

Comment 80.4

The amendment states that an environmental standard is a rule which "addresses the environmental effect caused by the project." Unlike OPR's 2015 draft proposed amendments, the amendment does not clarify that the standard must address the "same environmental effect." However, case law is clear on this issue. Public agencies must have "meaningful information reasonably justifying an expectation of mitigation of environmental effects."6 Agencies may not use standards which technically deal with the same environmental effect, but do not deal with the true effects caused by the project. In Californians for Alternatives to Toxics. Dept. of Food & Agriculture, the court set aside an agency's decision where the agency used standards that dealt with the effects of pesticides, but did not cover the actual effects caused by application of pesticides in a specific program. The requirement that the agency will consider the "project's actual environmental impacts" rather than the "project's compliance with some generalized plan." was reiterated by the court in Communities for a Better Env't v. California Res. Agency. Even though this issue is well settled by the courts, the proposed amendment to section 15064.7(d)(3) would result in increased litigation regarding whether agencies must address the actual environmental effects.

Response 80.4

The comment suggests that the proposed guideline identifying what environmental standards might be appropriate for use as a threshold of significance should state that the regulation addresses the same impact that the project would cause. Additional clarification in Section 15064.7, subdivision (d)(3) is unnecessary. That subdivision states that a standard might be appropriate as a threshold if it "addresses the environmental effect caused by the project[.]" The word "same" would be redundant. Moreover, please note, the proposed changes to Section 15064(b)(2) clarify: "Compliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence indicating that the project's environmental effects may still be significant." Thus, the public has the opportunity to point out why compliance with an environmental standard might not reduce project impacts to a less than significant level.

Comment 80.5

Proposed amendments to section 15168(c)(2) are internally inconsistent with the CEQA Guidelines and, therefore, are invalid. CEQA Guidelines section 15162(b) states that, if a subsequent EIR is not required, the "lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation." However, proposed amendments to section 15168(c)(2) state that if "pursuant to section15162, no subsequent EIR would be required(...)," the project can be approved as being within the scope of a program EIR. This proposed language is inconsistent with the directive in section 15162(b), results in confusion regarding the agency's required course of action once it determines a subsequent EIR is not required and would result in increased litigation.

Response 80.5

The comment suggests revising Section 15168 to state that a project could only be found to be within the scope of a program EIR not only if no subsequent EIR is required, but also if no subsequent negative declaration, addendum or other document is required. The Agency declines to adopt this suggestion. The comment conflates the general rules that apply when an agency must determine whether subsequent review may be required with the more specific rules, described in Section 15168(c), that apply when site-specific activities fall within the scope of a program EIR. Subdivision (d) of Section 15168 describes how to use a program EIR for subsequent negative declarations. Moreover, the comment provides no authority to support its assertion. Therefore, no change is necessary in response to this comment.

Comment 80.6

We recommend that the language in section 15168(c)(2) be revised to read: "[i]f the agency finds that pursuant to Section 15162, no subsequent EIR, subsequent negative declaration, an addendum, or other further documentation would be required, the agency can approve the activity .... " Otherwise, section 15168(c)(2) is internally inconsistent with the CEQA Guidelines and invalid.

Response 80.6

Please see Response to Comment 80.5, above.

Comment 80.7

The list of "relevant factors" proposed in section 15168(c)(2) is improper for several 1·easons: it is inconsistent with case law; it adds factual findings to the CEQA guidelines based on facts in limited case law; each factor is not dispositive of whether a project was sufficiently analyzed in a prior program EIR; and it contains no exception that requires an agency to consider substantial evidence, as required by CEQA.

Response 80.7

The comment objects to additions to Section 15168 intended to assist lead agencies in determining whether a project falls “within the scope” of a program EIR. The comment asserts, without authority, that the propose list of factors violates CEQA. The Agency disagrees that the additions violate CEQA. As

the comment notes, the proposed additions identify a non-exclusive list of possible factors, drawn from examples in the case law interpreting Section 15168, that might indicate whether a later project is within the scope.

Comment 80.8

Each of the proposed amendments to section 15168(c)(2)'s "relevant factors," standing alone, is not enough to make a legally adequate CEQA determination, and some are not even consistent with the limited case law on which the amendment relies. For example, "geographic area analyzed for environmental impacts" is a factor that is purportedly derived from the court decision in Santa Teresa Citizen Action Group u. City of San Jose.9 However, the court in Santa Teresa also looked at other crucial factors and concluded the project was "the same" as the project which was described in the previous EIR. The proposed amendment improperly relies on one factor in the court decision, and the factor is taken out of context.

Response 80.8

The comment suggests that the proposed additions might induce a lead agency to wrongly rely on only one factor in determining whether a later activity is within the scope of a program EIR. The Agency disagrees. Immediately preceding the non-exclusive list of factors is the statement that: “Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.” Thus, an Agency must consider the whole record in making its determination, not merely one factor. Further, another portion of subdivision (c) suggests that lead agencies use a written checklist to document how a site-specific activity falls within the scope of the program EIR’s analysis. (See Section 15168(c)(4).) Thus, the scenario that the comment describes, relying solely on being with the geographic scope of a plan, is highly unlikely to occur.

Comment 80.9

Proposed amendments to section 15168 (c)(2) also exclude many other factors that are relevant to an agency's determination and relied on by agencies, but not litigated. Therefore, including a list of "relevant factors" in the CEQA Guidelines may lead to agencies arbitrarily relying on one or more factors even where the later activity was not properly analyzed in the program EIR. For example, a City could argue that a previously planned residential project in the suburbs covers a later proposed industrial project in the same geographical area merely because the same geographical area was already analyzed for an entirely different project. This would violate the plain language and intent of CEQA and case law.

Response 80.9

Please see Responses to Comments 80.7 and 80.8, above.

Comment 80.10

The limited list of "relevant factors" in proposed amendments to section 15168(c)(2) violate the plain language and intent of CEQA. We recommend the list be deleted. In the alternative, the Agency must add a sentence clarifying that "one or more of the factors in this subdivision will not create a

presumption that the agency's decision is supported by substantial evidence where other factors show that the later activity's effects were not sufficiently examined in the program EIR."

Response 80.10

Thank you for the suggestion. The Agency has not incorporated this change for the reasons stated in Responses to Comments 80.7 and 80.8, above.

Comment 80.11

Proposed amendments to section 15168(c)(2) violate CEQA by allowing a public agency to rely on elements presented "in the project description or elsewhere in the program EIR" in order to decide if a project is "within the scope" of a program EIR. The proposed amendment is inconsistent with relevant case law, as well the objective of the proposed amendment itself.

The CEQA Guidelines explicitly require a project description to include the information required for evaluation and review of a project.11 The courts have repeatedly stressed that "an accurate, stable and finite project description" is a basic requirement for a sufficient EIR.12 Allowing an agency to look for elements of the activity not in the project description, but "elsewhere in the program EIR," violates CEQA's longstanding principle regarding the necessity of an accurate, stable and finite project description.

Response 80.11

The comment objects to allowing agencies to consider information outside of the project description section of a program EIR when considering whether a later activity is within the scope of that EIR. The comment provides no authority for its assertion. As a practical matter, some project details are described in portions of the environmental analysis where such project details are relevant. The Agency has revised the particular provision described in the comment to clarify that relevant portions of the later activity should be “described in the program EIR.” No further change is needed response to this comment.

Comment 80.12

Also, the proposed amendment directly contradicts another proposed amendment. The Agency proposes to amend the second sentence in section 15168(c)(5) so it will read "with a good and detailed project description(...) many later activities could be found to be within the scope of the project described in the program EIR (...)." The amendment thus rightfully stresses the importance of a good and detailed project description on the one hand, but undermines it with the amendment "elsewhere in the program EIR." This makes the amendments internally inconsistent. The phrase "or elsewhere in the program EIR" violates CEQA and results in internally inconsistent CEQA Guidelines. We recommend that "or elsewhere in the program EIR" be deleted. At a minimum, the Agency must revise the language so the factors can be presented "in the project description and elsewhere in the EIR."

Response 80.12

Please see Response to Comment 80.11.

Comment 80.13

Proposed amendments to section 15168(c)(1) violate CEQA by failing to require an initial study when a later activity would have effects that were not examined in a program EIR and, hence, not within the scope of a program EIR. CEQA Guidelines section 15168(c)(l} states, "[i]f a later activity would have effects that were not examined in the program EIR, a new Initial Study would need to be prepared leading to either an EIR or a Negative Declaration." The Agency proposes to add a sentence to "clarify that even if a project is not 'within the scope' of a program EIR," the lead agency may still use tiering to streamline environmental review of the project. The Agency fails to include the statutory requirement to prepare an initial study. Public Resources Code section 21094, which sets forth the tiering process, explicitly states that a lead agency "shall" prepare an initial study to comply with the requirement of the section. Public agencies and the courts, including the court in Sierra Club. County of Sonoma,13 which the Agency cites as the authority for the proposed amendment, consistently implement section 21094 by requiring an initial study when a later activity is not within the scope of a prior program EIR.14 The proposed amendment to section 15168(c)(l) violates CEQA and court holdings implementing CEQA. The Agency must revise the section to clarify that, if a project is not within the scope of a program EIR, an agency must prepare an initial study leading to either an EIR or a Negative Declaration.

Response 80.13

It is unclear what commenter is requesting. As commenter notes, the existing regulation states that a new initial study is needed if an activity falls outside of the scope of a program EIR. When an analysis is conducted, subsequent to the EIR, the agency may be able to tier parts of the analysis pursuant to Section 15152, subdivision (f).

Comment 80.14

The proposed amendment to section 15301 violates CEQA and is consistent with case law. The proposed amendments would allow agencies to use the existing facilities exemption where there is "negligible or no expansion of existing or former use," even when the use is "beyond that existing at the time of the lead agency's determination." In the draft proposed amendments, OPR claimed that the change would reflect the decision in Communities for a Better Environment, 15 which OPR misrepresents "found that a lead agency may look back to historic conditions to establish a baseline where existing conditions fluctuate ... "Hi This reasoning is flawed for two reasons:

First, in Communities for a Better Environment, the Supreme Court addressed the question of "how the existing physical conditions without the project can most realistically be measured,"17 and discussed how, in some cases, it might be necessary to consider conditions over a range of time periods. 18 The Court held We conclude neither the statute of limitations, nor principles of vested rights, nor the CEQA case law ... justifies employing as an analytical baseline for a new project the maximum capacity allowed under prior equipment permits, rather than the physical conditions actually existing at the time of analysis.19. The court did not allow the agency to use historic or previous conditions in lieu of existing conditions for the baseline setting. Therefore, the Agency's proposed amendment allowing agencies to look at "former" instead of existing use is inconsistent with the Supreme Court's holding.

Response 80.14

The commenter misstates case law on the establishment of baselines. Multiple cases have held that historic conditions can be used to establish an "existing conditions" baseline. See *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439; *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316; *San Francisco Baykeeper v. California State Lands Commission* (2015) 242 Cal.App.4th 202; *North County Advocates v. City of Carlsbad* (2015) 241 Cal.App.4th 94.

More importantly, the comment does not acknowledge that this language appears in a Categorical Exemption. In other words, it is a description of one class of activities that the Secretary has determined will not normally cause a significant impact on the environment, as authorized by the Legislature in Public Resources Code Section 21084. Thus, the Agency has discretion to determine that the phrase "existing or former use" is a better description for the class of existing facilities than the phrase "use beyond that existing at the time of the lead agency's determination." Moreover, please note, this categorical exemption is subject to the exceptions described in Section 15300.2, which state that the exemption cannot be used where the project might cause significant effects due to unusual circumstances, for example. Therefore, no change is required in response to this comment.

Comment 80.15

Second, the Supreme Court in Communities for a Better Environment made clear that the purpose of setting the baseline is to reflect the "real conditions on the ground." In contrast, the Agency's proposed amendment would reflect "previous" conditions without any need or explanation. Therefore, the Agency's proposed amendment reflecting "previous" instead of "real" conditions is inconsistent with the Supreme Court's holding.

OPR's reliance on Bloom v. McGurk is also without merit, and the amendment would conflict with the explicit language of the case. The court in Bloom concluded that the term "existing facility" in the Class 1 exemption does not mean the use "existing at the time CEQA was enacted," but rather that it exists at the time of the agency's determination." OPR's suggestion that Bloom can be relied on to delete the phrase "beyond that existing at the time of the lead agency's determination," (which is essentially the same language the court relied on when reviewing the exemption), is actually inconsistent with the court's holding in Bloom.

Response 80.15

The *Bloom v. McGurk* case was focused on whether the term "existing facility" in the Class 1 exemption would mean a facility as it exists at the time of the agency's determination, rather than a facility existing at the time CEQA was enacted. The court determined that the former definition applied. This citation was not added in defense of any changes made in the regulatory package. Therefore, no change is required in response to this comment.

Comment 80.16

It should also be noted that the Communities for a Better Environment case was about setting the baseline during the process of conducting environmental review under CEQA. However, the legislature

explicitly instructed OPR to use exemptions under the guidelines for "projects that have been determined not to have a significant effect on the environment .. prior to any environmental review. Therefore, OPR's application of principles from court decisions where CEQA review occurred to the Agency's proposed CEQA Guidelines exemptions is inconsistent with the Legislature's directive and inapplicable.

Response 80.16

The Agency disagrees with the commenter's assertion. The Legislature has delegated authority to the Agency to select the projects that qualify for a categorical exemption. See Public Resources Code, § 20184, subd. (a). Therefore, no change is required in response to this comment.

Comment 80.17

Finally, the concern raised in OPR's proposed draft that use of a vacant building would always be considered an expansion of use is inapposite because CEQA requires agencies to determine whether any direct or indirect physical change in the environment from current conditions is significant.23 A change from a vacant building to a new use involves direct and indirect physical changes with potentially significant public health and environmental impacts. Therefore, the proposed amendment would lead to significant unanalyzed and unmitigated impacts in violation of CEQA.

Response 80.17

If there were unusual circumstances that could cause a significant impact from reoccupying a vacant building, an exception to the categorical exemption may apply. See CEQA Guidelines, § 15300.2. Therefore, no change is required in response to this comment.

Comment 80.18

First, the language in subdivision (c) may be read as if the analysis should turn solely on whether the project is in conflict with zoning and other regulations, not whether it also degrades public views as compared to the current baseline. In Friends of the College of San Mateo Gardens v. San Mateo Community College District, the court applied the fair argument standard to determine whether the project would result in potentially significant aesthetics impacts.24 The court stressed that "(t]he significance of an environmental impact is ... 'measured in light of the context where it occurs."'25 Limiting the aesthetics consideration to interference with regulations is contrary to the court's directive. Therefore, the proposed amendment fails to reflect that the fair argument standard still applies to a determination of impacts regardless of compliance with local zoning and regulations.

Response 80.18

Appendix G is provided a non-binding guidance for lead agencies. Please see Master Response 18.

Comment 80.19

In addition, while conflict with zoning is a reasonable consideration, the policy considerations of aesthetics are largely found in other planning documents, such as local guidelines or in the general plan. The proposed amendment does not clearly include such other planning documents.

To the extent the proposed amendment precludes consideration of a fair argument regarding significant aesthetic impacts, the proposed amendment violates CEQA. Also, the language must be revised to include "whether the project would conflict with applicable policies, which can be found in, but not limited to, applicable zoning, regulations, plans and guidelines."

Response 80.19

The comment suggests that the proposed revisions to the Appendix G question on aesthetics does not incorporate the fair argument standard. The Agency disagrees. An adopted threshold cannot preclude evidence of a fair argument that a project may cause a significant impact. See *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111–114. The explanatory note at the very beginning of Appendix G states: “Substantial evidence of potential impacts that are not listed on this form must also be considered. The sample questions in this form are intended to encourage thoughtful assessment of impacts, and do not necessarily represent thresholds of significance.” Therefore, because the checklist is non-exclusive, and may be tailored by the lead agency, the revision suggested in the comment is not necessary.

Comment 80.20

In the proposed amendment to CEQA Guidelines, Appendix G for noise impacts, a public agency would consider whether a project will result in "a substantial temporary or permanent increase in ambient noise levels ... in excess of the standards established in the local general plan or noise ordinance, or applicable standards of other agencies." The Agency's use of the word "substantial" violates CEQA.

The heightened standard of a "substantial" increase beyond applicable standards prematurely establishes a new threshold of significance that is undefined and would result in inconsistent application. If a project noise level would exceed the noise standards, then the project would result in a potentially significant impact at the "initial study" stage of an agency's evaluation.

The proposed addition of the word "substantially" is inconsistent with CEQA's requirement that a public agency's threshold of significance be supported by substantial evidence.

Response 80.20

The language cited by the commenter is a consolidation of questions from the existing regulations and was not added by this regulatory package. Therefore, it is outside the scope. Moreover, as explained above, lead agency must still consider impacts even if not described in Appendix G. Therefore, because the checklist is non-exclusive, and may be tailored by the lead agency, the revision suggested in the comment is not necessary.

Comment 80.21

Despite OPR's explanation, the proposed amendment does not stop at including a reference to "historic" conditions. The proposed amendment also allows a lead agency to look towards "conditions expected when the project becomes operational." However, there is no basis in CEQA or case law to allow agencies to look only at conditions expected when the project becomes operational. In Communities for a Better Environment v. South Coast Air Quality Management Dist, the Supreme Court explained that in some circumstances the existing setting could be when the project is approved, not when the project becomes operational:

Response 80.21

The comment suggests that there is no basis for the proposed clarification in Section 15125 that lead agencies may develop their existing conditions baseline by considering conditions expected at the time the project would go into operation. The Agency disagrees. See *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 453 ("we find nothing precluding an agency from employing, under appropriate factual circumstances, a baseline of conditions expected to obtain at the time the proposed project would go into operation"). The issue in *Neighbors for Smart Rail* was whether a baseline that was set 15 years after project operation was appropriate.

Comment 80.22

Thus, the proposed amendments' use of the word ''operational" is unsupported by the case law. The option to analyze impacts compared to future conditions is properly discussed in the third proposed sentence of the subdivision, as a separate baseline that can be used in addition to the existing baseline.

Response 80.22

As discussed in the previous comment, the issue in *Neighbors for Smart Rail* was whether a baseline that was set 15 years after project operation was appropriate. The court held that a sole projected baseline beyond the date the project becomes operational was only appropriate if the lead agency demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-makers and the public. This holding has been incorporated into Section 15125, subdivision (a)(3).

Comment 80.23

Second, proposed section 15125(a)(2) states, 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." However, there is no basis in CEQA or case law to allow agencies to look at historic conditions as sole baseline.28 Also, while the Supreme Court in Neighbors for Smart Rail v. Exposition Metro Line Const. Auth. recognized the possibility of comparing a project's impacts to future conditions, the proposed amendment fails to ensure that using future conditions in lieu of existing conditions is the exception rather than the rule. Specifically, the proposed amendment ignores the Supreme Court's conclusion that using projected future conditions must be

"justified by unusual aspects of the project or the surrounding conditions."29 By omitting these Supreme Court factors, the proposed amendment violates CEQA and is inconsistent with case law.

Response 80.23

The commenter misstates case law on the establishment of baselines. Multiple cases have held that historic conditions can be used to establish an "existing conditions" baseline. See *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439; *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316; *San Francisco Baykeeper v. California State Lands Commission* (2015) 242 Cal.App.4th 202; *North County Advocates v. City of Carlsbad* (2015) 241 Cal.App.4th 94. As discussed above, the special circumstances required to use a post-operational baseline as the sole baseline are addressed in subdivision (a)(3).

Comment 80.24

Allowing agencies to compare impacts to future conditions would result in a public agency ignoring potentially significant impacts to public health and the environment during construction. This includes risks to the health of construction workers, nearby school children and residents, which may be significant and are required to be and routinely analyzed under CEQA.

The proposed amendments to section 15162 violate CEQA and case law and would result in unanalyzed, potentially significant, unmitigated impacts on public health and the environment.

Response 80.24

This regulation has been clarified. See Master Response 14. The regulation is now clear that an existing conditions baseline cannot extend past the operational date absent special circumstances laid out by the California Supreme Court in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority.*

Comment 80.25

The phrase "common sense exemption" in the proposed amendment is misplaced. The proposed amendment includes the phrase in the first sentence, which is the general rule of CEQA; whereas it is the second sentence that is the "common sense exemption." As drafted, the proposed amendment is inconsistent with CEQA.

Response 80.25

This regulatory change codifies the phrase "common sense exemption," which has been used in case law and is commonly used by practitioners but was not previously contained within the regulation itself. The comment asserts that the change is inconsistent with CEQA but provides no explanation or authority to support the assertion. Therefore, no change is required in response to this comment.

Comment 80.26

The proposed amendments to section 15072 and 15087 violate CEQA by only requiring that documents "incorporated by reference" be made available for public review. However, documents may already be

incorporated by reference, pursuant to section 15150 of the CEQA Guidelines. Section 15150 is, by its plain language, different and applicable to documents that are readily available to the public, such as regulations, ordinances, general plans, or other documents that are, for example, posted on agency websites or otherwise easily accessible. Sections 15072 and 15087, on the other hand, provide for public review of other types of documents that are clearly described in the statute - those referenced in or cited in an environmental review document.

Response 80.26

The comment suggests, without authority, that the clarification that documents that are incorporated by reference must be made available, as opposed to documents that are merely cited, violates CEQA. The Agency disagrees. The purpose of this regulatory update is to provide additional clarity. Some agencies interpret “referenced” to mean every document that is cited in the environmental document, where others interpret it to mean every document that is incorporated by reference into the document pursuant to CEQA Guidelines, § 15150. Documents that are incorporated by reference provide a portion of the document’s overall analysis, are likely in the agency’s possession, and therefore should be made available to the public. No change is required in response to this comment.

Comment 80.27

The proposed addition of the word "materially" to section 15357 completely changes the well-accepted definition of when an action is discretionary, violates CEQA and is inconsistent with Supreme Court case law. Proposed section 15357 misstates the "key question." OPR refers to the Court of Appeal decision in Friends of Westwood, Inc. v. City of Los Angeles. In determining whether an action is discretionary, the court in Friends of Westwood, Inc. held that "the touchstone is whether the approval process involved allows the government to shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report." The court then explained when the government is "foreclosed from influencing the shape of the project." A public agency is foreclosed from influencing the shape of a project "[o]nly when a private party can legally compel approval without any changes in the design of its project which might alleviate adverse environmental consequences.” By unjustifiably forcing the word "materially" into the court's language, the proposed amendment adds a new requirement that completely changes the definition of when an action is discretionary. The court never intended or authorized such change. The Friends of Westwood court stated that "[i]t is enough the city possesses discretion to require changes which would mitigate in whole or in part one or more of the environmental consequences an EIR might conceivably uncover." The same language was used later by other courts, including the Supreme Court.as Clearly, there is no "materiality" requirement in any court decision. The proposed addition of the word "materially" to section 15357 completely changes the well-accepted definition of when an action is discretionary, violates CEQA and is inconsistent with Supreme Court case law.

Response 80.27

This comment has been addressed in amendments to the regulation.

Comment 81 – The Wonderful Company

Comment 81.1

The Wonderful Company LLC ("Wonderful") submits the following comments regarding the above referenced proposed amendments to the California Environmental Quality Act ("CEQA") Guidelines ("Amendments").

Wonderful, in connection with our grower partners, farms and cultivates almonds, pistachios, various citrus varietals, pomegranates, wine grapes and nursery stock in Central California. As a diverse farming entity in the State of California, we know firsthand how important it is to have a clear interpretation of the law expressed through the CEQA guidelines. As such, we ask that the California Natural Resources Agency ("CNRA") take the following into consideration prior to finalizing the "Amendments".

Response 81.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 81.2

Wonderful requests that the Natural Resources Agency delete proposed section 15234 from the Amendments. Section 15234 is inconsistent with the Public Resources Code section 21168.9, and the cases interpreting section 21168.9. Section 15234 violates the "clarity" and "consistency" standards of the Administrative Procedure Act. It is in conflict with the common law governing the equitable discretion of California courts, and violates the separation of powers provisions of the California Constitution.

Response 81.2

The Agency disagrees that the new Section 15234 should be deleted. The purpose of this new section is to explain to public agencies and the public how CEQA litigation may affect project implementation.

Comment 81.3

Proposed section 15234, subdivision (b) is inconsistent with subdivisions (b) and (c) of Public Resources Code section 21168.9 and the court decisions interpreting these subdivisions. Public Resources Code section 21168.9 reserves to the courts broad equitable discretion to fashion an appropriate CEQA remedy. Section 15234 purports to limit the courts' equitable discretion and to impose limitations on agency actions notwithstanding a court's exercise of its equitable discretion.

Subdivision (b) of Public Resources Code section 21168.9 provides that:
(b) An order pursuant to subdivision (a) **shall include only those mandates** which are necessary to achieve compliance with this division, **and only those specific project activities in noncompliance with this division.**

(Pub. Resources Code, § 21168.9, subd. (b).) Thus, the "default" under section 21168.9 is that CEQA remedies are **required** be limited to those necessary to achieve compliance with CEQA and **shall** be limited to activities found not to be in compliance. One of the mandates expressly authorized by subdivision (a) of section 21168.9 is that "an agency take specific action as may be necessary to bring the determination, finding or decision into compliance with [CEQA]." Thus, the statutory text leaves broad discretion to courts to limit a CEQA mandate to revisions to the agency's CEQA findings without requiring any changes to an EIR or other CEQA document, or any changes to the project activities. Proposed section 15234 turns the text of the statute on its head to limit an agency action on remand to those that satisfy all three of the criteria in subdivision (b). A long line of CEQA cases holds that courts retain broad equitable discretion to fashion an appropriate remedy where the court finds a CEQA violation – including allowing project activities to continue even where the agency did not make a severability finding.

Response 81.3

This regulation does not limit the court's discretion in any way. As previously stated, the purpose of this new section is to explain to public agencies and the public how CEQA litigation may affect project implementation. Moreover, the regulation itself explicitly states in subdivision (a) that "Courts may fashion equitable remedies in CEQA litigation." Therefore, no change is required in response to this comment.

Comment 81.4

The Resources Agency's explanation of subdivision (c) of section 15234 claims that the subdivision "codifies the outcome" in *POET, LLC v. State Air Resources Board, supra.* The language in *POET, LLC* relied upon is at best *dicta,* is limited by the facts in *POET, LLC,* and is certainly not the holding of the court. No California court has held that the courts' equitable discretion in CEQA cases is limited to circumstances where "the environment will be given a greater level of protection if the project remedies remains operative than if it were inoperative during that period." The Resources Agency does not have the authority to adopt a regulation of general applicability based on *dicta* in one court decision that reflects the particular facts of one case, and that is inconsistent with the holdings of numerous court decisions.

Response 81.4

This comment has been incorporated into updates to the regulation. Please see Master Response 13.

Comment 81.5

The attempt in section 15234 to limit the court's equitable discretion to circumstances where the court makes the severability finding is flatly contrary to the acknowledgement in *POET, LLC* that the courts retain "inherent power to maintain the status quo pending statutory compliance" (emphasis added.)

Response 81.5

This regulation does not limit the court's discretion in any way. Moreover, the regulation itself explicitly states in subdivision (a) that "Courts may fashion equitable remedies in CEQA litigation." Therefore, no change is required in response to this comment.

Comment 81.6

Section 15234 is also invalid because it violates the principle of separation of powers established in the California Constitution. (Cal. Const., Art. III, § 3 ["The power of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."]; *Serrano v. Priest* (1982) 131 Cal.App.3d 188, 201; *Mandel* v. *Myers* (1981) 29 Cal.3d 531.)

Response 81.6

This regulation does not limit the court's discretion in any way. Moreover, the regulation itself explicitly states in subdivision (a) that "Courts may fashion equitable remedies in CEQA litigation." Therefore, no change is required in response to this comment.

Comment 82 - Augustine Band of Cahuilla lndians

Comment 82.1

Thank you for the opportunity to offer input concerning the development of the above-identified project. We appreciate your sensitivity to the cultural resources that may be impacted by your project, and the importance of these cultural resources to the Native American peoples that have occupied the land surrounding the area of your project for thousands of years.

Unfortunately, increased development and lack of sensitivity to cultural resources has resulted in many significant cultural resources being destroyed or substantially altered and impacted. Your invitation to consult on this project is greatly appreciated.

At this time we are unaware of specific cultural resources that may be affected by the proposed project. We encourage you to contact other Native American Tribes and individuals within the immediate vicinity of the project site that may have specific information concerning cultural resources that may be located in the area. We also encourage you to contract with a monitor who is qualified in Native American cultural resources identification and who is able to be present on-site full-time during the pre-construction and construction phase of the project. Please notify us immediately should you discover any cultural resources during the development of this project.

Response 82.1

The Agency thanks the commenter for providing a public comment. Because the comment does not address any specific aspect of this rulemaking package, no changes are needed.

Comment 83 - United Auburn Indian Tribe of the Auburn Rancheria

Comment 83.1

Please use the attached version of the comment letter sent yesterday. It corrects some typos, but is not intended to make substantive changes.

Response 83.1

This comment was received after the comment period had closed. According to the author, it does not make any substantive changes to a previously submitted letter. The Agency's response to the substantive issues raised are provided to Comment 84, below.

Comment 84 - United Auburn Indian Tribe of the Auburn Rancheria (2)

Comment 84.1

These comments are timely submitted on behalf of the United Auburn Indian Tribe of the Auburn Rancheria (Tribe), a federally-recognized tribal nation with a federally-recognized Tribal Historic Preservation Office (THPO). We received a letter dated January 23, 2018, from the Deputy Secretary directed to our Tribal Chairperson, inviting our "early input" on the draft proposed changes to the CEOA Guidelines (guidelines). As the proposed guidelines amendment s were already out for public review, we felt the letter arrived late in the regulatory process.

Our concern is that the amendments and additions to the guidelines appear to be largely a result of infill development, local government, water agency, and building agency input and advocacy. Very few, if any, of the proposed amendments and additions reflect tribal stakeholder views despite the efforts of tribes to participate early in the update process. For us, this call s into question the "balance" of the regulatory package.

While the guidelines update is certainly a large undertaking with many points of view to be considered and possibly harmonized, the views of California's tribal nations should also be heard and considered. It is important to acknowledge that tribal concerns regarding CEQA are not limited to the implementation of AB 52 and did not end with the prior amendment s to the g u ide li ne s to address Tribal Cultural Resources (TCRs) or the development with OPR of the draft AB 52 Technical Advisory. There are proposed revisions here we are seeing for the first time that could undermine successful AB 52 implementation. We have tried where we could to propose potential solutions for the concerns we have identified. We therefore ask that our comments be seriously considered.

In this vein, we respectfully request government-to-government consultation on the proposed rulemaking package, with a focus on the comments below. We also suggest that a group meeting with other interested tribes might be a good place to start. For convenience, our letter generally follows the order of how the issues were presented in the rulemaking package for efficiency and readability. These are complex issues that would benefit from additional stakeholder review and discussion.

Response 84.1

The Agency thanks the commenter for providing a public comment. The comment asserts that the package appears to address many interests but not necessarily tribal concerns. The Agency notes that it sent letters to tribal chairs specifically to solicit input on this package. The Agency also notes that it engaged in government-to-government consultation, as requested in the comment. Specific changes to the package that resulted from that engagement are described below.

Comment 84.2

The OPR summary states the first criterion requires that a standard be adopted by some "formal mechanism". (See, text of proposed amendments to Section 15064.7(b)). Do these mechanisms include consultation with tribes? If not, they should, particularly for any standards related to archaeological, cultural resources, historic properties, TCRs, Traditional Cultural properties (TCPs), etc. Tribes are experts regarding their TCRs and their views should be solicited and considered in the development of any such thresholds. If this does not occur, standards or thresholds may be biased by archaeological input, and create the potential for litigation regarding TCRs, something the legislative intent of AB 52 sought to avoid. We have recently seen a state agency develop such an approach without true consultation with tribes, resulting in a flawed approach that will lead to conflict and project delay.

Response 84.2

The comment expresses concern that tribal perspectives should be considered in the development of thresholds of significance. The adoption of thresholds of significance is generally not considered a project under CEQA. Accordingly, development of a threshold would not trigger AB 52 consultation requirements. However, the Agency agrees with commenter that lead agencies would benefit from consulting with tribes before developing certain thresholds. Please also note, tribes may request consultation on projects early in the CEQA process, and include the determination of significance, including the use of thresholds of significance, as part of that consultation. (Pub. Resources Code § 21080.3.2.) Thus, because the statute provides an opportunity for tribes to meet directly with lead agencies on the determination of significance, no change is needed in this rulemaking package.

Comment 84.3

Moreover, OPR proposes to add a sentence to Section 15064.7 (b) "clarifying" that agencies may use significance thresholds on a case-by-case basis, which seems to undercut the first criterion above requiring adoption of a standard by a formal mechanism and the requirements of subdivision (d). The concerns about standards applies equally to thresholds. Further, the proposed language at new Section 15064(b)(2), that the lead agency *should* briefly explain how compliance with the thresholds means the project's impacts are less than significant. The use of permissive language may mean that the agency may not support its finding with substantial evidence in the record, potentially encouraging violations of CEQA. We therefore cannot support the revisions as proposed.

Response 84.3

Despite adopting standard significance thresholds, agencies maintain the discretion to deviate from the standard thresholds and apply them on a case-by-case basis. Please also note, as described in Response to Comment 84.2, above, tribes may request consultation with lead agencies and discuss the application of any threshold to the project under consideration.

Subdivision (b)(2) of Section 15064 describes an optional method to determine significance of project impacts. The language cited by commenter addresses the issue that "thresholds cannot be used to determine automatically whether a given effect will or will not be significant." (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App.4th 1099, 1108-1109; see also *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 717.) An agency should discuss why compliance with the threshold demonstrates a less than significant impact. This is distinct discussion from the longer analysis applying the significance threshold to the project. Thus, it is appropriate to use the word "should" to signal encouragement based on policy. (See also CEQA Guidelines § 15005(b) ("'Should' identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations").) Please also note, Section 15064(f) already expressly states: "The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency." Thus, the Agency's proposed additions will not induce lead agencies to make decisions that are not supported with substantial evidence.

Comment 84.4

Solution: The guidelines should require consultation with tribes on the development of any standards and thresholds. Section 15064(b)(2) also should be revised to *shall* briefly explain how compliance with the thresholds means the project's impacts are less than significant to better reflect existing CEQA.

Response 84.4

The Agency thanks commenter for the suggested revision. These revisions will not be made for the reasons discussed in responses 84.2 and 84.3.

Comment 84.5

Tiering only works for cultural resources and TRCs when the base tiering document was sufficient, which unfortunately in our experience is very rarely is the case. Ability to potentially endlessly tier off of an AB 52 noncompliant document and sidestep consultation with tribes by simply not doing a notice of preparation (NOP) for the subsequent document is a significant problem already and would only worsen if not addressed with the proposed revisions which make tiering easier. This practice also constrains the practical ability to consider design alternatives in the field to reduce impacts to TCRs. What is the obligation of the agency to consider changes in law, such as the promulgation of AB 52, when assessing the appropriateness of tiering off a prior EIR?

Response 84.5

As discussed in the regulation, if a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration. This may include, depending on the project and the scope of analysis in a program EIR, effects on tribal cultural resources. As made clear in other changes to this section, the determination of whether the later activity falls within the scope of a program EIR is a factual determination to be made based on substantial evidence in the record. Please also note, as a result of SB 18, cities and counties have been required to consult with tribes before adopting updates to general plans and specific plans since 2004. Also, Governor Brown's Executive Order B-10-11 (2011) requires that "[e]very state agency and department shall encourage communication and consultation with California Indian Tribes." Thus, an increasing number of program EIRs are likely to have expressly addressed tribal cultural resources. Thus, the Agency finds that no change is necessary in response to this comment.

Comment 84.6

Also, we have not seen mitigation funding increase for cultural resources and TCRs since AB 52 was enacted or become operational. Adequate funding to support a reasonable effort at early identification of TCRs and the use of Tribal Monitors to survey must be secured early on in project development and budgeting and should be incentivized. There are also pockets of resistance to looking at alternatives and addressing cumulative effects, notably with some branches of DWR and flood control agencies: Instead they repeatedly defer meaningful cultural resource identifications, avoidance, and mitigation to project level review, or even later, during construction. This results in impacts to historic properties by discovery and no consideration of those cumulative effects. (Please also see our related comments in section below on deferral of Mitigation Details).

Response 84.6

The comment raises concern regarding particular forms of mitigation. Please note, the appropriateness of any particular mitigation measure is a subject that may discussed directly between a tribe and a lead agency during consultation. (Pub. Resources Code § 21080.3.2.) The actions of particular agencies are outside the scope of this regulatory package. Therefore, no change is necessary in response to this comment.

Comment 84.7

We have also often seen agencies failing to address big picture alternatives and cumulative effects in programmatic documents, contrary to CEQA, instead trying to defer those to project level documents when we are then told it is too complex to set up at the project level. These include the failure to develop creative mitigation frameworks for TCRs, such as cultural funds, mitigation banks, and cultural conservation easements, which should be set up as early in the process as possible. This also has implications for the viability and effectiveness of the proposed Amendments to Section 15730 to recognize conservation easements within CEQA's definition of Mitigation.

Response 84.7

The actions of particular agencies are outside the scope of this regulatory package. The specific mention of conservation easements as a form of mitigation in Section 15370 should make lead agencies more likely to utilize this option. The Agency agrees with commenter that this option is more effective when pursued earlier in the process. Please also see Response to Comment 84.6.

Comment 84.8

The text of the proposed amendments at Section 15168(a)(c)(2) also lists "overall planned density and building intensity" as a factor that the agency can use in making their determination. However, overall density intensities may not be relevant to impacts to cultural resources and TCRs: instead it may be true that the *sitting* and *location* for that density, intensity and project components are not necessarily fungible and can make a difference between a significant and less than significant impacts to these resources. We therefore cannot support the revisions as proposed.

Response 84.8

The provision cited by commenter is part of a list of potential factors to consider. It may not be the most appropriate metric in all situations. The comment suggests that the proposed additions might induce a lead agency to wrongly rely on only one factor may be sufficient in determining whether a later activity is within the scope of a program EIR. The Agency disagrees. Immediately preceding the non-exclusive list of factors is the statement that: "Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record." Thus, an agency must consider the whole record in making its determination, not merely one factor. Further, another portion of subdivision (c) suggests that lead agencies use a written checklist to document how a site-specific activity falls within the scope of the program EIR's analysis. (See Section 15168(c)(4).) Thus, no change is required in response to this comment.

Comment 84.9

Solution: Commit to working with tribes and agencies to develop guidance regarding AB 52 goals and tiering, securing adequate budgets for AB 52 implementation and TCR mitigation and tribal participation initiatives, and encouraging agencies to set up programs to support TCRs including cultural funds and conversation easements and banks.

Response 84.9

Thank you for the suggestion. The Agency welcomes on-going input from tribes on how AB 52 is being implemented. As noted in Response to Comment 84.5, tribal consultation has grown more prominent and tribes and public agencies continue to learn what works. As explained in Responses to Comments 84.5 through 84.8, no changes are required in this rulemaking package.

Comment 84.10

Certain exemptions from CEQA can cause significant adverse impacts/effects to tribes and resources of concern to them. Over a decade ago, a bill passed through legislature to preclude the use of exemptions in sacred areas. This concern still exists and would only worsen with the proposed amendments including those to expand the Emergency Exemption, discussed below.

Response 84.10

The Agency understands the concerns expressed by commenter. The Agency responds to specific concerns below.

Comment 84.11

Also, the proposals fail to note the section of the Public Resource Code relating to the Native American Heritage Commission's (NAHC) jurisdiction, is not part of CEQA, and remains applicable even if a project were determined to be exempt from CEQA. This includes, but is not limited to, compliance with California Ancestral burials, grave goods, ceremonial sites, and Most Likely Descendant (MLD) laws. We therefore cannot support the revisions as proposed.

Solution: We again request that CNRA and OPR consider adding questions regarding NAHC resources in the guidelines, possibly under the TCR section. (See comments in introduction above and in checklist discussion below).

Response 84.11

The comment suggests pointing lead agencies to rules in the Public Resources Code, outside of CEQA, addressing tribal cultural resources so that agencies approving projects that are exempt from CEQA are aware. The Agency declines to adopt this proposed change, however. The purpose of the CEQA Guidelines is to guide lead agencies on the requirements of CEQA. Therefore, it is beyond the scope of this rulemaking to address statutes outside of CEQA.

Comment 84.12

The proposed guideline amendment for *Transit Oriented Development* states that certain projects that are consistent with certain adopted plans would be exempt from CEQA. This is proposed to include Master Pans, Downtown plans, etc. What if the plans did not include consultation with tribes pursuant to SB 18 (Burton) and AB 52 (Gato)? Tribes are experts regarding their TCRs and their views should be solicited and considered in the development of any such plans. If this does not occur, the plans, their standards, and thresholds, may not reflect tribal input, and create the potential for litigation regarding TCRs, something the legislative intent of AB 52 sought to avoid.

Response 84.12

The comment expresses concern that project that qualify for the exemption described in 15182 may not have included tribal consultation. Please note, section 15182 implements exemptions included in the Public Resources Code and the Government Code. The Agency cannot, therefore, add requirements that are not included in the statute.

Comment 84.13

The guideline amendment for the Existing Facilities Exemption proposes to exempt projects that involve negligible or no expansion of existing or former uses. This can be an issue for tribes where a facility, public structure, or topographic feature was vacant, abandoned, or unused at the time of the lead agency's determination but is now being proposed for reuse and is located in or near a cultural site or TCR which may have not been previously considered. Tribes concern may be mostly in a suburban or rural environment, but not exclusively. We therefore cannot support the revisions as proposed.

Solution: Can the proposed exemption expansion be limited to urban environments to facilitate infill development but also allow for resources outside of those environments to be considered with more certainty?

Response 84.13

As a categorical exemption, 15301 is limited by certain exceptions. Those exceptions include unusual circumstances and cumulative impacts, among others. In creating or amending the categorical exemptions, the Agency considers whether there will be an environmental impact under the typical situation. See Public Resources Code, § 21084; CEQA Guidelines, §§ 15300, 15300.2. Therefore, no further change needs to be made in response to this comment.

Comment 84.14

I. AESTHETICS:

Concern: It seems that the proposal here is to boil down aesthetic concerns to zoning and design review for urban areas. While this may work in some instances, it may not work for nonurban areas, historic properties and districts within urbanized areas, or for resources of tribal concern. There is also more to this subject than just considering public views. Relative to historic properties and districts within urbanized areas, the feeling, association, and context of the resources must be considered. Many zoning and design review regulations and boards do not have that expertise or consider these aspects. Moreover, visual quality, viewsheds, and aesthetics, often play a role in the significance and integrity for TCRs.

Solution: Any proposals to revise the guidelines must be sure to make allowance for the continuance of considerations relative to historic properties and TCRs. They should also be limited to urban environment, and be accompanied by requirements that zoning and design review boards have members qualified relative to historic preservation and TCRs.

Response 84.14

Appendix G is provided a non-binding guidance for lead agencies. Please also note, the explanatory note at the very beginning of Appendix G states: “Substantial evidence of potential impacts that are not listed on this form must also be considered. The sample questions in this form are intended to encourage thoughtful assessment of impacts, and do not necessarily represent thresholds of significance.” Therefore, because the checklist is non-exclusive, and may be tailored by the lead agency, the revision suggested in the comment is not necessary.

Please also see Master Response 18 regarding Appendix G.

Comment 84.15

VI. ENERGY:

Concern: This is a newly proposed section to the checklist. We are concerned that as it is written, section (b) is both redundant to and inconsistent with the approach taken in proposed revised XI. LAND USE AND PLANNING (b) which asks if the project would cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. We are also concerned the verbiage "conflict with or obstruct" could be used by some to try and challenge efforts to designate or manage open space, park lands, or other special designation lands including public lands within or near areas referenced in renewable energy plans.

Solution: Strike VI Energy (b) question or reword it to take an approach more consistent with proposed revisions to XI. LAND USE AND PLANNING (b).

Response 84.15

Appendix G is provided a non-binding guidance for lead agencies. Please also note, the questions are not new. Questions related to energy were removed in the late 1990s. The Agency is merely replacing those questions. Also, because the questions related to land used plans already note that the emphasis should be on significant environmental impacts that result from conflicts with plans, no change is necessary in this section. Please see Master Response 19 regarding consistency with plans.

Comment 84.16

VII. GEOLOGY AND SOILS:

Concern: AB 52 directed that paleontological questions be separated from TCR questions. However, there are several concerns about how this is reflected in the proposed guidelines. First, Paleontology should be in its own section; the resource and expertise about it is directly related neither to Geology nor Soils, except that many (but not all) paleontological resources may be in the ground. Second, the question about paleontological resources is overly brief and insufficient to prompt an adequate review for such resources. Third, the question does not reflect recent guidance from the American Society of Paleontologists that some paleontological resources may be cultural resources.

Solution: CNRA should outreach to California paleontologists and develop a standalone PALEONTOLOGICAL RESOURCES section with updated and meaningful questions. Also, the reference to whether there is a unique geologic feature, can remain as a question in the Geology and Soils section.

Response 84.16

Appendix G is provided as nonbinding guidance. Lead agencies have the authority to determine the appropriate significance thresholds and place impact analyses where appropriate for that particular project. The Agency heard from many in the paleontological community on this issue. However, the Agency declines to make further changes for the reasons described in Master Response 18 regarding Appendix G.

Comment 84.17

IX. HAZARDS AND HAZARDOUS MATERIALS:

Concern: Why is section (f) related to a project within the vicinity of a private airstrip proposed for deletion? If not here, where are such effects otherwise considered?

Solution: Retain section (f).

Response 84.17

Please note, Appendix G is provided as nonbinding guidance. Lead agencies have the authority to determine the appropriate significance thresholds and place impact analyses where appropriate for that particular project. The impacts of locating a project near a private airstrip are still considered in the Noise Section (XIII), subdivision (c). Therefore, no further change is needed in response to this question.

Comment 84.18

X. HYDROLOGY AND WATER QUALITY:

Concern: Why are sections (g) through (j) related to placing housing within a 100 year flood hazard area, exposure of people or structures including flooding resulting from a failure of a levee or dam, and inundation by seiche, tsunami, or mudflow proposed for deletion? If not here, where are such effects otherwise considered?

Solution: Retain sections (g) through (j).

Response 84.18

As explained in the Initial Statement of Reasons' discussion of the changes to Section 15126.2(a), the Agency is updating the CEQA Guidelines to reflect the Supreme Court's holding in *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369. In that case, the Court held that "agencies subject to CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users or residents" but they must analyze hazards the project might risk exacerbating. Among other changes, the Agency has reframed the Appendix G

questions on hydrology to focus on effects that projects located within inundation zones might exacerbate. No further changes are required in response to this comment.

Comment 84.19

XIII. NOISE:

Concern: Why are sections (e) and (f) related to projects located within airport land use plans or within two miles of a public airport and within the vicinity of a private air strip proposed for deletion? If not here, where are such effects otherwise considered?

Solution: Retain sections (e) and (f).

Response 84.19

The Agency accepted this comment, though consolidated into one question, in the 15-Day changes.

Comment 84.20

XIV: POPULATION AND HOUSING:

Concern: Why is section (e} related to projects that could displace substantial numbers of people proposed for deletion? If not here, where are such effects otherwise considered? Redevelopment often displaces lower income housing with more expensive housing, contributing to the affordable housing crisis, homelessness, and loss of historic buildings.

Solution: Retain section (e}.

Response 84.20

The Agency has consolidated the questions asking about displacement of both people and housing into a single question. Please also note Appendix G is a sample form and lead agencies may tailor their own as appropriate.

Comment 84.21

XVIII. TRIBAL CULTURAL RESOURCES:

Now that a few years of implementation experience has occurred relative to AB 52 (Gatto), we make the following comments:

Concern: The rulemaking package (page 31) states that the checklist questions should alert lead agencies to environmental issues that might otherwise be overlooked in the project planning and approval process. We still maintain that adding a question to the question to the Cultural Resources or TCR sections regarding the presence of public land would assist applicants, agencies, and tribes in better understanding the potential of the project to impact resources under the jurisdiction of the NAHC.

Without such a prompt, many will continue to not understand that the NAHC jurisdiction is separate from consideration of resources under CEQA.

Solution: Add prompt to Cultural or TCR sections regarding whether the project is on public land and may contain properties under the jurisdiction of the Native American Heritage Commission.

Response 84.21

The comment suggests pointing lead agencies to rules in the Public Resources Code, outside of CEQA, addressing tribal cultural resources so that agencies approving projects that are exempt from CEQA are aware. The Agency declines to adopt this proposed change, however. The purpose of the CEQA Guidelines is to guide lead agencies on the requirements of CEQA. Therefore, it is beyond the scope of this rulemaking to address statutes outside of CEQA. Also, please note, tribes may raise these issues during project-level consultation as appropriate. No further change is required in response to this comment.

Comment 84.22

Concern: Page 2 of the sample environmental checklist form, number 11 (page 37} focuses on whether the consultation has *begun.* While starting consultation with tribes prior to finalization of the initial study is important, that continues to not be the only measure for successful AB 52 compliance. Other simple prompts can help get the agency *off* to a stronger start that will help to reduce the potential for do-overs and project delays.

Solution: We believe that instead of potentially prompting a binary yes/no answer, the question should be poised to do more, such as also inquire whether consulting tribes were involved in determining the level of environmental review, whether the tribe's views were incorporated into the initial study, whether agreement has been reached on how to incorporate tribal perspectives into the environmental documents and project record, etc.

Response 84.22

This suggestion has been incorporated into the regulations in the Appendix G Environmental Checklist Form and Appendix N Infill Environmental Checklist Form.

Comment 84.23

XVIX. UTILITIES AND SERVICE SYSTEMS:

Concern: We understand the addition to the question regarding a project having sufficient water supplies available during normal, dry, and multiple dry years. However, why was reference to existing entitlements and resources proposed for deletion? If not here where are

such effects otherwise considered? Note that California tribes often hold primary rights to water and this has been underscored by recent federal caselaw.

Solution: Retain language regarding water entitlements.

Response 84.23

The Agency has updated this question to better reflect the factors identified by the Supreme Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, as well as the water supply assessment and verification statutes. (Wat. Code, § 10910; Gov. Code, § 66473.7.) The change does not affect any entity's water rights; rather, the question as reformulated asks lead agencies to consider the actual quantity of water that may be available, regardless of the amount of entitlement.

Comment 84.24

XXI.MANDATORY FIDINGS OF SIGNIFICANCE:

Concern: The proposal adds the word "substantially" before the phrase degrade the quality of the environment, and before the phrase reduce the number or restrict the range of a rare or endangered plant or animal in section (a). What is the purpose of these changes? Do they add a higher bar to the significance threshold resulting in reduced environmental protection? This is of concern to tribes as rare and endangered plants may also be species of cultural use and concern to tribes. If not here, where are such effects otherwise considered?

Solution: Retain original wording in section (a).

Response 84.24

When the Agency and OPR originally solicited suggestions for improvements to the CEQA Guidelines in 2013, one of the suggested changes was to make Appendix G internally consistent with Section 15065, which also addresses mandatory findings of significance. That latter section had been updated previously. Now the Agency proposes changes to Appendix G for consistency.

Comment 84.25

5. **Remedies and Remand** ***(proposed New Section 15234)***

This section lays out remedy and remand options for a court. It appears to be something that was largely sought by allies of the development community. There are both general and specific concerns with the new section. Generally, it will provide the parties with several more things to argue about in litigation which would likely extend both litigation costs and timeframes, and likely require additional court briefings and hearings. It would also likely increase misunderstandings among the parties and the courts about "what parts of a project may/not proceed, which in turn could result in irreparable environmental harm, such as wetlands being mistakenly bulldozed, buildings accidentally razed, or burials removed from their resting places. More specifically, the proposal notes that Public Resources Code section 21168.9(a} states that CEQA does not limit the traditional equitable powers of the judicial branch. Yet, the way new section 15234 is worded might be read that the equitable powers of a court in a CEQA action *are limited* to the ones enumerated in the new section, i.e., "requires the agency to do one or more of the following ... " We therefore cannot support the revisions as proposed.

Solution: If the amendments are retained, we suggest shortening the section and use wording that clearly preserves the court's equitable powers on a case by case basis such as by "including, but not limited to" language, etc.

Response 84.25

This regulation does not limit the court's discretion in any way, as that would be beyond the scope of these regulations. As stated in subdivision (a), "Courts may fashion equitable remedies in CEQA litigation." The purpose of this new section is to explain to public agencies and the public how CEQA litigation may affect project implementation. Therefore, no further changes are required in response to this comment.

Comment 84.26

6. **Analysis of Energy Impacts** ***(proposed Amendments to Section 15126.2)***

This section appears confused about whether it is related to energy impacts or land use impacts (or both). Moreover, there is no reasoning provided for the proposal stating that the revisions "signal" that a full "lifecycle" analysis that would account for energy used in building materials and consumer products will generally not be required.

Solution: Explain the legal basis for the lack of evaluation of full lifecycle analyses directly in the proposal; if there is no legal basis, revise the proposed guidelines to provide for such analysis, subject to a rule of reason or other guidance.

Response 84.26

This sentence is necessary to place reasonable limits on the analysis. (See also Cal. Natural Resources Agency, Final Statement of Reasons for Regulatory Action: Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97 (Dec. 2009) at pp. 71-72.) The Initial Statement of Reasons provides the legal basis for the changes in Section 15126.2. No changes are required in response to this comment.

Comment 84.27

7.Deferral of Mitigation Details ***(proposed Amendments to Section 15126.4)***

The proposal is that details of mitigation, not mitigation itself, may be deferred until after project approval *in* certain circumstances. The issue here is what constitutes a "mitigation measure" versus a "detail": one parties' "specific detail" may be another parties' substantial measure. No workable definitions are provided in the proposal.

Tribes have already seen this issue arise in the context of certain programmatic and quasi programmatic environmental documents and their approach towards resource identification efforts for cultural resources and TCRs. In these cases, some water agencies have attempted to defer reasonable efforts to identify such resources until a later time, well after project approval. Such efforts then increase the risk of sensitive resources being located too late in the project process or even during construction itself, the

timing of which then makes project redesign and avoidance unlikely - outcomes that the legislature sought to avoid with the passage of SB 18 and AB52. Our further concern *is* that agencies may try and subvert the intent of the proposed guideline change by asserting that because it can be somewhat more difficult, costly, or time consuming, that identification of resources of tribal concern can almost always be viewed by an agency as "impractical" or "infeasible" prior to project approval. Moreover, these terms are undefined in the guideline. This is setting up a serious risk of litigation for agencies who want to assert deferral as far as they can. It also exacerbates the current problem where agencies assert at the time of project approval that consultation with tribes is "pending" or "incomplete" which again pushes tribal input further into the future and after a project has been approved. The tribal input at that later time is less effective, again subverting legislative intent and consultation best practices as outlined by the Advisory Council on Historic Preservation, Office of Native American Affairs <http://www.achp.gov/nap.html>.

Deferring the "specific detail" of resource identification also could render the alternatives analysis pointless as to these resources as the location of resources must be known at the time of environmental review so that they can be considered for preservation in place, as required by CEQA, during environmental review. We therefore cannot support the revisions as proposed.

Solution: Strike "impractical" or replace "impractical or infeasible" with words with potentially less wiggle room, such as "not possible" . Also, commit to working with tribes, SHPO, ACHP, and other stakeholders to produce guidance regarding reasonable efforts to identify cultural

resources and the benefits of coming to conclusion regarding the substance of TCR mitigation measures before project approval.

Response 84.27

The commenter is correct that mitigation measures may not be deferred. An agency must commit itself to mitigating a significant impact before approving a project. However, the details of the mitigation may be deferred under certain circumstances. This does not allow an agency to defer necessary analysis or resource identification. That information is necessary for the significance determination. The words impractical or infeasible have been used in other legal contexts and should not lead to litigation. See Master Response 15. Commenter's additional suggestion is noted but is beyond the scope of this regulatory package.

Comment 84.28

8. **Responses to Comments** ***(proposed amendments to Sections 15067 and 15088)***

Proposed amendments to section 15087(c)(2), public review of Draft EIR, require the public notice of availability of an EIR to state the manner in which the lead agency will receive comments from the public. The concern is that if only electronic submission is allowed, that the underserved public, including those without internet connection or with unreliable internet, will be left out of the environmental review process. This can be of special concern for rural communities and those lacking communication infrastructure, a very real issue for many California tribal communities.

Solution: Make clear that while agencies may receive electronic submissions, that they must also still receive mailed comments and to make that clear in the notice.

Response 84.28

Commenter's point is well-taken. However, this is language is an important clarification given that failure to respond to a timely submitted comment may lead to invalidation of a project for failure to comply with CEQA. Further, it is important for the public to understand the way to best make its views known to decisionmakers. Thus, this change promotes both public participation in the CEQA process and predictable outcomes in the CEQA process.

Comment 84.29

Regarding referenced material, this is not just an issue for lead agencies, it can also be a problem for tribes and the commenting public. For example, we have seen consultant reports supporting environmental documents reference other reports and materials, sometimes in a substantive way. These references are rarely attached to the report and sometimes are not readily available on the internet. Sometimes it takes a long time for such materials to be supplied upon request - if they are even provided before the close of the comment period - sometimes they are not provided at all. These reports and materials must be made available for reviewers to test whether these source materials have been accurately portrayed in the expert reports. This gets to the heart of verifying what is being portrayed as substantial evidence by consultants. The proposed guidelines update does not address this issue and in fact may worsen it.

Solution: Examine section 15087(c)(S) and provide clarity on an agency's and its consultants' obligation to make available referenced sources in consultant reports in a manner that addresses any potential concern regarding potential sensitive or confidential cultural information.

Response 84.29

Thank you for your suggestion. This regulation was limited to information that was incorporated by reference because documents that are incorporated by reference provide a portion of the document's overall analysis, are likely in the agency's possession, and therefore should be made available to the public. Please also note, the treatment of confidential information is a subject that may be appropriate for tribal consultation.

Comment 84.30

9. **Pre-Approval Agreements** ***(proposed Amendments to Section 15004)***

This proposed revision creates some of the same issues as those enumerated above regarding Deferral of Mitigation Details. Namely, that irreversible momentum towards project approval has occurred, and that environmental review coming later in time will be less robust and mitigation measures more likely to be determined infeasible, leaving project impacts unmitigated and creating additional unmitigated cumulative effects.

Of specific concern, are certain revisions to Section 15004(b)(2)(A) allowing for land acquisition agreements when conditioning the agency's future use of the site on CEQA compliance. The practical effect of entering into acquisition agreements would be to predetermine the project location, rendering any off site alternatives analysis moot.

Solution: Strike "and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site in CEQA compliance.11

Response 84.30

The language cited by commenter is based on established case law. See *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116; *Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549, 570-572. Because these changes are consistent with case law and preserve the environmental status quo until after a lead agency conducts environmental review, no change is needed in response to this comment.

Comment 84.31

Another issue is whether the proposed findings in Section 15004(b)(4) which would help set the expectations of the parties and specifically commits the agency to key steps in the CEQA process, applies to both public and private projects.

Solution: Add language to Section 15004(b)(4) clarifying that the findings apply to both private and public projects. Also, to allow for a full range of mitigation measures to be considered, strike the word "feasible." Feasibility of measures is a separate step that occurs after all mitigation is considered; collapsing those steps would result in public comment being meaningless.

Response 84.31

Pre-commitment restrictions apply to projects that are subject to CEQA. No additional clarification is needed. As an agency is not required to adopt infeasible mitigation measures, the foreclosure of infeasible mitigation measures does not pre-commit an agency to a project. Therefore, no change is needed to the regulatory language.

Comment 84.32

10. Preparing an Initial Study (proposed Amendments to Section 15063)

This proposal desires to specify the arrangements a lead agency may use to prepare an initial study. In general, we prefer that the *lead agency* itself prepare the initial study, to help reduce the potential for conflicts-of-interest on the part of applicants or outside consultants with business conflicts.

Solution: If the proposed revision is retained, language should be added to Section 15063(a)(4) clearly stating that such arrangements are still subject to Section 15084(e), that the documents must reflect the agency's independent judgment.

Response 84.32

This regulatory change is based on statute. (See Public Resources Code, § 21082.1.) The comment's suggested addition is not needed because as the comment notes, Section 15084(e) already requires agencies to exercise their independent judgment. Section 15074(b) applies the same requirement to negative declarations.

Comment 84.33

11. **Citations in Environmental Documents** ***(opposed Amendments to Sections 15072 and 15087)***

This proposed revision creates some of the same issues as those enumerated above regarding Responses to Comments. Namely, that citations and references that are used in a consultant's report should continue to be made available so that they can be assessed for sufficiency as substantial evidence. This is of particular concern relative to cultural resources and TCRs, as old reports are often cited or referenced, but not incorporated by reference, and often contain inaccuracies, errors, or outdated approaches. Such material therefore may not form the basis for substantial evidence as defined in CEQA once tested. Without having these reports available, these errors may remain uncorrected and environmental effects of a project may go unmitigated. This is of a particular concern relative to TCRs, as old reports using archaeological methods are not appropriate for consideration of TCRs. The approach advocated in the proposed revisions also hampers transparency, another hallmark of CEQA.

Solution: Add language to the revisions at Sections 15072(g)(4) and 15087(c)(5) stating that referenced or cited material will be made available by the lead agency *upon request,* in a timely manner, and respecting confidentiality provisions of CEQA.

Response 84.33

Thank you for your suggestion. This regulation was limited to information that was incorporated by reference because documents that are incorporated by reference provide a portion of the document's overall analysis, are likely in the agency's possession, and therefore should be made available to the public. The sources of information leading to impact conclusions is a potential topic to include in tribal consultation on individual projects. No change in needed in response to this comment, however.

Comment 84.34

12. Project Benefits (proposed Amendments to Section 15124)

These proposed revisions would clarify that the general project description may also discuss the proposed project's benefits to allow decision makers to balance a project's benefits and costs. We do not believe this revision is necessary as project benefits are fully considered in the Statement of Overriding Considerations and are not precluded from being part of the environmental document by CEQA. Making it seem as though a consideration of a project's benefits should be considered at the environmental document stage, may also shortcut a complete environmental analysis as it may go over the line and veer into project advocacy when the environmental document is supposed to reflect the independent judgment of the lead agency. We therefore cannot support the revisions as proposed.

Solution: If the proposal is retained, the proposal should be revised at Section 15124(b) to include that any statements about project benefits must clearly identify whether the project benefits being asserted are asserted by the applicant versus the lead agency.

Response 84.34

The Agency agrees with commenter that this regulation provides additional clarification and that CEQA did not previously restrict project benefits from being considered by the lead agency. This clarification is necessary to ensure that the CEQA Guidelines are consistent with case law. (See *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 192 (determined an accurate project description allows decision makers to balance the proposal's benefit against its environmental cost).) The comment suggests that including a discussion of project benefits may veer into advocacy for the project. The Agency disagrees. Section 15124 currently suggests that the project description should include project objectives and such details as economic characteristics. Stakeholders suggested that a discussion of project benefits would also provide useful context. This is so particularly for projects such as renewable energy facilities and infill development that may have some adverse impacts, but are also key strategies to combatting climate change. The Agency is aware of no authority, and the comment provided none, that would prohibit such discussion. Moreover, recent legislation makes clear that agencies may discuss project benefits in the project description. Thus, the Agency declines to adopt the comment's suggestion.

Comment 84.35

13. Using the Emergency Exemption (proposed Amendments to Section15269)

This proposal is to add language that emergency reports may require planning and that review of long-term projects may also be exempt if environmental review would create a risk to public health, safety, or welfare or if activities are proposed for existing facilities in response to an emergency at similar facility. If aggressively used, the proposal could greatly expand the use of emergency exemptions beyond bona fide emergency situations and result in unstudied and unmitigated environmental effects, including those to TCRs, as there would be no CEQA document or process. Almost any agency could try and argue its project protects public health, safety, or welfare - after all, these are the very purposes of municipal and state government.

This also could be of particular concern for TCRs in and near rivers, coastlines, and forests - relating to water (levees, dams, etc.) and fire control. The proposal could also create a potential end run around AB 52 and tribal consultation contrary to the intent of the legislature. We therefore cannot support the revisions as proposed.

Solution: If the proposal is retained, findings must be developed so that the exemption does not swallow the rule. Also, OPR should commit to working with tribes, SHPO, ACHP, and other stakeholders to produce guidance regarding methods to consider TCRs and retain tribal consultation during emergency projects, including supporting the use of negotiated Memoranda of Understanding between the agencies and interested tribes to protect TCRs and to act in accordance with NAHC jurisdiction over Ancestral burials, ceremonial sites, and sacred places which is a legal obligation separate from CEQA compliance.

Thank you for considering these comment s. We hope they are useful to you. Please keep us on lists to receive future rulemaking notices for this act ion . We look forward to your written responses and productive consultation.

Response 84.35

Please note, the exemption addressed in this comment was created by the Legislature and interpreted by the courts. The Agency proposes the changes in this section to be consistent with those court decisions. Please also note, this regulation has been further clarified to state that the planning must be required "to address an anticipated emergency." Commenter's other suggestion about the Governor's Office of Planning and Research producing additional guidance documents is outside the scope of this regulatory package. Please note, however, that the Native American Heritage Commission has developed guidance addressing this topic. (See, Protecting California Native American Sites During Drought, Wild Land Fire, and Flood Emergencies: A Guide to Relevant Laws and Cultural Resources Management Practices (2015), available online at: http://nahc.ca.gov/wp-content/uploads/2017/03/Protecting-CA-NA-Sites-During-Drought-Wild-Land-Fire-and-Flood-Emergencies.pdf.)

Comment 85 - United Auburn Indian Tribe of the Auburn Rancheria (3)

Comment 85.1

Also, we would request that the comments be categorized in the record and on the website as comments from a Tribe or Governmental Agency, not an individual. Thank you.

Response 85.1

The Agency notes the commenter's request; however, the Agency has not categorized comments in the record. Rather, they are labelled numerically.

Comment 86 - Paleo Solutions, Inc. (3)

Comment 86.1

I am writing your office to comment on the proposed updates to the CEQA review process. My primary concern is on how the proposed changes affect the treatment and protection of California's Paleontological Resources under CEQA, and I would like to recommend that they be treated separately as a standalone issue in the CEQA checklist of Appendix G.
Until recently Paleontological Resources, which consist of the remains and behavioral traces of ancient organisms (fossils), were addressed in Appendix G as part of the Cultural Resources issue. This lumping of Paleontological Resources with Cultural Resources (prehistoric and historic) has often caused confusion to agency personnel and citizens alike, and this confusion is in part what ultimately lead to the removal of Paleontological Resources from Cultural Resources with the passage of AB-52. While this change will most likely have a positive effect on the treatment of Cultural Resources, the decision to shoehorn consideration of Paleontological Resources into the Geology and Soils issue will not significantly improve the treatment of Paleontological Resources and may make matters worse.

Although Paleontological Resources are preserved and found in geological rock units, they are not related in any way to the environmental concerns traditionally addressed under the Geology and Soils issue; namely earthquake rupture, seismic ground shaking, unstable land surfaces and geologic units, expansive soils, and soil erosion. The treatment of paleontological resources, including the types of data gathered during the assessment phase of resource evaluation, the content and structure of the environmental documents produced, and the types of mitigation strategies employed, differs greatly from that of Geology and Soils. Another issue is that the Geology and Soils sections often need to utilize state maps/soil maps for their analyses, which are often at a lower resolution (1:500,000) than other maps that are available. Paleontological studies, on the other hand, always want to use the highest resolution maps available (preferably 1:24,000) since the paleontological analysis requires a detailed breakdown of the named geologic units within a given project area in order to tie the units to the paleontological locality records and literature, for the purpose of providing the temporal framework which is critical to understanding evolutionary patterns. The fact that different geologic maps are being used to complete the Geology and Soils vs. Paleontology analyses causes confusion for reviewers when the Environmental Document combines them in the same chapter (based on our experience with documents that have adopted a combined Geology/Paleontology section). It also requires extra time and coordination for the geological and paleontological consultants to reconcile the differences in geologic terminology used in the separate studies, which is counter to the streamlining process CEQA is striving to achieve.

Response 86.1

Responses to this comment are provided in Comment 62, which is an identical copy.

Comment 87 - Joshua Blumenkopf

Comment 87.1

VMT minimization is a flawed procedure which can result in people sitting in congestion for hours with their cars burning gas, as long as they don't go far. VHT minimization is a much better benchmark. At any rate VMT should not be applied to transportation, as it would result in favorable numbers for building a wall to obstruct a freeway, and negative numbers for congestion management (through tolls, carpool lanes) that increase speeds.

Response 87.1

The Agency thanks the commenter for providing a public comment. Please see Master Response 2 explaining why vehicle miles traveled is the most appropriate measure of transportation impacts.

Comment 88 - Jim Clemson

Comment 88.1

I am writing to say that any revision to the California Environmental Quality Act should require that transportation projects account mitigate for the additional Vehicle Miles Traveled. Transportation is the leading source of greenhouse gases in California and to leave a loophole open that will allow additional

cars on the road will severely impede the state's ability to meet our climate goals. Therefore, all projects that will put more cars on the road for longer should have to acknowledge that and mitigate the harm.

Response 88.1

The Agency thanks the commenter for providing a public comment. Please see Master Response 5 regarding the analysis of transportation projects.

Comment 89 - John Edwards

Comment 89.1

I hereby make several recommendations to the proposed CEQA regulations based on my prior experience with NEPA and because of deficiencies I noticed in the EIR process, specifically notifications for the Scoping process, for the Butcher-Solana Residential Development Project in Torrance, California. I will address your specific sections and provide reasons for my comments.

Response 89.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 89.2

1. Section 15082 - Notice of preparation of and determination of Scope of EIR. Amend to state the notice must also be filed with the County Clerk of Cities that boarder the project. Also Clarify that the public that will be impacted, even if in another city adjacent to a project, will be notified. Specify how the public will be notified through: Local newspapers, other local media, postings on or off the site in the area of the project, direct mailing to owners and occupants of nearby or affected property.

Response 89.2

This suggestion is beyond the scope of this regulatory package. The CEQA Guidelines state the noticing requirements found in the Public Resources Code. See Public Resources Code, §§ 21092, 21092.2, 21092.3, 21092.6, 21098, 21161. As regulations, the CEQA Guidelines cannot add new requirements that do not exist in the code. Statutory direction may be required to implement the comment's suggestion to expand notice requirements. The Agency thanks the commenter for providing additional information about NEPA noticing, but no changes will be made in response to this comment.

Comment 89.3

2. Section 15087 - Public Review of Draft EIR. Amend this section to specify that the impacted public be notified with some specific examples, eg. local newspapers / other media, outlets, postings in the area, letters to neighbors in impacted areas.

Response 89.3

This suggestion is beyond the scope of this regulatory package. Please see Response to Comment 89.2.

Comment 89.4

3. Section 15124 - Project Description. It states that the project description must include a statement of objectives sought by the project. Spell out that this means the purpose of the project. For example: "the project description must include a statement of objectives sought by the project, e.g. the Purpose of the Project." Reason, existing language is not clear to the average reader.

Response 89.4

Thank you for your suggestion. The project objectives section of the project description is an existing requirement that agencies have experience interpreting and applying. The project objectives can be distinct from the purpose of the project. Therefore, no change is needed.

Comment 89.5

Section 15126.4 - I recommend mitigation measures be included in the Initial Study, so that the public has an idea of what options are feasible.

Response 89.5

Thank you for your suggestion, at the initial study stage, lead agencies may not know the potential mitigation measures. That information is released to the public later in the mitigated negative declaration or the environmental impact report. Therefore, no change is needed.

Comment 89.6

5. Section 15152 - Tiering. Is tiering being promoted? If so then state that it is required or strongly encouraged. The project in Torrance is not being Tiered even though the project requires a Zone Change and a General Plan change. So his section would encourage or require the city of Torrance to perform CEQA on the General Plan first, then a second CEQA on the Zone Change, then a third on the project?

Response 89.6

A preference for tiering is included within the CEQA statute. See Public Resources Code, § 21093(b) ("environmental impact reports should be tiered whenever feasible"). Section 15152(b) already states that "[a]gencies are encouraged to tier … environmental analyses[.]" No additional change is needed in the Guidelines.

Comment 89.7

Section 15182 - Residential Projects Pursuant to a Specific Plan. This makes sense in

general to promote use of mass transit and to reduce regulatory burden. However, there may be particular circumstances that require exceptions, so there should be a way to handle these. For example if the project were to tear down a home of architectural or historic significance, e.g. a Frank Lloyd Wright Jr. house, and replace it with another (as occurred in Palos Verdes Estates), it would warrant or trigger some CEQA analysis.

Response 89.7

Section 15182 implements statutory exemptions included in the Public Resources Code and the Government Code. The Agency cannot, therefore, add requirements that are not included in the statute. Please note, however, that this exemption is limited by the events listed in Public Resources Code Section 21166.

Comment 89.8

7. Section 15062 - Notice of Exemption. If the public is to be able to react in a timely manner, there must be timely public notifications.

Response 89.8

This suggestion is beyond the scope of this regulatory package. The notice requirements are governed by statute. No change is being made in response to this comment.

Comment 89.9

8. Section 15072 - Notice of intent to adopt a Negative Declaration or Mitigated Negative

Declaration. Notification of public transit agencies within a 1/2 mile radius was added. Add that the impacted public shall also be notified in the same manner as EIR / Scoping notification is made.

Response 89.9

This suggestion is beyond the scope of this regulatory package. The notice requirements are governed by statute. No change is being made in response to this comment.

Comment 89.10

9. Section 15075 - Notice of Determination on a project for which a proposed negative or mitigated Negative Declaration has been approved. Add that he impacted public shall be notified in the same manner as EIR / Scoping notification is made.

Response 89.10

This suggestion is beyond the scope of this regulatory package. The notice requirements are governed by statute. No change is being made in response to this comment.

Comment 89.11

10. I recommend that California Natural Resources Agency or the clearinghouse provide training to City Planners who implement CEQA, and how to notify the public for EIR's and Scoping.

Response 89.11

Thank you for this suggestion. OPR often provides training and technical assistance to local planning departments.

Comment 90 - John Edwards (2)

Comment 90.1

I hereby make several recommendations to the proposed CEQA regulations based on my prior experience with NEPA and because of deficiencies I noticed in the EIR process, specifically notifications for the Scoping process, for the Butcher-Solana Residential Development Project in Torrance, California. I will address your specific sections and provide reasons for my comments. My primary concern is with public notification, especially in section 15082, since notification was not appropriately done for Scoping the Torrance project. The project is now very controversial. I will send you a copy of a letter I am preparing for the Torrance Planning Department.

Response 90.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 90.2

1. Section 15082 - Notice of preparation of and determination of Scope of EIR. Amend to state the notice must also be filed with the County Clerk of Cities that border the project. Also Clarify that the public that will be impacted, even if in another city adjacent to a project, will be notified. Specify how the public will be notified through: Local newspapers, other local media, postings on or off the site in the area of the project, direct mailing to owners and occupants of nearby or affected property.

My basis for this is our experience on this project, the limited and misused Torrance code which does not meet the intent of CEQA, the guidance of the Council on Environmental Quality for NEPA which has useful and specific public notification requirements, and which was the original basis for CEQA, logic, and best practices from the NAEP (National Association of Environmental Professionals), given below.

Response 90.2

This comment is addressed in 89.2.

Comment 90.3

2. Section 15087 - Public Review of Draft EIR. Amend this section to specify that the impacted public be notified with some specific examples, eg. local newspapers / other media, outlets, postings in the area, letters to neighbors in impacted areas.

Response 90.3

This comment is addressed in 89.3.

Comment 90.4

3. Section 15124 - Project Description. It states that the project description must include a statement of objectives sought by the project. Spell out that this means the purpose of the project. For example: "the project description must include a statement of objectives sought by the project, e.g. the Purpose of the Project." Reason, existing language is not clear to the average reader.

Response 90.4

This comment is addressed in 89.4.

Comment 90.5

4. Section 15126.4 - I recommend mitigation measures be included in the Initial Study, so that the public has an idea of what options are feasible.

Response 90.5

This comment is addressed in 89.5.

Comment 90.6

5. Section 15152 - Tiering. Is tiering being promoted? If so then state that it is required or strongly encouraged. The project in Torrance is not being Tiered even though the project requires a Zone Change and a General Plan change. So his section would encourage or require the city of Torrance to perform CEQA on the General Plan first, then a second CEQA on the Zone Change, then a third on the project?

Response 90.6

This comment is addressed in 89.6.

Comment 90.7

6. Section 15182 - Residential Projects Pursuant to a Specific Plan. This makes sense in general to promote use of mass transit and to reduce regulatory burden. However, there

may be particular circumstances that require exceptions, so there should be a way to handle these. For example if the project were to tear down a home of architectural or historic significance, e.g. a Frank Lloyd Wright Jr. house, and replace it with another (as occurred in Palos Verdes Estates), it would warrant or trigger some CEQA analysis.

Response 90.7

This comment is addressed in 89.7.

Comment 90.8

7. Section 15062 - Notice of Exemption. If the public is to be able to react in a timely manner, there must be timely public notifications.

Response 90.8

This comment is addressed in 89.8.

Comment 90.9

8. Section 15072 - Notice of intent to adopt a Negative Declaration or Mitigated Negative Declaration. Notification of public transit agencies within a 1/2 mile radius was added. Add that the impacted public shall also be notified in the same manner as EIR / Scoping notification is made.

Response 90.9

This comment is addressed in 89.9.

Comment 90.10

9. Section 15075 - Notice of Determination on a project for which a proposed negative or

mitigated Negative Declaration has been approved. Add that he impacted public shall be notified in the same manner as EIR / Scoping notification is made.

Response 90.10

This comment is addressed in 89.10.

Comment 90.11

10. I recommend that California Natural Resources Agency or the clearinghouse provide training to City Planners who implement CEQA, and how to notify the public for EIR's and Scoping.

Response 90.11

This comment is addressed in 89.11.

Comment 91 - John Edwards (3)

Comment 91.1

I hereby recommend that the CNRA proposed CEQA regulations include more useful guidance to preparers of EIRs regarding Aesthetic Impact Analyses. Yesterday in the public hearing you held in Los Angeles I made this general comment verbally. Here is more specific information about a repeatable assessment tool used on the Space Shuttle program (1), in the Nuclear industry (2) and on other projects (3).

Response 91.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 91.2

The cause of my concern in this area is the apparent lack of understanding of aesthetics on the part of a contractor (Placeworks) doing the Initial Study for the City of Torrance on the Butcher-Solana Residential Development Project (4). They simply used the four questions in the Appendix-G Environmental Checklist Form (5). I require that you substitute a more quantifiable method. In Appendix G: Environmental Checklist Form it clearly states that "Substantial evidence of potential impacts that are not listed on this form must also be considered. The sample questions in this form are intended to encourage thoughtful assessment of impacts, and do not necessarily represent thresholds of significance." However in practice the contractor for the Torrance project just used the four items listed in Appendix G and did not explore additional impacts. I believe that that approach does not capture the significant Aesthetic impacts of the project, whereas using a more focused quantifiable approach would.

Response 91.2

Appendix G is provided a non-binding guidance for lead agencies. Please see Master Response 18.

Comment 91.3

The methodology utilized in this evaluation portrays anticipated visual changes in an accurate manner and describes the subjective effects of such change on the visual quality of the scene. Visual quality is taken to mean the sum of three components:
1) the memorability of a scene; (Vividness)
2) its degree of development; (Innocents)
3) the harmony of its parts; (unity)

Response 91.3

Thank you for your suggestions. Please note, however, that while the Public Resources Code lists aesthetics as one aspect of the environment that may require study under CEQA, it largely leaves the choice of methodology to study impacts to the discretion of lead agencies. Because the statute does not mandate that lead agencies evaluate aesthetic impacts in any particular way, the Guidelines cannot contain any such mandate. Thus, no changes will be made in response to this comment.

Comment 92 - Stuart Flashman

Comment 92.1

I am submitting the following comments on the above-referenced amendment package as a California attorney and CEQA practitioner for more than twenty-five years. While the package contains many worthwhile features, there is still significant room for improvement. More importantly, some aspects of the proposed guideline may unintentionally result in weakening CEQA's protection of both the environment and of the right of the public to be fully informed and comment on the environmental effects a project may have. For these reasons, I would ask that OPR consider revising the Guideline Amendments along the lines suggested in these comments.

Response 92.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 92.2

The expansion of this section to cover projects other than residential project is an issue of concern. The idea of exempting projects proximate to transit is based on the idea that such projects will have lower transportation and related (e.g., air quality, GHG emissions) impacts because residents/employees/customers/clients will be more likely to utilize transit rather than private automobiles to access the project. However, that idea is subject to a number of limitations that are not adequately addressed by the proposed amendments.

Specifically, some kinds of commercial projects are much less likely to have customers utilize transit. Some obvious examples include: Automotive dealerships and repair businesses, wholesale dealerships of any sort that involve sales and pickup of caseload or greater quantities of goods, retail sales outlets selling primarily large items not easily transported by public transit (examples include sales of appliances other than small appliances, sales of furniture or home, garden, workshop furnishings or equipment not easily carried [e.g., rugs, sizeable power tools, lawnmowers, large light fixtures, and other bulky items], retail sales of case quantities of goods [e.g., warehouse retailers]). These items are likely to be transported by purchasers in a private

automobile or truck, or to be delivered by truck. In either case, the proximity of public transit is largely irrelevant to the project's transportation and related impacts.
An additional concern involves the connectivity and availability of the public transit. While the intersection of two "major transit lines" may make a project highly transit accessible, as may the presence of a transit/ferry terminal, that is not necessarily the case. To take an obvious example, It is often the case that transit lines, particularly bus lines, will be routed to allow easy access to a major employer by its employees. The area served will be designed to optimize access by employees to the business or government center involved. However, employees/customers of that employment center may not reflect the customer/resident base of a mixed-use project at the route intersection. For example, a "blue collar" employment center such as a manufacturing complex may aim to connect to residential areas for blue-collar employees. However, a mixed-use project aimed at upper middle class residents and businesses (e.g., accountants, attorneys, gift shops, fashion boutiques, etc.) may not reap e=any benefits in terms of transit use from those bus lines.

Another potential complication can arise based on actual availability of the transit to those going to and from the project. Two "limited" transit lines may have high frequency service, but not have a transit stop at or near where they cross. Similarly, a transit line may have a station near the project, but at peak hours the transit vehicles may already be full when they reach that station. For example, the MacArthur and West Oakland BART stations in Oakland are served by trains that, at peak transit hours, are already full or near-full in the commute direction (inbound in the AM, outbound in the PM). Thus, during those important hours, there may not be transit capacity available for a new project near the station.

The best way to deal with all these potential exceptional circumstances would be to place this exemption under the categorical exemptions section of the Guidelines and make it subject to the exceptions identified for such exemptions.

Response 92.2

This section is taken directly from Public Resources Code, § 21155.4. As such, the Agency does not have the authority to make the changes suggested by the commenter.

Comment 92.3

I am concerned about the expansion of this exemption to cover "former" uses without providing any time limit on how far back such a former use can be considered. This essentially is a special case of the general requirement that environmental review be based on "existing conditions." While there is little question that a short period of vacancy, for example, less than six months, would generally not result in any changes to the circumstances surround a former use, longer term discontinuance or vacancy can result in changes in the existing conditions.

For example, if a large manufacturing facility were to close, and remain vacant for several years, other projects might be considered and approved in the interim period. The environmental reviews of those projects would use as their baseline the

existing conditions without the operating factory. This could affect many impacts, including air quality, water quality, transportation, etc. If the factory were allowed to reopen after that five year gap, its project-specific impacts might be unchanged, but its cumulative impacts could now be highly significant. Thus any such exemption must be limited to situations where there have not been changes to the baseline, other than the closure of the facility, that might result in cumulative impacts.

Response 92.3

The Agency acknowledges commenter's concerns about potential misuse of the Class 1 categorical exemption. The exceptions to the exemptions will continue to provide a check to these potential abuses. In creating or amending the categorical exemptions, the Agency considers whether there will be an environmental impact under the typical situation. See Public Resources Code, § 21084; CEQA Guidelines, §§ 15300, 15300.2.

Comment 92.4

Appendix G

Under Wildfire, the checklist should include an additional category related to potential for wildfires to significantly and adversely affect agricultural, forestry, or biological resources, namely, would the project expose significant agricultural, forestry, or biological resources to significant risks related to wildfires, including downslope or downstream flooding or landslides etc.

Response 92.4

Please see Master Response 18. Appendix G is provided as a non-binding guide to lead agencies and does not limit what can be analyzed.

Comment 92.5

§ 15064.3

Subsection (b(1) asserts that projects within ½ mile of a major transit stop or a stop along an existing high quality transit corridor should be presumed to cause less than significant transportation impact. What evidence is there that the distance from a major transportation stop should be the same as for a stop on a high-quality transit corridor? A rapid transit station where trains can travel 15-20 miles in 15-20 minutes would be far more attractive than a bus line along a congested street where a bus may only travel 2-3 miles in 15 minutes. The radius needs to adjust to the attractiveness of the transit. People will walk further to access more efficient transit, and efficiency includes speed and connectivity, not just frequency. Any presumption should be explicitly identified as being rebuttable based on substantial evidence that the distance should be less or more than ½ mile. An estimation of likelihood of transit use should be

the primary determinant, not distance. There should be a clear preference for quantitative versus qualitative analysis. The presumption of no significant impact from a qualitative analysis should be considered rebutted if substantial quantitative evidence is presented contradicting the qualitative analysis. Any model being used to estimate vehicle miles travel needs to have been validated before it should be considered substantial evidence.

Response 92.5

The Agency thanks the commenter for the suggestion. Please see Master Response 4 explaining why lead agencies should presume that projects located within one-half mile of transit will have a less than significant transportation impact.

Comment 92.6

§ 15064.4

In considering the significance of a project's GHG emissions over various timeframes, evidence concerning the potential for GHG emissions to reach a "tipping point" - a point beyond which the ability to halt or reduce the rise in atmospheric GHG levels is significantly reduced, should be considered in evaluating the significance of a project's GHG emissions.

Once a tipping point has been passed, the significance of reductions in GHG emissions must take into account the already increased background rate of GHG emissions. Conversely, earlier reductions in GHG emissions, especially those which might reduce the likelihood of reaching a tipping point or which would extend the time until a tipping point would be reached, should be considered far more significant that GHG emissions after a tipping point, and GHG emission increases should also be considered far more significant if they would increase the likelihood of reaching a tipping point or reduce the time until a tipping point is reached.

In simple terms, early GHG reductions should be considered more beneficial than later reductions, and earlier increases in GHG emissions may be considered a significant adverse impact even if they are "balanced" by later GHG emission decreases, especially if the later decreases could occur after a tipping point.

Response 92.6

The comment suggests that agencies should consider that the impact of a quantity of emissions may not be equal over time. Please note, several provisions of the proposed additions to the Guideline section on greenhouse gas emissions address this concern. Specifically, subdivision (b) has been updated to state:

> In determining the significance of a project's greenhouse gas emissions, the lead agency should focus its analysis on the reasonably foreseeable incremental contribution of the project's emissions to the effects of climate change. A project's incremental contribution may be cumulatively considerable even if it appears relatively small

compared to statewide, national or global emissions. The agency's analysis should consider a timeframe that is appropriate for the project. The agency's analysis also must reasonably reflect evolving scientific knowledge and state regulatory schemes.

No further changes are required in response to this comment.

Comment 92.7

§ 15125 In considering the environmental setting for a project, any environmental condition resulting from an illegal or unpermitted activity or condition should not be considered. Rather, the environmental setting should assume that any existing illegal activity and/or condition would be terminated and the effect of the illegal activity/condition remediated unless substantial evidence indicates that remediation is infeasible prior to the project's approval. In that case, while the direct project impacts may consider effects related to the illegal activity condition, the long-term or cumulative impact analysis should assume the remediation of any effects of the illegal activity/condition.

In addition, if the illegal activity/condition is a result of actions of the project sponsor or a party in privity with the project sponsor, the project must include full remediation of any effects from the illegal activity/condition as a necessary precondition associated with the project. Anything otherwise would be inequitable and would be rewarding illegal or improper behavior.

Response 92.7

The Agency declines to make the change suggested in this comment for the reasons described in Response to Comment 68.5.

Comment 93 - Sandra Genis

Comment 93.1

Thank you for this opportunity to comment upon the proposed revision to the Guidelines for the Implementation of the California Environmental Quality Act. By way of background I am a professional land planner with over thrity years' experience, primarily dealing with CEQA. I am also mayor of a city of approximately 110,000 in southern California.

Response 93.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 93.2

Certain aspects of the proposed changes are helpful, for example the encouragement to local agencies to establish local thresholds. At the same time, I have concerns about potential pre-emption of local

control and standards. I have significant concerns regarding proposed Section 156064.3 of the proposed guidelines. While it is ostensibly provided in response to SB 743 (Steinberg) it appears to go beyond the provisions of the bill.

SB 743 directs the Office of Planning and Research to develop alternate metrics to traditional congestion management metrics for transportation analyses, not to develop replacement metrics to eliminate congestion management. Indeed, SB743 eliminates congestion management standards included in Government Code 65089 only in limited infill opportunity areas. Government Code Section 65089 would still apply in most areas of the State. If it had been the Legislature's intent to eliminate congestion management planning, they could have and would have deleted provisions of GC Sec.65089. They did not.

Response 93.2

The regulatory package addresses the provisions of SB 743 related to the analysis of transportation impacts under CEQA. The commenter is correct that congestion management will continue to be performed pursuant to the Congestion Management Act. As directed by the Legislature, however, upon adoption of the Guidelines, auto delay will not be considered an environmental impact pursuant to CEQA.

Comment 93.3

Further, the technical rationale for standards included in proposed Section 15064.3 is flawed First, the rationale assumes that total vehicle miles travelled is not already included in analyses of air quality and greenhouse gases. The rational also assumes that congestion itself does not contribute to air emissions.

Typically, an environmental document prepared pursuant to CEQA would include an analysis of air quality impacts in general and greenhouse gases in particular. The analysis would address emissions from both fixed and mobile sources. Nearly any reasonably competent analysis of mobile source emissions would be based on numbers of trips multiplied by trip length, i.e. vehicle miles travelled. Thus emissions of greenhouse and other pollutants associated with VMT is already included in CEQA analyses.

Response 93.3

The Agency agrees that most agencies already measure vehicle miles traveled as part of the analysis of air quality, greenhouse gas emissions and other impacts. The Agency identified vehicle miles traveled as the measure to replace level of service in the analysis of transportation impacts in part because it would not impose additional burdens on lead agencies. Please also note, there are additional impacts beyond air quality and greenhouse gas emissions that will be captured by the transportation analysis.

Comment 93.4

Regarding air emission due to congestion, Reduction in emissions due to reduced congestion has been identified in various environmental impact reports for roadway projects in recent years. These have included State approved projects. In addition, analyses of air quality impacts generally include identification of air pollution hot spots that may result from traffic congestion. Cars idling in gridlocked

traffic waste energy and needlessly generate additional pollutant emissions which then concentrate in the congested area. This impact falls most heavily on persons in lower socioeconomic groups

who live along transportation corridors in older, more congested parts of the region. Residents in the areas of the Ports of Los Angeles and Long Beach and our inner cities are most severely affected by what is clearly a matter of environmental justice. They are also less able to afford newer, cleaner vehicles.

Response 93.4

As noted above, congestion will continue to be addressed by the Congestion Management Act. Any potential air quality impacts from congestion will continue to be analyzed under CEQA. Please also note, due to improvements in vehicle technology, carbon monoxide hot spots are far less likely to occur.

Comment 93.5

Overall vehicle miles travelled could be an important factor in assessing impacts on regional transportation systems. Historically Caltrans has, for the most part, assessed transportation impacts generated by a proposed project based primarily on trip volumes at localized portions of regional facilities, such as on- and off-ramps and occasionally adjacent stretches of throughway Perhaps direction to Caltrans, rather than local governments could more effectively address regional transportation impacts.

Response 93.5

Thank you for your comment. The comment does not address any specific portion of the rulemaking package however, and so no change is being made.

Comment 94 - Kyle Jenkins

Comment 94.1

As a lifelong Californian I urge the Natural Resources Agency to insist that all projects, including highways and other transportation projects, use VMT rather than LOS when determining impacts under the revised CEQA guidelines. This is the only way to ensure that California continues to lead the nation in reducing emissions and creating a healthy environment for our citizens.

Response 94.1

The Agency thanks the commenter for providing a public comment. Please see Master Response 5 regarding the application of the new Guidelines to transportation projects.

Comment 95 - Linda Klein

Comment 95.1

Please consider clarifying that the exception in 15300.2(e) applies to sites with active hazardous materials and does not apply to sites that have been cleaned and closed by the Department of Toxic

Substance Control (DTSC) or the Regional Water Quality Control Board (RWQCB). As currently written, it is ambiguous whether cleaned sites are ineligible for a categorical exemption because they may remain on a list kept by DTSC or the RWQCB as "closed." Many of these sites are urban infill lots where development should be encouraged, which the proposed clarification would do.

Response 95.1

The Agency thanks the commenter for providing a public comment. This suggestion would require a change to the statutes governing how the Department of Toxic Substances Control and Regional Water Quality Control Boards identify sites on the "Cortese List." Therefore, the suggestion is beyond the scope of this regulatory package.

Comment 96 – S. Lee

Comment 96.1

Thank you for the thoughtful effort and time your organization has spent in updating CEOA and providing opportunity for public comment, which I submit below.

Response 96.1

Thank you for your comment letter.

Comment 96.2

These three sections have been modified to require the individual's name whenever a public agency is involved in areas such as grants, loans, permits, licenses, etc. I would like to suggest including the individual's title or position (e.g., President, Owner, Operator, etc.) as this would be more informative than only the individual's name, particularly where common last names may exist in an organization or individually.

Response 96.2

The Agency is not making any change in response to this comment. These changes are being made to conform the Guidelines to recent changes in the Public Resources Code.

Comment 96.3

This section addresses the Lead Agency identifying the "physical environmental conditions as they exist at the time the notice of preparation is published..." In some cases, however, the applicant may have a better understanding of the existing environment than the lead agency, and in preparing a project description would be able to provide the input a lead agency requires to make such a determination. Therefore, would it be appropriate to include a provision that the lead agency "may rely on the applicant's description or position regarding the existing environment?" (either wholly or in part?)

Response 96.3

The Agency is not making any change in response to this comment. The lead agency is responsible for preparing or causing to be prepared environmental documentation. It can obtain relevant information from the applicant, or others, but it, or the consultant hired to perform this work determines the relevant environment. The lead agency ultimately must make the finding that the environmental

document reflects its independent judgment. If the applicant disagrees, it may submit its concern to the lead agency.

Comment 96.4

Several small water companies (both rural and urban, and privately owned) across the nation provide drinking water from wells to local populations under 10,000, and many of these companies need to seek affordable solutions to address removal or reduction of manganese (and iron in some cases) in their drinking water. Several manufacturers have met this need by designing self-contained, pre-fabricated plants at their facilities which are then delivered as a unit on steel skids to the water company. The water company then locates the plant between the wells and the existing water storage tank and connects the treatment plant via piping. A small utility building may also be erected to house electrical controls and perform water tests as part of routine maintenance, or some water companies may locate the delivered plant inside an existing building.

Under 15301, two projects have been listed as examples of "categorically exempt'' projects - paragraph (m) (addresses dams) and paragraph (o) (addresses medical waste). These would seem to be potential projects requiring environmental review; however, they have been found, under certain conditions, to be exempt.

Is it possible to include the above-discussed pre-treatment of drinking water project as another example of a "categorically exempt" project, like dams and medical waste projects have been? (The State Water Resources Board issues permits for drinking water, but the City would likely be the lead agency responsible for permits, review of zoning and other considerations and environmental review).

Response 96.4

The Agency is not making any change in response to this comment.

Section 15301 provides a non-exclusive list of examples of potential changes to existing facilities that are not likely to cause significant environmental effects. Lead agencies may use that exemption for other similar facilities. Please also note, other exemptions may also cover the activities described in the comment, such as, for example, Section 15303 (new construction of small structures). Thus, the Agency finds that further changes are not necessary.

Comment 96.5

"Require or result in the relocation or construction of new or expanded water, or wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities or expansion of existing facilities, the construction or relocation of which could cause significant environmental effects?"

Please note the previously discussed pre-treatment drinking water plant is not a "new or expanded water facility'' (the water system has not changed, only improvement to its quality) and nothing is relocated (the plant is delivered to the water company site to facilitate water quality improvement), so the checklist question does address the pre-treatment drinking water plant project.

Response 96.5

The Agency is not making any change in response to this comment. The checklist is a guide to help lead agencies. Not every conceivable question that may be asked is on the list. If there are specific project characteristics or constraints that would result in additional questions being considered by a lead

agency, it is responsible for considering those characteristics or constraints and the whole of the project when determining what if any impacts could potentially result from a proposed project.

Comment 96.6

Considering the above discussed pre-treatment of drinking water for manganese for a small water company serving less than 10,000 consumers, might this type of project (which is a public utility) be included as a "project type" in the performance standards (paragraph 4)?

A small water company, particularly a privately owned one, has very limited budget and resources, yet needs and desires to comply with environmental concerns. It would be very helpful for reviewers of such projects to look to a "public utilities" category which serve water to the public for guidance.

Response 96.6

The Agency is not making any change in response to this comment. Appendix M is not intended to provide another location where small or exempt projects should be considered, but rather a single point of location for all statutorily streamlined processes for infill projects pursuant to CEQA.

Comment 97 – Esteban McKenzie

Comment 97.1

To whom it may concern,

While it is great to see that VMT will be replacing LOS for development, it is absurd that LOS is being retained as an option for transportation projects. If you find you have dug yourself into a hole, the first thing you should do is STOP DIGGING! Decades of LOS driven projects have been shown time and time again as adding to, not reducing congestion and pollution. There is no acceptable reason to continue using it. Through embracing VMT, CNRA is acknowledging that LOS led to harmful results. If transportation projects are found, or expected to be, harmful by VMT there is no logical justification for allowing it to proceed under the LOS metric. Doing so is intellectually lazy and dishonest. Please reconsider, as these changes will likely be in place for a long time before being reviewed again.

Response 97.1

This comment appears concerned that the guidelines expressly state that, “For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements.” Please see Master Response 5 regarding discretion for roadway capacity projects.

Comment 98 – Ben Phelps

Comment 98.1

This email is in regard to proposed updates to the California Environmental Quality Act that would positively effect the California Environment- though they fall woefully short by excluding transportation projects from their purview. It is wholly logical and necessary to replace consideration of traffic delays with vehicle miles traveled under CEQA reviews of development projects. However, I find it appalling that somehow TRANSPORTATION projects would no fall under this same umbrella- how can we fairly and logically evaluate the effects on vehicle miles traveled of a housing development project, but not

judge the similar effects of a transportation project? Are we proposing that we objectively and fairly judge the environment effects on VMTs of a housing development, but for a highway project or a rail project we are not allowed to consider this in the environmental impact report? How does this make any sense? I support the current rules revisions but their scope needs to expanded desperately.

Response 98.1

This comment argues vehicle miles traveled should be the metric for all projects, including roadway and capacity projects. Please see Master Response 5 regarding discretion for roadway capacity projects.

Comment 99 – Robert E. Reynolds

Comment 99.1

I am writing to comment on proposed updates to the CEQA review process, and the treatment and protection of California's Paleontological Resources under CEQA. I recommend that they be treated separately as a standalone item in the CEQA checklist of Appendix G. Paleontological Resources are the remains and behavioral traces of ancient organisms (fossils) and addressed as a Cultural Resources issue in Appendix G. Combining Paleontological Resources with Cultural Resources has often caused confusion to agency personnel and to citizens. However, the decision to consider paleontological Resource as a Geology and Soils issue will not significantly improve the treatment of Paleontological Resources, and may make matters worse. I am writing to comment on proposed updates to the CEQA review process, and the treatment and protection of California's Paleontological Resources under CEQA. I recommend that they be treated separately as a standalone item in the CEQA checklist of Appendix G. paleontological Resources are the remains and behavioral traces of ancient organisms (fossils), and addressed as a Cultural Resources issue in Appendix G. Combining Paleontological Resources with Cultural Resources has often caused confusion to agency personnel and to citizens. However, the decision to consider paleontological resources as a Geology and Soils issue will not significantly improve the treatment of Paleontological Resources, and may make matters worse. The management of Paleontological Resources is best thought of as management of ancient Biological Resources. Management of Paleontological Resources should not be addressed under the Biological Resources issue, but their management should be treated as a new and separate issue during the CEQA review process. For purposes of recognition and clarification, I recommend that Paleontological Resources be added to the Appendix G checklist as a new, standalone environmental issue. As written the only impacts to be considered for Paleontological Resources are impacts to" unique paleontological resources", rather than to 'Significant Paleontological Resources. Additionally, the definition of "paleontological resource," "resource potential," and "significance" can be exacted from the Society of Vertebrate Paleontology Bull., 163, January, L995. With this recommendation, I propose the following language:

Would the project: Directly or indirectly cause a substantiate adverse effect on a significant paleontological resource or resource area? I strongly urge you to consider the above recommendations for the increased protection and preservation of California's rich paleontological record.

Response 99.1

Commenter appears to advocate for separating paleontological resources from other resources in Appendix G, and to increase consideration of such resources beyond those that are unique to those that are “significant.” The Agency will not make these changes at this time. Appendix G is a sample, and changes made to it by the Agency were intended to streamline and update it to reflect law that has

changed. These suggested changes would not serve either goal. Commenter remains free to comment publicly if and when such resources require additional consideration, and to advocate for local agencies to alter their checklists to include this additional consideration if, in their discretion, they find it relevant.

Comment 100 – Antero Rivasplata, AICP

Comment 100.1

Thank you for the opportunity to comment on the proposed CEQA Guidelines amendments and additions. Regularly updating the Guidelines to reflect current statutes and case law is extremely helpful to practitioners and the public. For the most part, I think that the proposed changes are well-written and on point. The Natural Resources Agency and Office of Planning and Research have done a commendable job in identifying key areas of the Guidelines that are in need of updating and proposing useful changes. However, I do have some suggestions for revisions that would clarify the proposed language and avoid inadvertent misinterpretations by practitioners. These comments are my own and do not reflect the opinions of my employer. My comments and suggested revision language follow.

Response 100.1

Thank you for the comment.

Comment 100.2

Section 15004.

15004(b)(2)(A): the added language could easily be misinterpreted as allowing deferral of CEQA analysis, which is in opposition to case law. I suggest the following replacement language, generally reflective of the holding in Neighbors for Fair Planning v. City and County af San Francisco (2013) 217 Cal.App.4t h 540:

…except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has committed to completing CEQA compliance prior to final acquisition conditioned the agency's future use of the site on CEQA compliance.

15004(b)(4): for clarity, I suggest adding the following:

(D) Not restrict the lead agency from denying the project.

Response 100.2

The Agency made changes in response to this comment.

Comment 100.3

Section 15064.

15064(b)(2): for clarity, the added language should use the term "fair argument" rather than "substantial evidence indicating." I suggest revising the text of the final sentence as follows: "Compliance with the threshold does not relieve a lead agency of the obligation to consider a fair argument substantial evidence indicating that the project's environmental effect may still be significant." This confirms that the fair argument applies and avoids confusion among practitioners.

Response 100.3

The Agency has not made changes in response to this comment because the Agency finds this change is not necessary. The proposed language is consistent with the cases addressing this issue. The Agency's obligation is to consider substantial evidence presented to it regarding the significance of impacts, both in the context of negative declarations and environmental impact reports.

Comment 100.4

Section 15064.3.

15064.3(b)(1): the text of this subsection establishes a general presumption for projects within½ mile of specified transit opportunities. That appears to be undercut by the provisions of the Technical Advisory. Specifically, the advisory creates a numeric threshold for residential and commercial projects of 15% below existing VMT per capita. This needs to be clarified in the Technical Advisory so it is in agreement with the Guideline.

Also, the Technical Advisory's threshold of 15% below existing VMT unnecessarily burdens projects where existing VMT is low, such as in dense central cities. It may actually work as a disincentive to projects in those areas.

Response 100.4

The Agency is not making changes in response to this comment. The advisory is not a binding document; rather, it is guidance put out by the Office of Planning and Research. Moreover, the 15% threshold in the technical advisory is only intended to be applied to those projects to which the presumption would not apply.

Comment 100.5

15064.3(b)(2): arguably, transportation (i.e., road) projects are the most important single type of project resulting in long-term VMT increases. Similarly, mitigating these increases for road projects can have a greater effect on VMT and the associated emissions of greenhouse gases (GHGs) than mitigation of small, individual development projects. Agencies should not be given the discretion to use a metric other than VMT for transportation projects. Using another metric avoids the need to consider induced VMT, creating a large loophole in the GHG emissions reduction objective of SB 743.

Response 100.5

This comment argues vehicle miles traveled should be the metric for all projects, including roadway and capacity projects. The Agency has determined that lead agencies retain discretion to select methodologies other than vehicle miles traveled for roadway capacity projects. This does not relieve any agency of the requirement to analyze greenhouse gas emissions or other air pollutants.

Comment 100.6

15064.3(b)(3): this implies strongly that qualitative analysis is only suitable when existing models/methods are not available. This will lead to arguments over whether existing models/methods would apply to a project, particularly as quantitative models become more available. I suggest the following revision:

(3) Qualitative Analysis. If 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, typical VMT for similar projects, etc. For many projects, a qualitative analysis of construction traffic may be appropriate.

Response 100.6

The Agency is not making changes in response to this comment. How many vehicle miles are induced by a proposed project is inherently a numeric concept, and where models exist to determine that number, the lead agency is better informed understanding it. However, where such models do not exist, a lead agency should still consider the nexus of a project to transit, services, and the community in an effort to ensure access and reduction of vehicular travel where possible. In this way direct impacts to infrastructure, climate, air quality can be mitigated where feasible, even where modeling accuracy is not available.

Comment 100.7

15125(a): I recommend revising the proposed new sentence to simplify it.

The purpose of this requirement is to give the public and decision makers the most accurate and understandable information about the project's likely near- term and long-term impacts to allow them to make an informed decision.

Response 100.7

The Agency is not making changes based on this comment. The commenter is merely saying the same thing in a different way, and the Agency is satisfied its original proposal is sufficient.

Comment 100.8

15125(a)(l) and (2): the discussion of using a historic baseline (covered by the Supreme Court in Communities for a Better Environment v. South Coast Air Quality Management District) is being conflated with the Neighbors for Smart Rail v. Exposition Metro Line Construction Authority decision on the use of a future baseline. These subdivisions need to be reworked to correctly express the Supreme Court's Smart Rail and Communities for a Better Environment holdings. Historic baseline was addressed in Communities for a Better Environment and does not require special findings. I recommend the following revisions:

(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, average conditions over time, or conditions expected when the project becomes operational, that are supported with substantial evidence. In addition to existing conditions, a lead agency may also use baselines consisting of 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. The lead agency must adopt a finding based in substantial evidence to support its use of a future conditions baseline.

Response 100.8

The Agency has made changes in response to this comment, and has circulated those changes for 15-day review. The change will clarify how lead agencies may develop a baseline for purposes of impact comparison. The changes also clarify that in some cases historic conditions are more appropriate than those existing ones. Finally, it requires justification of projected future conditions beyond project operation, consistent with case law.

Comment 100.9

15126.2(a): This doesn't seem to reflect the Supreme Court's CBIA v. BAAQMD ruling in that it may still be interpreted to require review of impacts of the environment on the project. I recommend the following revisions to the last sentence:

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, when the development would exacerbate the risk as the conditions may be identified in authoritative hazard maps, risk assessments or in land use plans, addressing such hazards areas.

Response 100.9

The Agency is not making changes in response to this comment. The changes make clear that the focus of the analysis is impacts that a project may cause (directly or indirectly) or hazards that a project may risk exacerbating.

Comment 100.10

15126.2(b) Energy Impacts: there's little statutory basis for this new subsection and it should be deleted. Energy is only covered in one subdivision of the statute, and then only in passing. Pub Res Code Section 21100(b)(3) states that an EIR must include: "(3) Mitigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy."

That mere mention does not support the extensive requirement set out in the proposed Guideline, nor does it continue to support retention of Appendix F.

Response 100.10

The Agency is not making changes in response to this comment. Commenter is correct that the statute identifies how lead agencies are to consider energy. Several courts have interpreted this to include transportation energy. The Agency considers it useful to help practitioners comply with those cases by understanding the scope and application the statute has or could have. (See, *Ukiah Citizens for Safety*

First v. City of Ukiah (2016) 248 Cal. App. 4th 256; *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912.)

Comment 100.11

Section 21100(b)(3) was enacted in the mid-1970s, before the adoption of energy conservation measures in the California Building Codes, water conservation measures, and other regulatory actions that greatly reduce energy use in California. The Initial Statement of Reasons ignores the broad regulatory scope of California's energy conservation efforts and how that greatly reduces the need to consider energy consumption on a case-by-case basis. Conservation efforts include not only Title 24 building code standards and Title 20 appliance efficiency program for energy conservation in buildings, which are tightened tri-annually, but also state requirements for local water efficient landscape ordinances, general conservation by water providers (e.g., Water Conservation Act of 2009 requiring a 20% reduction in per capita urban water use by 2020), the push for increased reliance on renewable energy embodied in the Renewables Portfolio Standard, and other energy conserving programs and regulations that apply to development, regardless of whether a project is subject to CEQA. The following goals for the development of zero net energy (ZNE) buildings set out in the California Public Utilities Commission's California Energy Efficiency Strategic Plan are a good example of California's energy conservation future:

- All new residential construction will be ZNE by 2020.
- All new commercial construction will be ZNE by 2030
- 50% of commercial buildings will be retrofit to ZNE by 2030
- 50% of new major renovations of state buildings will be ZNE by 2025, and 100% by 2025

Rather than continuing the outdated assumption that California does not have a nation-leading, energy-conserving regulatory scheme, the Guidelines should recognize that new development is consistently less energy intensive than existing conditions. The regulatory scheme in 2018 is different from the 1970s when Section 21100 was enacted. Consideration of the "wasteful, inefficient, and unnecessary consumption of energy" should be updated to match the current and future results of that scheme in avoiding these impacts.

The primary source of "excessive" energy use is transportation. Although transportation is increasingly efficient on a per vehicle level, continuing increases in VMT offset those efficiencies. Please consider limiting these requirements to that sector. Waste, inefficiency, or unnecessary consumption are not defined in the Guidelines. Providing such definitions would be very useful for purposes of mitigating energy use related to transportation, and could be linked to the goal of VMT reduction.

Also, I suggest that the related Guidelines Appendix F is no longer necessary and should be repealed. The initial statement of reasons notes that this appendix dates to the mid-1970s. As I've explained above, California's regulatory scheme is much changed since the adoption of Appendix F. Subsection (a)(l) of Section 15126.4 "Consideration and Discussion of Mitigation Measures proposed to Minimize Environmental Effects" covers the language in Section 21100{b)(3) on energy conservation and should suffice to meet CEQA's requirements.

Response 100.11

Commenter appears to take issue with the Agency’s addition of language interpreting Public Resources Code 21100(b)(3) because 1) it was enacted in the 1970s, when the regulation around energy was in its

infancy, 2) there is no definition for wasteful, inefficient, or unnecessary" consumption, 3) it is not limited to transportation sectors, and 4) it does not delete Appendix F.

The Agency is not making changes in response to this question. As previously noted, this section responds to case law requiring analysis of energy impacts. Further, it identifies ways in which lead agencies may consider energy impacts in a practical context, and notes that the rule of reason should be applied so that lead agencies only conduct analysis that is reasonable and feasible. Additionally, the Agency believes lead agencies should retain the ability to determine waste, necessity, or inefficiency on a project-by-project basis, and that these words are not so arcane or technical that they don't have a plain meaning. Other portions of the Guidelines address the extent to which environmental standards, such as the building code standards the comment notes, reduce impacts to a less than significant level. (See, e.g., proposed changes to Section 15064.7.) Finally, Appendix F is not proposed for removal in this rulemaking, and doing so is not the focus of it, so the Agency declines to make that change at this time.

Comment 100.12

This section could be improved by adding a statement clarifying that while an EIR must disclose the availability of water to serve a proposed project, it is not required to ensure that water is available. That is the holding in several court decisions, including Preserve Wild Santee v. City of Santee (2012) 210 Cal.A pp.4th 260, Watsonville Pilots Assoc. v. City of Watsonville (2010) 183 Cal.App .4th 1059, and Vineyard Area Citizens v. City of Rancho Cordova (2007) 40 Cal.4th 412. Here is suggested language: (g): The purpose of the water supply assessment is to disclose the availability of water supply in order to promote informed decisions. However, the CEQA document is not required to ensure that water will be available to the project.

Response 100.12

The agency is not making changes in response to this comment. The changes reflect case-law that directs the level of specificity an EIR must exhibit when identifying impacts associated with water supply. The changes make clear that "a lead agency should have greater confidence in the availability of water supplies for a specific project than might be required for a conceptual plan (i.e. general plan, specific plan)" while ensuring that project-level analysis considers where the supply of water will originate for all phases of the project, consistent with the Supreme Court's decision in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 4th 412.

Comment 100.13

15168(c)(3): the definition of "within the scope" should be revised to clarify that the focus is on the scope of the project originally approved under the Program EIR. Recommend revising the last sentence as follows:

Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and description of covered infrastructure, as described presented in the project description or elsewhere in the program EIR.

Response 100.13

The Agency has made changes in response that are substantially similar to those described in this comment.

Comment 100.14

The proposed revision to the definition of "discretionary project" should be made to the definition of "ministerial project" instead. The case law on this point has been over ministerial projects, not discretionary ones.

I recommend the following: No change to Section 15357. Make the following revision to Section 15369, based on Sierra Club v. County of Sonoma (2017) 11 Cal.App.51 11, Sierra Club v. Napa County Board of Supervisors (2012) 205 Cal.App.4th 162, and San Diego Navy Broadway Complex Coalition v. City of San Diego (2010) 185 Cal.App.4th 924: Section 15369. MINISTERIAL

"Ministerial" describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. Common examples of ministerial permits include automobile registrations, dog licenses, and marriage licenses. A building permit is ministerial if the ordinance requiring the permit limits the public official to determining whether the zoning allows the structure to be built in the requested location, the structure would meet the strength requirements in the Uniform Building Code, and the applicant has paid his fee.

The existence of discretion is irrelevant if it does not confer the ability to mitigate any potential environmental impacts in a meaningful way. A decision is ministerial when the public official may have some limited discretion over the requirements of the permit, but that discretion did not allow the official to mitigate potential environmental impacts to any meaningful degree.

Response 100.14

The Agency is not making changes in response to this comment. The Agency is further clarifying the concept of what is discretionary, not what is ministerial, though each concept is understood in relation to the other. The Agency did make a change to its originally proposed language, however, that states, “The key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project.” The Agency agrees with commenter that the ability to mitigate is a significant consideration for purposes of understanding what is “discretionary,” and thus when considering whether it has the ability to carry out or approve a project in a particular fashion, this will be a key consideration

Comment 101 – Laura Sellmer

Comment 101.1

1) Please do not remove the measure of "traffic congestion" and replaced it with the measure of with "vehicle miles traveled." Vehicle miles traveled must be in addition to the "impact of congestion." For example, a property near a congested traffic intersection, will continue to experience choking emissions from vehicles idling at intersections, waiting for red lights, and the distance of travel is irrelevant to that emission on local human lungs, especially in urban areas where children live with high vehicle density. Port traffic is a good example where diesel trucks line up for miles and idle. Date is clear that humans who live near highly congested traffic areas have the highest rates of asthma and lung cancer. As a state, we need to do more to create human distance from vehicle congested zones which are the equivalent of

carbon monoxide clouds. Do not remove "vehicle congestion" form the California Environmental Quality Act. The state must continue to consider this serious condition for children who breathe auto fume because their home is near a congested freeway or intersections.

Response 101.1

The Agency is not making changes in response to this comment. Commenter appears worried that without a consideration of congestion in CEQA, the indirect impacts associated with it to air quality and human health will not be considered. However, if congestion could cause such impacts, CEQA does not exempt analysis of those impacts, but rather would require the impacts be disclosed in connection with the analysis of air quality and health. Please also see Master Response 9 regarding addressing congestion in the planning process.

Comment 102 – Benjamin Steele

Comment 102.1

By continuing to allow roadway projects to avoid VMT metric considerations, these proposed changes to CEQA drastically undermine California's climate goals, natural environment, and commitment to sustainability; rather, unlimited public funds will continue to be put toward level of service "improvements" that empirically fail to alleviate (and often exacerbate) existing traffic congestion through willful ignorance of induced demand, that add noise and air pollution to our cities' poorest neighborhoods, and that facilitate (and are in turn justified by) unending sprawl into sensitive greenfield sites instead of urban infill development for our growing population. These projects come at a staggering human cost - no traffic analysis considers the ever-rising count of drivers, cyclists, and pedestrians maimed and killed with rising speeds and the endless demands for more automobiles on our roads; no traffic analysis considers the families displaced for the latest futile round of freeway widening; no traffic analysis is willing to grapple with the reality of a generation condemned to waste their lives behind the wheel on endless, pointless commutes that are somehow never quite solved through the next interchange redesign, invariably made at staggering public expense. Though global warming represents an existential threat to California's natural spaces and built environments alike, CEQA will still mandate open-ended polluting investments into California's largest (and still-growing) contribution to the carbon emissions crisis: transportation. At some level, I believe this agency has an awareness that the CEQA status quo cannot be justified on through cost-benefit analysis, and that CEQA's reality has become a perversion, even subversion, of its ostensible intent. I urge this agency in the strongest possible terms to subject roadway projects to VMT analysis as it originally proposed. Your past guidelines legally locked the state into furthering 1970's priorities for a full generation, no matter the cost - let's not do the same for our next generation.

Response 102.1

This comment argues vehicle miles traveled should be the metric for all projects, including roadway and capacity projects. The Agency has determined that lead agencies retain discretion to select methodologies other than vehicle miles traveled for roadway capacity projects. This does not relieve any agency of the need to analyze greenhouse gas emissions, air pollutants or other impacts associated with such capacity projects. Please see Master Response 5.

Comment 103 – Monica M. Suter, PE, TE, PTOE

Comment 103.1

Today, when a developer proposes a large project, we review the baseline traffic conditions for all transportation users (pedestrians, bicyclists, transit users, residents, business owners, and drivers). If the development is anticipated to create a significant impact, we require that they mitigate their impacts: this can include, providing a new bike lane, longer turn pocket, additional pedestrian or traffic signal features near schools, new signalized crosswalks, etc., and with the ability to obtain additional fees that can also be identified for future transit or other infrastructure improvements.

We understand the need to MOVE PEOPLE rather than just vehicles and concur with that objective along with smarter and more transit oriented development and intensification and efficiency of land-use combinations. However, if the LOS tool is completely removed, agencies will not have the tools currently available to more specifically and accurately extract fees from developers to address the transportation network for all transportation users.

Rather than completely disregarding the entire LOS procedures and its value, why not require it to be more inclusive of more up-to-date strategies that facilitate the movement of people, not just vehicles, and to encourage incentives/credits for better land use planning that encourages more live-work strategies located next to existing transit. Further, it would be useful to identify specific funding programs that developers will need to pay fees into to expand the development of transit that is still lacking throughout many urban and suburban communities.

Response 103.1

The Agency is not making changes in response to this comment. The proposed Guidelines not prevent agencies from imposing impact fees on projects.

Comment 103.2

Many urban, suburban and rural areas lack adequate transit facilities and have little financial ability to enhance those facilities. So, while we understand the goal to develop in a manner that presses that issue and fills that gap, it seems irresponsible to try and apply a one size fits all methodology when the transit service and infrastructure is absent in many areas.
For example, if an urban area is scheduled to obtain a new light rail system, great. When it is implemented, developer fees can be applied to support it. In areas where it does not exist (many areas), developer fees through more detailed LOS evaluations, can be collected toward that future goal. And, newer mitigation strategies can be prioritized as appropriate. In contrast, the other end of the spectrum where it is suburban or rural in nature, those areas may have little to no current transit. Consequently, this new analysis system should be phased in rather than implementing it as one massive change for every situation and prematurely.

Response 103.2

The Agency is not making changes in response to this comment. The proposed Guideline is sufficiently flexible to allow implementation in a variety of settings. Also, the new Guideline will be phased in over time.

Comment 103.3

We are concerned that local agencies who aim to represent their citizen's interests, will actually have fewer resources following the implementation of these guidelines, because fees currently collected may not be able to be collected in the future without the LOS system. Specific analyses at intersections allow us to be able to drill down to the specific impacts in more detail. Also, how will VMT provide a baseline that is specific enough to figure out where the challenges exist? And, without this knowledge, are we serving the public the way it wishes to be served and with few existing or funded alternative modes? It seems to be too broad of a brush to paint a new picture for every large, medium and tiny town regardless of its current transit reality.

With these new guidelines, it will be much easier to push through massive projects that may put more traffic into neighborhoods which may adversely impact the safety of school children, pedestrians and bicyclists. This could be an unintended consequence and adverse impact of changing from the LOS (Level of Service) system that includes more detailed studies to broader VMT data that will gloss over specifics.

We have installed permit parking and traffic diverters to protect school kids within residential communities. However, there are limits to these if the overall system fails, especially given the lack of transit available.

It is recommended that the deadline to comment be extended and that there be an effort to reach out to neighborhood leaders throughout communities in California.

Response 103.3

The Agency is not making changes in response to this comment. The proposed Guidelines not prevent agencies from imposing impact fees on projects.

Comment 103.4

I also have comments focused on the proposed new Section 15064.3 Determining the Significance of Transportation Impacts and issues related to the implementation of Senate Bill 743 (Steinberg 2013).

NEW CEQA SECTION 15064.3 COMMENTS

1. Page 11, (c) Applicability: The date of application statewide is stated as July 1, 2019, not January 1, 2020. Presumably this was a minor error and the intent was to be consistent with the Governor's Office of Planning and Research recommendation that the statewide application date would be January 1, 2020.

2. Page 11, (c) Applicability: it is requested that the implementation date be no sooner than one year after the CEQA adoption process concludes and following the outreach to community leaders. In order to minimize disruption related to the implementation of SB 743, lead agencies will require at least a one-year period from the adoption of the new CEQA guidelines to the required implementation date. This could potentially lead to an extension of the required implementation date beyond January 1, 2020 if the CEQA

adoption process is not concluded in 2018/2019.

3. Page 11, (b) (1), Criteria for Analyzing Transportation Impacts - Land Use Projects: The last sentence states that "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." The word "existing" should be changed to "baseline" to allow for lead agencies to choose an appropriate baseline other than existing conditions.

4. Page 11, (b) (1), Criteria for Analyzing Transportation Impacts - Land Use Projects: Similar to the comment above, the word "existing" should be deleted and replaced with "baseline" when talking about projects within one half mile of a major transit stop or a high quality transit corridor. The appropriate baseline for determination of this exemption may be something different than the existing condition.

Response 103.4

The Agency has made changes in response to this comment. It did include a typo, and implementation will start July 1, 2020.

The Agency will not change the word "existing" to baseline, as baseline conditions for purposes of analyzing VMT should be existing conditions, or historic ones if existing conditions don't reflect the true extent of VMT.

Comment 103.5

OVERALL COMMENTS REGARDING THE IMPLEMENTATION OF SB 743
The proposal to exclude automobile delay or congestion from constituting a significant environmental impact should be applicable (at least initially) only in transit priority areas (within one-half mile of either a major transit stop or a stop along a high quality transit corridor). After that implementation has been done, it would be wise to then monitor the new system. Further, new funding systems to increase transit should be simultaneously implemented so that viable travel alternatives have a better chance of success. Quite frankly, if available transit does not go hand in hand with the intensification of development, there could be a large back-lash from stakeholders. If that happens, there can be an increase in resistance to the objectives of this law and the increased density and roadway congestion within urban areas. Outside of urban areas, it would be unwise to start something substantially new like this if successful implementation is the goal. In non-urban, non-transit priority areas (or in more suburban/rural areas), lead agencies should have the discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements.

Although this recommendation is inconsistent with the Technical Advisory on evaluating Transportation Impacts in CEQA prepared by OPR dated November 2017, caution is recommended if success is desired. For example, when the first road diets were installed, agencies who implemented them within appropriate facilities that could have win-win success, have then been able to install other road diets (reducing 4 to 3 lanes) on other roads. In contrast, it is wise for local agencies to first apply them to locations that may drastically "fail" in the eyes of the public because that is likely to produce a massive backlash against that new and innovative idea. By pushing the boundaries with new approaches too far and too fast, there can be grave consequences. We request that the comment be reconsidered for the

change in the language of Section 15064.3. This would require a delay in the adoption of Section 15064.3 and a revision to the Technical Advisory, but would be advisable.

Response 103.5

The Agency is not making changes in response to this comment. Please see Master Response 3 regarding geographic application of the guidelines.

Comment 103.6

On an overall basis, we expect the implementation of SB 743 to be accompanied by a period of significant disruption in the analysis of transportation impacts for CEQA projects. This disruption could be greatly minimized by limiting the initial implementation of SB 743 to transit priority areas only as described above. Otherwise, we can expect the public to react adversely and they may politically react to obtain completely contrary legislation undoing the goals and objectives of this law.

Whether or not SB 743 is implemented initially only in transit priority areas or statewide, there are inherent challenges in applying the analysis of vehicle miles traveled (VMT) to individual CEQA projects. VMT is difficult to measure and report on a localized basis and there are inherent difficulties in determining appropriate significance thresholds and mitigation measures for individual land use and transportation projects. While OPR and various stakeholders (including ITE) will continue to work toward a successful implementation process, the experience that transportation professionals have dealing with the public at the grass roots level, should not be ignored. Our work occurs daily within the political reality of implementation and public reaction. For success of any new idea, public acceptance will be key.

Response 103.6

The Agency is not making changes in response to this comment. Please see Master Response 3 regarding geographic application of the guidelines.

Comment 103.7

Thank you for the opportunity to provide comments and suggestions regarding the proposed amendments and additions to the State CEQA Guidelines dated January 26, 2018 the proposed guidelines being considered.

I am a practicing local agency transportation professional with 30 years of experience serving a variety of communities and stakeholders. Currently, represent the American Public Works Association (APWA) on a national standards committee for transportation, have held several regional and international leadership roles with the Institute of Transportation Engineers (ITE), and have also participated in state level committee work regarding key transportation aspects that affect safety and citizens.

My daily work requires me to be very familiar with school, pedestrian and bicycling safety and infrastructure challenges, neighborhood quality of life issues and I have reviewed and prepared traffic studies for developers prior to my local agency work. I also previously managed a vast permit parking program, and have worked with business communities. As a long-standing

transportation leader, our profession has striven to provide “win-win” solutions for the communities and citizens we regularly represent in our work.

However, the voice and participation of community leaders has been largely absent in this process. It is critical that their knowledge and involvement be sought after with overt public outreach before these substantially different guidelines that vastly modify how we ensure their interests are protected, are implemented. It would be unwise to miss this critical interest group and implement without extending the deadline and specifically reaching out to them throughout the state.

Today, when a developer proposes a large project, we review the baseline traffic conditions for all transportation users (pedestrians, bicyclists, transit users, residents, business owners, and drivers). If the development is anticipated to create a significant impact, we require that they mitigate their impacts: this can include, providing a new bike lane, longer turn pocket, additional pedestrian or traffic signal features near schools, new signalized crosswalks, etc., and with the ability to obtain additional fees that can also be identified for future transit or other infrastructure improvements. We understand the need to MOVE PEOPLE rather than just vehicles and concur with that objective along with smarter and more transit oriented development and intensification, efficiency of land-use combinations thereby reducing green-house gas emissions.

However, if the LOS tool is completely removed, agencies will not have the tools currently available to more specifically and accurately extract fees from developers to address the transportation network for all transportation users.

Rather than completely disregarding the entire LOS procedures and its value, why not require it to be more inclusive of more up-to-date strategies that facilitate the movement of people, not just vehicles, and to encourage incentives/credits for better land use planning that encourages more live-work strategies located next to existing transit. Further, it would be useful to identify specific funding programs that developers will need to pay fees into to expand the development of transit that is still lacking throughout many urban and suburban communities. Many urban, suburban and rural areas lack adequate transit facilities and have little financial ability to enhance those facilities. So, while we understand the goal to develop in a manner that presses that issue and fills that gap, it seems irresponsible to try and apply a one size fits all methodology when the transit service and infrastructure is absent in many areas.
For example, if an urban area is scheduled to obtain a new light rail system, great. When it is implemented, developer fees can be applied to support it. In areas where it does not exist (many areas), developer fees through more detailed LOS evaluations, can be collected toward that future goal. And, newer mitigation strategies can be prioritized as appropriate. In contrast, the other end of the spectrum where it is suburban or rural in nature, those areas may have little to no current transit. Consequently, this new analysis system should be phased in rather than implementing it as one massive change for every situation and prematurely.
We are concerned that local agencies who aim to represent their citizen's interests, will actually have fewer resources following the implementation of these guidelines, because fees currently collected may not be able to be collected in the future without the LOS system. Specific analyses at intersections allow us to be able to drill down to the specific impacts in more detail. Also, how will VMT provide a baseline that is specific enough to figure out where the challenges exist? And, without this knowledge, are we serving the public the way it wishes to be served and with few existing or funded alternative modes? It seems to be too broad of a

brush to paint a new picture for every large, medium and tiny town regardless of its current transit reality.

With these new guidelines, it will be much easier to push through massive projects that may put more traffic into neighborhoods which may adversely impact the safety of school children, pedestrians and bicyclists. This could be an unintended consequence and adverse impact of changing from the LOS (Level of Service) system that includes more detailed studies to broader VMT data that will gloss over specifics. We have installed permit parking and traffic diverters to protect school kids within residential
communities. However, there are limits to these if the overall system fails, especially given the lack of transit available.

It is recommended that the deadline to comment be extended and that there be an effort to reach out to neighborhood leaders throughout communities in California before any new guidelines or new rules and regulations are approved further.
I also have comments focused on the proposed new Section 15064.3 Determining the Significance of Transportation Impacts and issues related to the implementation of Senate Bill 743 (Steinberg 2013).

NEW CEQA SECTION 15064.3 COMMENTS

1. Page 11, (c) Applicability: The date of application statewide is stated as July 1, 2019, not January 1, 2020. Presumably this was a minor error and the intent was to be consistent with the Governor's Office of Planning and Research recommendation that the statewide application date would be January 1, 2020.

2. Page 11, (c) Applicability: it is requested that the implementation date be no sooner than one year after the CEQA adoption process concludes and following the outreach to community leaders. In order to minimize disruption related to the implementation of SB 743, lead agencies will require at least a one-year period from the adoption of the new CEQA guidelines to the required implementation date. This could potentially lead to an extension of the required implementation date beyond January 1, 2020 if the CEQA adoption process is not concluded in 2018/2019.

3. Page 11, (b) (1), Criteria for Analyzing Transportation Impacts - Land Use Projects: The last sentence states that "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." The word "existing" should be changed to "baseline" to allow for lead agencies to choose an appropriate baseline other than existing conditions.
4. Page 11, (b) (1), Criteria for Analyzing Transportation Impacts - Land Use Projects: Similar to the comment above, the word "existing" should be deleted and replaced with "baseline" when talking about projects within one half mile of a major transit stop or a high quality transit corridor. The appropriate baseline for determination of this exemption may be something different than the existing condition.

OVERALL COMMENTS REGARDING THE IMPLEMENTATION OF SB 743
The proposal to exclude automobile delay or congestion from constituting a significant environmental impact should be applicable (at least initially) only in transit priority areas (within

one-half mile of either a major transit stop or a stop along a high quality transit corridor). After that implementation has been done, it would be wise to then monitor the new system. Further, new funding systems to increase transit should be simultaneously implemented so that viable travel alternatives have a better chance of success. Quite frankly, if available transit does not go hand in hand with the intensification of development, there could be a large back-lash from stakeholders. If that happens, there can be an increase in resistance to the objectives of this law and the increased density and roadway congestion within urban areas. Outside of urban areas, it would be unwise to start something substantially new like this if successful implementation is the goal. In non-urban, non-transit priority areas (or in more suburban/rural areas), lead agencies should have the discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements.
Although this recommendation is inconsistent with the Technical Advisory on evaluating Transportation Impacts in CEQA prepared by OPR dated November 2017, caution is recommended if success is desired. For example, when the first road diets were installed, agencies who implemented them within appropriate facilities that could have win-win success, have then been able to install other road diets (reducing 4 to 3 lanes) on other roads. In contrast, it is wise for local agencies to first apply them to locations that may drastically "fail" in the eyes of the public because that is likely to produce a massive backlash against that new and innovative idea. By pushing the boundaries with new approaches too far and too fast, there can be grave consequences. We request that the comment be reconsidered for the change in the language of Section 15064.3. This would require a delay in the adoption of Section 15064.3 and a revision to the Technical Advisory, but would be advisable.
On an overall basis, we expect the implementation of SB 743 to be accompanied by a period of significant disruption in the analysis of transportation impacts for CEQA projects. This disruption could be greatly minimized by limiting the initial implementation of SB 743 to transit priority areas only as described above. Otherwise, we can expect the public to react adversely and they may politically react to obtain completely contrary legislation undoing the goals and objectives of this law.

Whether or not SB 743 is implemented initially only in transit priority areas or statewide, there are inherent challenges in applying the analysis of vehicle miles traveled (VMT) to individual CEQA projects. VMT is difficult to measure and report on a localized basis and there are inherent difficulties in determining appropriate significance thresholds and mitigation measures for individual land use and transportation projects. While OPR and various stakeholders (including ITE) will continue to work toward a successful implementation process, the experience that transportation professionals have dealing with the public at the grass roots level, should not be ignored. Our work occurs daily within the political reality of implementation and public reaction. For success of any new idea, public acceptance will be key.
Thank you for your consideration.

Response 103.7

This comment is an identical attachment of the comment provided, but sent to the Office of Planning and Research. Please see Responses to Comments 103.1 to 103.6.

Comment 104 – Michael Woodburne

Comment 104.1

I am writing to comment on proposed updates to the CEQA review process, and the treatment and protection of California's Paleontological Resources under CEQA. I recommend that they be treated separately as a standalone item in the CEQA checklist of Appendix G.
Paleontological Resources are the remains and behavioral traces of ancient organisms (fossils) and addressed as a Cultural Resources issue in Appendix G. Lumping of Paleontological Resources with Cultural Resources has often caused confusion to both agency personnel and citizens. However, the decision to consider Paleontological Resources as a Geology and Soils issue will not significantly improve the treatment of Paleontological Resources, and may make matters worse.

The management of Paleontological Resources is best thought of as management of ancient Biological Resources. Management of Paleontological Resources should not be addressed under the Biological Resources issue, but their management should be treated as a new and separate issue during the CEQA review process. For purposes of recognition and clarification, I recommend that Paleontological Resources be added to the Appendix G checklist as a new, standalone environmental issue.

As written the only impacts to be considered for Paleontological Resources are impacts to "unique paleontological resources" [undefined], rather than to "Significant" Paleontological Resources. Additionally, the definition of "paleontological resource," "resource potential," and "significance" can be extracted from the Society of Vertebrate Paleontology Bull., 163, January, 1995. With this recommendation, I propose the following language:
Would the project:
Directly or indirectly cause a substantial adverse effect on a significant paleontological resource or resource area?

I strongly urge you to consider the above recommendations for the increased protection and preservation of California's rich paleontological record.

Response 104.1

Thank you for this comment. The Agency is not making changes to the checklist to treat paleontological resources distinctly at this time. Commenter advocates separating paleontological resources from other resources in Appendix G, and to increase consideration of such resources beyond those that are unique to those that are "significant." The Agency will not make these changes. Appendix G is a sample, and changes made to it by the Agency were intended to streamline and update it to reflect law that has changed. These suggested changes would not serve either goal. Commenter remains free to comment publicly if and when such resources require additional consideration, and to advocate for local agencies to alter their checklists to include this additional consideration if, in their discretion, they find it relevant.

Comment 105 – San Francisco Planning Department (2)

Comment 105.1

The proposed regulatory text removes "for which the project region is non-attainment" from the Appendix G, Air Quality section. We did not include a comment in the below letter regarding this

because we did not have time to fully discuss it internally. Pending our conversation, is it alright if we send you an email regarding it soon?

Response 105.1

The Agency has made changes in response to this comment. It has added “for which the project region is non-attainment” back into this question so that the relevant consideration can be given to air quality standards.

Comment 106 – City of San Diego

Comment 106.1

Regarding proposed amendments to Section 15155, the City supports the renewed emphasis on long term planning for water supplies. We support the addition of language to accurately identify water supply sources into the future and the associated environmental impacts. However, we suggest the analysis of water supply should be consistent with Water Code §10910(c)(4) and local management plans, which require a 20 year threshold for supply forecasting. The proposed revisions imply accurate forecasting could occur beyond this threshold, which is outside the mandated scope of Urban Water Management Plans and cannot be accurately forecasted, and therefore cannot be reasonably foreseeable. In that regard, please see our recommended edits (shown in strike-out /red italics) to Section 15115, as follows:

The degree of certainty regarding the availability of-water supplies will vary depending on the stage of project approval. A lead agency should have greater confidence in the availability of water supplies for a specific project than might be required for a conceptual plan (i.e.. general plan. specific plan). An analysis of water supply in an environmental document may incorporate by reference information in a water supply assessment. urban water management plan. or other publicly available sources. The analysis shall include the following:

Sufficient I information regarding the project's proposed water demand and proposed water supplies to permit the lead agency to evaluate the pros and cons of supplying the amount of water that the project will need during the 20-vear projection under Water Code section 10910(c)(4).

An analysis of the reasonably foreseeable environmental impacts of supplying water throughout the life of all phases of for the project during the 20-vear projection under Water Code section 10910(c)(4).

An analysis of circumstances affecting the likelihood of the water's availability during the 20- year projection under Water Code section 10910(c)(4). as well as the degree of uncertainty involved. Relevant factors may include but are not limited to. drought. salt water intrusion. regulatory or contractual curtailments. and other reasonably foreseeable demands on the water supply.

Response 106.1

Commenter advocates limiting the amount of consideration water supply is given to the 20 year horizon that local management plans use for forecasting supply and demand pursuant to Urban Management Water plans regulated under the Water Code. The Agency is not making changes in response to this comment. The language selected by the agency, “for all phases of the project,” is derived from the Supreme Court in Vi*neyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 4th 412. As this requirement was imposed by the Court, it is useful for practitioners to have it available to them.

Comment 106.2

If the lead agency cannot determine that a particular water supply will be available. it may consider alternative sources and an analysis of the sources. including at least in general terms the environmental consequences of using those alternative sources.

Response 106.2

The Agency is not making changes in response to this comment. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 4th 412 requires the approach identified by the Agency, holding that if a project proceeds without this analysis, it could result in a lack of disclosure about uncertainty and the potential impacts that cannot be identified as a result of that uncertainty. Further, to proceed with a project a lead agency is required pursuant to Vineyard, to consider alternative sources and analyze them. Therefore, leaving this in assists the regulated public in understanding the legal requirement to consider alternative supplies in such instances.

Comment 106.3

CEQA Guidelines Comments Related to SB 743/Transportation Impacts

The City concurs with OPR's recommendation that all land use projects, not just those in Transit Priority Areas (TPAs), should be required to use a VMT metric. Restricting the VMT analysis to projects that are within TPAs will likely undermine the streamlining objectives of SB 743 for infill projects, and could create legal uncertainty. The City believes that VMT is the appropriate metric to review land use projects on the basis of transportation efficiency and its close association with GHG emissions.

Response 106.3

The Agency appreciates this comment. The comment seeks no changes, and no changes will be made as a result.

Comment 106.4

Change in circumstances - The updated Guidelines should include a provision to ensure that the new thresholds and methodologies do not affect an agency 's ability to tier from previously certified CEQA documents by clarifying that the amended Guidelines do not constitute a "change in circumstances ."

Response 106.4

The Agency will not make changes in response to this comment. The Commenter appears concerned that new guidelines will void any previously done analysis. Nothing in the proposed guideline affects the standards for preparation of a subsequent environmental impact report.

Comment 106.5

Section 15064.3 (b) (1) - We agree that projects that decrease vehicle miles traveled in the project area compared to existing conditions should be considered to have a less than significant impact.

Response 106.5

The Agency appreciates this comment. The comment seeks no changes, and no changes will be made as a result.

Comment 106.5

Appendix G Environmental Checklist Form

VXII. TRANSPORTATION (a) - Revise "bicycle lanes and pedestrian paths" to "bicycle and pedestrian facilities" to include all types of these facilities.

VXII. TRANSPORTATION (d) - Revise to delete the proposed specification of "geometric design features" as advances in technology may lead to the need for other potential design features to be considered.

Response 106.5

The Agency has made changes in response to this comment. The section now includes bicycle and pedestrian facilities to include more ancillary components of that infrastructure.

Response 106.6

VXII. TRANSPORTATION - We support the removal of safety from CEQA as currently proposed. Safety will continue to be important in every agency's decision-making process, but it can and should be addressed outside of the environmental process. The previously proposed changes could have invited additional CEQA litigation, and therefore, would not advance the streamlining objective of SB 743.

Response 106.6

The Agency appreciates this comment. The comment seeks no changes, and no changes will be made as a result.

Comment 106.7

OPR Technical Advisory

Section F Mitigation and Alternatives, and Section H VMT Mitigation and Alternatives - Additional research and documentation on the applicability and efficacy of mitigation measures are needed.

Response 106.7

The Agency will not make changes in response to this comment. The comment addresses OPR's technical advisory, and not this rulemaking. The Agency will forward this comment to OPR for its consideration.

Comment 107 – The Two Hundred

Note: This comment letter was not received by the Agency during the public review period. The commenter instead delivered the comments to OPR. Therefore, because the comments were not submitted in the manner described in the Notice of Proposed Rulemaking, the Agency is under no obligation to respond to these comments. However, because OPR did provide a copy to the Agency, the Agency offers the following responses for the sake of completeness and to address the policy issues raised in the letter.

Comment 107.1

The Two Hundred is a group of community civil rights leaders advocating for home ownership for California's minority families. We are committed to increasing the supply of housing, to reducing the cost of housing to levels that are affordable to California's hard working families, and to restoring and enhancing home ownership by minorities so that our communities can also benefit from the family stability, enhanced educational attainment over multiple generations, and improved family and individual health outcomes, that white homeowners have long taken for granted. Our leadership group includes civil rights advocates who each have four or more decades of experience in protecting the civil rights of our communities against unlawful conduct by government agencies as well as businesses.

We also support the quality of the California environment, and the need to protect and improve public health in our communities.

We have for many decades watched with dismay decisions by government bureaucrats that discriminate against and disproportionately harm minority communities.
We have battled against this discrimination for our entire careers, which for some of us means working to combat discrimination for more than 50 years. In litigation and political action, we have worked to force government bureaucrats to reform policies and programs that included blatant racial discrimination - by for example denying minority veterans college and home loans and benefits that were available to white veterans, and by promoting housing segregation as well as preferentially demolishing homes in minority communities. We sued and lobbied and legislated to force federal and state agencies to end redlining practices that denied loans and insurance to aspiring minority home buyers and small businesses. We sued and lobbied to force regulators and private companies to recognize their own civil rights violations, and end discriminatory services and practices, in the banking, telecommunication, electricity, and insurance industries.

We have learned, the hard way, that California's purportedly liberal, progressive environmental regulators and environmental advocacy group lobbyists are as oblivious to the needs of minority communities, and are as supportive of ongoing racial discrimination in their policies and practices, as many of their banking, utility and insurance bureaucratic peers.

Several years ago, we waged a three year battle in Sacramento to successfully overcome state environmental agency and environmental advocacy group opposition to establishing clear rules for the cleanup of the polluted properties in our communities, and experienced first-hand the harm caused to our communities by the cozy crony relationships between regulators and environmentalists who financially benefited from cleanup delays and disputes instead of creating the clear, understandable, financeable, insurable, and equitable rules for the cleanup and redevelopment of the polluted properties that blighted our communities.

Having successfully fought for decades to overcome government and business discrimination against minority working families, we were deeply saddened - but not surprised - that the predatory lending practices and discriminatory regulatory oversight deficiencies that led to the Great Recession disproportionately harmed minority homeowners, who lost homes to foreclosures at a far greater rate than white families. Just as the civil rights promises of laws enacted in the 1960s and 1970s had reached their stride, and the racial homeownership racial gap was starting to close, the Great Recession wiped out generations of home ownership progress in our communities.

We were not surprised, but were likewise deeply saddened, when the regulatory climate change passions of California's environmental leaders - including the overlapping leadership at the Office of

Planning and Research ("OPR") and Strategic Growth Council - were quickly distorted into a series of proposed changes to the CEQA Guidelines that add compliance costs, add regressive new consumer costs for basic living necessities like housing, transportation and utilities, and increase litigation risk to the housing and housing-related transportation and infrastructure projects.

Response 107.1

This particular comment is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 107.2

In fact, OPR's 2017 Proposals will actually worsen our current housing, poverty and homeless crises - while intentionally increasing traffic congestion for those already forced to drive the longest distances to housing they can afford to own or rent.

Response 107.2

The Agency is not making any change in response to this comment. No specific regulation being proposed or amended is identified as problematic. Please also note, nothing in the proposal intentionally increases traffic congestion. Please also see Master Response 8 regarding housing affordability.

Comment 107.3

OPR does not even acknowledge California's housing, homelessness and poverty crisis - all of which require the prompt construction of millions of new housing units that California's hard-working residents can afford, and infrastructure that California's burdened taxpayers can afford.

Response 107.3

The Agency is not making any change in response to this comment. The comment is factually inaccurate. At the outset of its effort to develop the new Guideline on transportation analysis, OPR sought input regarding equity impacts. (See OPR, Preliminary Evaluation of Alternative Methods of Transportation Analysis (December 2013), at p. 7.) In setting forth the policy objectives that would guide development of the new Guidelines, OPR stated:

> OPR will look for alternative criteria that treat people fairly. The state's planning priorities are intended to promote equity. (Gov. Code, § 65041.1.) OPR seeks to develop criteria that facilitate low-cost access to destinations. Further, OPR recognizes that in its update to the General Plan Guidelines, OPR must provide planning advice regarding "the equitable distribution of new public facilities and services that increase and enhance community quality of life throughout the community, given the fiscal and legal constraints that restrict the siting of these facilities." (Gov. Code, § 65040.12.) In addition, OPR must also provide advice on "promoting more livable communities by expanding opportunities for transit-oriented development so that residents minimize traffic and pollution impacts from traveling for purposes of work, shopping, schools, and recreation." (Ibid.) Though this advice must be developed within the General Plan Guidelines, OPR recognizes that similar issues may be relevant in the context of evaluating transportation impacts under CEQA.

(See also, OPR, General Plan Guidelines (2017), Chapter 5 (addressing equity in the planning process).) The Agency acknowledges the severity of housing affordability in California. Please see Master Response 8 regarding housing affordability. The Agency finds that while this rulemaking package does not, indeed cannot, remove all impediments to housing production, it will remove barriers within the existing CEQA process.

Comment 107.4

Nowhere does OPR acknowledge the fact that housing is the top target of CEQA lawsuits statewide.

Response 107.4

The Agency is not making any change in response to this comment. This is beyond the scope of this regulatory package.

Comment 107.5

Nowhere does OPR acknowledge that CEQA' s vague and ambiguous

provisions - which the Legislature directed OPR to clarify in the CEQA Guidelines, and which OPR is also independently required to make clear under the California Administrative Procedure Act - has resulted in a pattern of CEQA litigation outcomes that are hugely and disproportionately highly biased in favor of CEQA lawsuit challengers when

Response 107.5

The Agency is not making any change in response to this comment. This is beyond the scope of this regulatory package. No specific regulations proposed for amendment or adoption have been identified as substandard in terms of clarity. The Agency has drafted this rulemaking package to be as clear as possible.

Comment 107.6

CEQA protect the status quo: home ownership is increasingly a privilege reserved for older, whiter elites in California, and CEQA gives a powerful litigation leverage tool to even anonymous parties seeking to stop construction of the estimated 3.5 million shortfall in California housing units. No meaningful legislative reforms have been enacted (with the exception of some "buddy bills" for politically favored sports stadiums, the Legislature's own office remodel, and similar projects).

Response 107.6

The Agency is not making any change in response to this comment. This is beyond the scope of this regulatory package. No specific regulations proposed for amendment or adoption have been identified as substandard in terms of clarity.

Comment 107.7

CEQA protect the status quo: home ownership is increasingly a privilege reserved for older, whiter elites in California, and CEQA gives a powerful litigation leverage tool to even anonymous parties seeking to stop construction of the estimated 3.5 million shortfall in California housing units. No meaningful

legislative reforms have been enacted (with the exception of some "buddy bills" for politically favored sports stadiums, the Legislature's own office remodel, and similar projects).

Response 107.7

The Agency is not making any change in response to this comment. This comment is outside the scope of this rulemaking as it is not directed at proposed or amended regulations, but at Legislative action (or inaction) and the underlying validity of the statutory scheme being regulated.

Comment 107.8

In fact, the two successive studies of statewide CEQA lawsuits (2010-2012, and 2013-2015) showed that percentage of CEQA lawsuits filed against housing actually increased, even while ineffective "reforms" to CEQA promoted by OPR were enacted by the Legislature.

Response 107.8

The Agency is not making any change in response to this comment. This comment is outside the scope of this rulemaking as it is not directed at proposed or amended regulations, but at Legislative action (or inaction) and the underlying validity of the statutory scheme being regulated. Also, the rate of CEQA litigation, though always variable, has held roughly constant over the last decade. In fact, it was slightly lower on average during this administration than the prior administration. (See Rose Foundation, Bay Area Economics, “CEQA in the 21st Century: Environmental Quality, Economic Prosperity, and Sustainable Development in California” (August 2016), at p. 19.)

Comment 107.9

Governor Brown has personally acknowledged that because certain unions like using CEQA litigation threats to leverage project labor agreements, political reform of CEQA in the Legislature is impossible politically - quipping that CEQA reform is "the Lord's work" but "the Lord's work isn't always done."

Response 107.9

The Agency is not making any change in response to this comment. This comment is outside the scope of this rulemaking as it is not directed at proposed or amended regulations, but at Legislative action (or inaction) and the underlying validity of the statutory scheme being regulated.

Comment 107.10

However, even within the framework of the existing CEQA statutes, it is unconscionable for any state agency - including OPR - to make CEQA more ambiguous and more expansive, and thereby worsen our housing, poverty and homeless crisis - and disproportionately harm California's minorities.

Response 107.10

The Agency is not making any change in response to this comment. This is beyond the scope of this regulatory package. No specific regulations proposed for amendment or adoption have been identified as substandard in terms of clarity. OPR and the Agency engaged in an extensive outreach effort to ensure that this Guidelines update is as clear as possible and addresses the concerns of those that are affected by their implementation. Because the interests of those affected by the Guidelines are so varied, it is simply not possible to craft a package that will please every stakeholder in every respect.

Comment 107.11

Adopting expansions, constraints, and ambiguities in the CEQA Guidelines - and thereby arming the politically-favored group of stakeholders that benefits from the non-environmental use of CEQA litigation and litigation threats to advance economic or other non-environmental objectives - crisis is not a color blind decision by OPR**,** it is a decision that has a disparate unconstitutional and unlawful impact on our minority communities.

Response 107.11

The Agency is not making any change in response to this comment. This is beyond the scope of this regulatory package. No specific regulations proposed for amendment or adoption have been identified as substandard in terms of clarity. Moreover, the Agency is not expanding CEQA, but conforming its regulations to comply with existing law, and to adequately consider impacts to the environment, as required by that statute.

Comment 107.12

California's majority minority population is far more likely to be homeless, far less likely to own homes and be able to attain the economic security and wealth that comes from home ownership, far more likely to suffer from multi-hour daily commutes to work, and far more likely to live below the poverty line even in households with two or more full-time workers.

Response 107.12

The Agency is not making any change in response to this comment. This is beyond the scope of this regulatory package. No specific regulations proposed for amendment or adoption have been identified as substandard in terms of clarity. Please also see Master Response 8 regarding housing affordability.

Comment 107.13

Expanding CEQA, and increasing CEQA litigation risks, imposes stunningly regressive new costs and burdens on California lower and middle income families in the form of higher costs for basic necessities like utilities, transportation, fees and other CEQA "mitigation" costs that are imposed solely on those needing the new housing and infrastructure.

Response 107.13

The Agency is not making any change in response to this comment. This is beyond the scope of this regulatory package. No specific regulations proposed for amendment or adoption have been identified as substandard in terms of clarity.

Comment 107.14

OPR's decision to impose new bundles of regressive cost burdens - like the vehicle mile travelled threshold ("VMT") and "all feasible" mitigation mandates for "significant" VMT quantities that universally occur in the inland areas of California that provide the only home ownership opportunities available to median or below median income families - makes home ownership even less affordable and accessible to our communities.

Response 107.14

The Agency is not making any change in response to this comment. This is beyond the scope of this regulatory package. No specific regulations proposed for amendment or adoption have been identified as substandard in terms of clarity. Note, this package does not include any mitigation mandates.

Comment 107.15

No one in the Legislature voted to impose regressive new cost burdens that disproportionately harm California's minority communities. No one in the Legislature voted to authorize OPR to expand CEQA, or increase CEQA uncertainty and litigation risks. OPR is not empowered, in pursuit of climate or environmental goals, to worsen the housing, poverty and homelessness crisis.

Response 107.15

The Agency is not making any change in response to this comment. This is beyond the scope of this regulatory package. No specific regulations proposed for amendment or adoption have been identified by the comment as substandard in terms of clarity.

The Agency is not expanding CEQA. It is implementing legislative and judicial direction. Please also see Master Response 8 regarding housing affordability. Please also see Master Response 20 regarding broader policy concerns.

Comment 107.20

CEQA fundamentally is biased in favor of stopping changes to the status quo:

- Projects and plans to provide desperately needed housing in existing communities is the top litigation target of CEQA lawsuits statewide, and the unavailability and unaffordability of housing has been well documented by numerous studies including several reports from the non-partisan Legislative Analyst's Office. Virtually all CEQA lawsuits targeting housing in California's major job centers are aimed at stopping infill, multi-family, transit-oriented housing: 100% of anti-housing CEQA lawsuits in the Bay Area region targeted infill housing, as did 98% of these lawsuits in the SCAG region. In the SCAG region, more than 70% of such lawsuits targeted multi-family housing near transit, nearly 80% of these lawsuits targeted housing in whiter, wealthier and healthier parts of California The Legislature, and voters, have authorized significant bond funds and other measures6 to fund homeless and affordable housing, and to streamline housing approvals and production. The CEQA Guidelines update must recognize and be aligned with these housing and poverty priorities, and include clear and practical regulatory revisions that are consistent with existing statutes and judicial precedent to expedite completion of new housing that complies with California's stringent environmental, public safety, and climate statutes.

- Transportation infrastructure is another top target of CEQA lawsuits: nearly half of all Caltrans EIRs are challenged based on a 2017 California Senate Committee study, and more transit system projects were targeted by CEQA lawsuits than highways and roadways combined in a statewide study examining all CEQA lawsuits filed between 2010-2012

Commuter gridlock has worsened, and people have been forced to drive ever longer distances to afford housing they can rent or buy, resulting in recent increases in vehicle miles travelled with corresponding increases in transportation emissions even as traditional pollutants from cars have fallen 99% below 1960's fleet averages and the deployment of fuel efficient, hybrid, and electric cars has increased. Bus

ridership is down nationally, and transit ridership is down in California's largest metro areas - even while new transportation technologies and services have created new transit solutions for more Californians.

transportation projects area must be in regional plans for which EIRs have already been prepared, the California Air Resources Board reviews and approves such plans for compliance with SB 375 climate requirements, and voters have approved bond funding in numerous jurisdictions to expedite completion of these transportation projects. The CEQA Guidelines update must recognize and be aligned with these housing and poverty priorities, and include clear and practical regulatory revisions that are consistent with existing statutes and judicial precedent to expedite completion of new transportation projects and other critical infrastructure that complies with California's stringent environmental, public safety, and climate statutes.

- Local voters have agreed to increase taxes, fees and debt to help solve homelessness, subsidize low-income housing, and build critical transportation infrastructure. The CEQA Guidelines update must recognize and be aligned with the completion of taxpayer funded projects, which are already required to comply with California's stringent environmental, public safety, and climate statutes. Specifically, the CEQA Guidelines update must include clear and practical direction, consistent with CEQA's statutes and judicial precedent, to assure that taxpayer funds are not diverted into lengthy and repetitive environmental studies, and approved projects are not then mired down by multi-year CEQA lawsuits based on uncertain or vague CEQA compliance mandates. Duplicative studies and CEQA lawsuits by those who oppose voter-approved projects increase taxpayer costs, delay critical projects, and continue to erode public confidence in the capability and willingness of government agencies to actually implement solutions approved by voters.

Response 107.20

The Agency is not making any change in response to this comment. This comment criticizes the California Environmental Quality Act itself, which is outside the scope of this rulemaking. The comment presents information indicating that important projects are challenged in CEQA lawsuits. The comment then states that the Guidelines should prevent lawsuits against such projects. The Guidelines address procedures to comply with CEQA. The Guidelines cannot specify who may seek judicial review of projects, or what types of projects are subject to judicial review. Those policy choices must be made by the Legislature in statute.

Moreover, the Agency notes that, to the extent that these studies show that infill projects are the target of litigation, this comment contradicts the commenter's prior claim that this Administration has done nothing to address these issues. On the contrary, changes in CEQA during this administration to address infill include, among others:

- Senate Bill 226 (2011), creating a streamlined process for infill projects, and changes to the CEQA Guidelines to implement this bill
- Senate Bill 743 (Steinberg, 2013), creating a statutory exemption for transit-oriented developments within a specific plan and eliminating aesthetic and parking analysis for certain transit oriented developments

Further, these proposed Guidelines create a presumption of less than significant transportation impacts for projects that locate within one-half mile of transit, as well as transportation projects that reduce vehicle miles traveled.

Comment 107.21

We believe OPR has a legal, political, and moral obligation to assure that this comprehensive update to the CEQA Guidelines will actually help expedite housing, transportation and related critical infrastructure and other projects by reducing duplicative CEQA processes, and reducing CEQA litigation risks

Response 107.21

The Agency is not making any change in response to this comment. CEQA directs the Agency to develop guidelines that proscribe how environmental review should be done by lead agencies. These updates reflect that mandate. Where possible, the Agency has proposed changes that should reduce time and costs associated with CEQA review. Please also see Master Response 8 regarding housing affordability.

Comment 107.22

However, many of OPR's 2017 Proposals perpetuate and even introduce new ambiguous and conflicting CEQA Guidelines which will expand CEQA' s compliance costs and litigation risks.

Response 107.22

The Agency is not making any change in response to this comment. This comment does not identify any new or amended regulation that is either ambiguous, or that conflicts with the statute.

Comment 107.23

OPR's expansion of CEQA also undermines the validity of previously-certified, and even previously judicially upheld, CEQA documents.

Response 107.23

The Agency is not making any change in response to this comment. The Agency's proposal does not expand CEQA, nor could it. This comment does not address any specific provision that exceeds CEQA's scope.

Comment 107.24

Specifically, the application of the mandatory new transportation threshold for land use projects - 15% below "regional" VMT must be achieved to be less than significant under this new threshold approach, notwithstanding the fact that VMT has recently been increasing in response to increasing population and employment levels in major California regions.

Response 107.24

The Agency is not making any change in response to this comment. The Guidelines do not mandate any thresholds. The comment may be referring to OPR's Technical Advisory, which suggests advisory, non-binding thresholds to assist lead agencies. This comment, however, is outside the scope of this rulemaking.

Comment 107.25

OPR's defense of this as a "climate" measure also fails: neither OPR nor CARB have quantified how this is "required" to achieve the statutory GHG reductions required under SB 329 (40% below 1990 GHG levels by 2030) or the regional land use and transportation planning targets established pursuant to the statutory requirements of SB 375. In the only available quantitative study10 of the effects of an "infill-only" approach to solving the state's desperate housing shortage by building all new housing within existing Sen. Bill No. 32 (2015-2016 Reg. Sess.)

http://temercenter.berkeley.edu/uploads/right_type_right_place.pdf

communities - and then assuming that residents of such new housing would reverse national and statewide transportation trends and actually ride buses rather than use alternative vehicular transit modes that most studies conclude would increase VMT, a team of UC Berkeley researchers found that this radical densification would reduce 1.79 million metric tons of GHG (MMTC02e) annually - which is less than 1% of the 181 MMTC02e that CARB has concluded must be eliminated from California's GHG emissions to achieve the SB 32 target (which takes into account reductions from the land use and transportation sector from SB 375 as well as more than a dozen other major California climate laws). Even the least costly housing units constructed under this new land use vision of densification of existing communities - townhomes and small unit subdivisions in single structures like triplexes - would cost far more in rent that average middle income workers actually earn. Finally, the UC study concluded that implementing this vision would require the demolition of "tens, if not hundreds of thousands, of single family homes" - and excluded entirely the social, equity, and even GHG emissions attributed to such a massive demolition and displacement program.

Response 107.25

The Agency is not making any change in response to this comment. This comment is outside the scope of this rulemaking. Please see Response to Comment 107.24, above.

Comment 107.26

OPR also fails to acknowledge the massive adverse environmental impacts caused by changing CEQA in an effort to require this radical change in land use to achieve less than one percent of the California GHG reductions required by the Legislature

Response 107.26

The Agency is not making any change in response to this comment. This comment is outside the scope of this rulemaking. The proposed Guidelines do not mandate any particular outcomes. No environmental impacts will result from analyzing vehicle miles traveled.

Comment 107.27

California's largest region is all of Southern California (except San Diego), and the regional land use and transportation agency (the Southern California Association of Governments, "SCAG") concluded that requiring even half of all new housing to occur exclusively in higher density, transit-served, previously-developed locations would cause significant unavoidable adverse impacts in 17 topical CEQA areas, and for many of these topical areas would cause multiple adverse impacts in each topical area, including: aesthetics, agriculture and forestry resources, air quality, biological resources, cultural resources, energy, geology and soils, greenhouse gas emissions and climate change, hazards and hazardous

materials, hydrology and water quality, land use and planning, mineral resources, noise, population/employment/housing, recreation, transportation/traffic/safety, and utilities and service systems. SCAG further concluded that it was entirely infeasible to cram all required new housing units into these high density transit locations, and that this would cause even worse significant unavoidable impacts than the CARB - approved SCAG Sustainable Communities Strategy.

Response 107.27

The Agency is not making any change in response to this comment. This comment is outside the scope of this rulemaking. The comment appears to describe the environmental review of a regional transportation plan. It is not surprising that a large-scale, multi-year infrastructure investment plan may lead to various positive and adverse impacts. The relevance of the comment to this rulemaking, however, is not clear. Because it is does not address any specific provision, no further response is required.

Comment 107.28

CEQA delays and obstructs change, even change that is fully compliant with every single environmental, climate, health and safety, worker protection, and anti-discrimination law and regulation applicable to California projects.

Response 107.28

The Agency is not making any change in response to this comment. This comment is outside the scope of this rulemaking and does not articulate changes or deletions of any proposed regulation.

Comment 107.29

OPR's untested theory that expanding CEQA is necessary to achieve California's climate leadership goals is not supported by substantial evidence, and will in fact cause further delay, cost, and litigation risks that obstruct timely implementation of solutions to California's housing, homelessness, poverty and transportation crises. Amending the CEQA Guidelines to intentionally do what the Legislature has repeatedly declined to authorize - put California on a "road diet" of ever-worsening congestion and directing new housing to transit-served locations in high density unit types that are entirely unaffordable to the "missing middle" of hard working Californians is a cruel travesty to inflict on the 40% of Californians that the United Way has concluded cannot routinely meet monthly housing, transportation, utility, food, and medical expenses Plunging still more Californians into poverty to. achieve "Less Than One Percent" of the SB 32 and SB 375 GHG reduction mandates is unconscionable.

Response 107.29

The Agency is not making any change in response to this comment. This is outside the scope of this rulemaking. Nothing in this Guidelines update mandates more congestion nor any particular type of housing development.

Comment 107.30

Apart from the fundamental flaw that the high density development vision OPR is attempting to coerce with its 2017 Proposals will cause "significant unavoidable harm" under CEQA to scores of environmental and health thresholds, will plunge more people into poverty and homelessness, will continue to drive working Californians to much higher per capita GHG states where they can afford

housing, and will achieve less than one percent (#<1%) of the state's SB 32 and SB 375 GHG reduction mandates

Response 107.30

The Agency is not making any change in response to this comment. This is outside the scope of this rulemaking and does not seek any changes. The proposed Guidelines do not mandate any type of development, and the comment has offered no evidence of any significant adverse environmental impacts that would result from the proposal.

Comment 107.31

OPR's 2017 Proposals are also fatally flawed as regulations. Specifically, many of OPR's 2017 Proposals also fail to comply with the mandatory legal requirements applicable to the CEQA Guidelines under the Administrative Procedures Act (APA). Revisions to OPR's 2017 Proposals that are legally required to comply with the APA, and to CEQA's statutory requirements for the CEQA Guidelines, and include revisions that are necessary to:

- Avoid ambiguous or vague Guideline provisions that create or exacerbate CEQA litigation risks
- Avoid conflicts, and eliminate duplication, with other federal, state and local legal requirements
- Avoid duplicative CEQA reviews, delays, and lawsuits that would exacerbate California's housing, homelessness, poverty and transportation crises
- Avoid duplicative CEQA reviews, delays and lawsuits targeting: (A) transportation, water and other public infrastructure projects required to serve population and land uses included in regional Sustainable Communities Plans that the California Air Resources Board (CARB) has already approved, and (B) housing, transportation, water and other public facilities eligible for voter-approved funding.

Response 107.31

The Agency is not making any change in response to this comment. This is outside the scope of this rulemaking and does not seek any changes. The Agency's basis for compliance with the Administrative Procedures Act is set forth in the Initial Statement of Reasons.

Comment 107.32

OPR's economic impact assessment includes zero acknowledgement of evaluation of how OPR's 2017 Proposals will actually affect CEQA compliance costs and litigation risks affecting housing, transportation, and other urgent priorities to address our poverty and homelessness crises, and is accordingly fundamentally flawed.

Response 107.32

The Agency is not making any change in response to this comment. The Agency prepared a Standardized Regulatory Impact Assessment to analyze the impacts of this proposal. As is required by the Department of Finance, the Agency identified all direct and indirect costs and benefits supported by the evidence related to the proposed regulatory amendments. Commenter does not articulate how or where any of the Agency's assumptions were flawed. General statements that there will be litigation

risk, and this will lead to increased costs in certain sectors is speculative, and no evidence has been identified by Commenter to explain how the analysis was flawed or to what degree.

Comment 107.33

OPR's unlawful economic impact assessment is based on flawed, false, and biased estimates of revisions to one impact issue (traffic-related transportation impacts).

Response 107.33

See comment 107.32. The comment is factually inaccurate. The Agency's Standardized Regulatory Impact Assessment address non-transportation portions of the Guidelines update using a qualitative assessment.

Comment 107.34

Accordingly, OPR's Proposal lacks the required analysis of the economic, equity and economic consequences of the 2017 Proposals.

Response 107.34

See comment 107.32

Comment 107.35

OPR's 2017 Proposals also have a disparate effect on minority communities, as well as younger Californians such as Millennials, who are most urgently in need of more housing - and the transportation, infrastructure, and public services needed to accommodate new housing

Response 107.35

The Agency is not making any change in response to this comment. First, the comment is outside the scope of this regulatory package. Please see Master Response 20 regarding broader social policy. Second, Commenter fails to explain how the proposal referred to the Agency by OPR has a disparate impact on minorities or young people, nor does the comment offer any evidence of that effect. Nothing in this regulatory package precludes a lead agency from approving housing necessary for its population. It simply requires impacts be adequately considered and disclosed.

Comment 107.36

The 2017 Proposals continue a tradition of intentionally introducing ambiguous, contradictory and litigious regulatory text that benefit the strong special interests who have a vested financial interest in continuing the non-environmental abuse of CEQA litigation to gain economic advantages.

Response 107.36

The Agency is not making any change in response to this comment. The comment alleges the proposed changes are ambiguous, contradictory, will lead to litigation, and are discriminatory, but does not explain how or identify the regulations that trigger this alleged issue. Rather, as was the case in 107.34, commenter appears to take issue with the Legislative direction and policy that promoted this regulatory package. Since such concerns are better raised with the Legislature.

Comment 107.37

Finally, OPR's 2017 Proposals are also unconstitutional and unlawful in perpetuating CEQA's bias against change -which favors wealthier, whiter, older Californians - even when such change is urgently needed to address climate, housing, poverty, equity and transportation priorities. OPR's 2017 Proposals constitute de jure discrimination in violation of federal and state law.

Response 107.37

The Agency is not making changes in response to this comment. See comment 107.14. CEQA merely directs lead agencies to consider and disclose, and where feasible mitigate, environmental impacts associated with their discretionary decision-making. Commenter has provided no evidence CEQA creates an impediment to development, or that CEQA itself creates disparate social development. If Commenter finds that local and other public entities are engaged in discriminatory application of CEQA, its remedy lies not with a challenge to the CEQA Guidelines, but with those agencies it feels are misapplying it.

Comment 107.38

To remedy these deficiencies, OPR must revise and re-issue modified proposed amendments to the CEQA Guidelines, correct its economic assessment, fully disclose the effects of its proposal to the environment and to the disparate impacts that CEQA's status quo bias has on minority and low income communities, and prioritize drafting clear, unambiguous, and practical regulations to minimize CEQA's compliance costs and substantially reduce or eliminate litigation risks for projects not relying on "fair argument" negative declarations

Response 107.38

The Agency is not making changes in response to this comment. First, the comment is directed at OPR. Second, it is outside the scope of this rulemaking and fails to identify proposed amendments it believes fail to comply with the APA. Finally, this comment alleges, without basis or evidence, that the proposed regulations are unlawful.

Comment 107.39

These modifications to the OPR 2017 Proposals are necessary to comply with law, and to address the housing and poverty crisis, and expedite completion of transportation and other critical infrastructure projects that have already had at least one completed round of CEQA compliance as well as voter and initial agency approvals.

Response 107.39

See response to 107.38

Comment 107.40

No state agency should hide within a silo of vague legalese to promote increased litigation risks and delays, and do further harm to hard working minority and millennial families suffering from California's housing, homelessness, poverty and transportation crises.

Response 107.40

See response to 107.38

Comment 107.41

Specific comments, and revisions required to correct the fatal and discriminatory legal flaws in OPR's 2017 Proposal, are described in Attachment A to this letter.

Response 107.41

No response is required. Responses to specific comments are provided below.

Comment 107.42

A comprehensive revision to OPR's economic analysis, which specifically discloses all adverse and disparate impacts of OPR's 2017 Proposal on housing, homelessness, transportation, public infrastructure, and global climate change - including inducing even more population and job relocation to other states and countries, to the detriment of pension funds and tax revenues dependent on maintenance of a robust and equitable California economy - is also required, as described in Attachment B to this letter.

Response 107.42

See comment 107.37

Comment 107.43

Courts have long held that CEQA should be broadly construed to protect the environment consistent with CEQA's objectives, and have repeatedly upheld the "fair argument" standard of judicial review that applies to Negative Declarations.

Response 107.43

The Agency will not make changes in response to this, as it is a statement of the commenter’s view of existing law.

Comment 107.44

Neither of these broad principles excuses or exempts OPR from its legal obligation to comply with the California Administrative Procedure Act ("APA"), which is designed to assure that all regulations be written in " plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style

Response 107.44

The Agency will not make changes in response to this. The Agency has complied fully with the APA.

Comment 107.45

The agency shall draft the regulation in plain English." (Cal. Gov. Code§ 11346.2, emphasis added). For a Governor to have repeatedly emphasized the urgent need for CEQA reform as the "Lord's work" to promote regulatory amendments to CEQA that increase compliance cost and litigation risks, and worsen the state's housing, poverty and transportation crisis and actually increase rather than decrease global

greenhouse gas emissions (GHG), is simply unconscionable. OPR should revise its 2017 Proposals to draft the CEQA Guidelines with the same level of clarity and plain English text that is required of other California regulations. OPR's policy choice to maintain and expand ambiguity in the Guidelines to benefit the well-documented special interest abuse of CEQA lawsuits and lawsuit threats at the expense of hard working California families is simply unconscionable.

Response 107.45

The Agency will not make changes in response to this. The Commenter does not identify any regulations that are not clearly stated, nor has it identified any ambiguity or abuse.

Comment 107.46

Expressly applicable requirements of the APA to the CEQA Guidelines also demand an assessment of this proposal on housing supplies and housing costs, both of which will be harmed by OPR's 2017 Proposals

Response 107.46

The Agency will not make changes in response to this comment. To the extent that environmental analysis relative to future development could impact such costs, those costs are speculative at this time. It is not clear when or how lead agencies will exercise their discretion, thus it is not clear that any impediment to housing arises as a result of these regulations, nor are financial impacts more than mere speculation.

Comment 107.47

Housing has for the past seven years been the top target of CEQA lawsuits statewide, and the vast majority of these housing CEQA lawsuits are located in infill areas (e.g., 100% of Bay Area CEQA lawsuits targeted infill housing locations, and 98% of the SCAG region's housing projects were located in infill locations)

Response 107.47

The Agency will not make changes in response to this comment. The comment does not address any specific provision in this Guideline update, and so is outside the scope of this regulatory package. Moreover, the comment fails to provide adequate context. Please see Response to Comment 107.8, regarding litigation rates.

Comment 107.48

Within the SCAG region, the vast majority of the 14,000 challenged housing units were higher density, multi-family projects - and 70% of those were within one-half mile of high quality transit stations or corridors.

Response 107.48

The Agency will not make changes in response to this. The comment does not address any specific provision in this Guideline update, and so is outside the scope of this regulatory package. Please see Response to Comment 107.8, regarding litigation rates.

Comment 107.49

CEQA lawsuits against housing are also yet another tactic used by whiter, wealthier, healthier communities to keep out "those people" - 78% of the challenged housing units in the SCAG region happened outside the environmentally disadvantaged areas designed by the California Environmental Protection Agency.

Response 107.49

The Agency will not make changes in response to this. The comment does not address any specific provision in this Guideline update, and so is outside the scope of this regulatory package. Please see Response to Comment 107.8, regarding litigation rates.

Comment 107.50

OPR has no statutory impediment to updating the Guidelines to avoid duplicative Environmental Impact Reports (EIRs), or to clarify the required contents of EIRs.

Response 107.50

The Agency will not make changes in response to this. The Agency has proposed changes to improve efficiency and to clarify the required contents of environmental documents. Many of the changes were proposed by the building industry.

Comment 107.51

As explained below, numerous provisions of the proposed CEQA Guidelines fail to comply with this APA legal mandate for clear and practical regulations

Response 107.51

See response to 107.45

Comment 107.52

Other provisions of OPR's 2017 Proposals are internally inconsistent, or are inconsistent with other applicable legal requirements, and are thus unlawful and require revision independent of APA violations.

Response 107.52

The Agency is not making changes in response to this comment. See response 107.45. Commenter fails to identify specific provisions that it alleges are internally inconsistent or violate other provisions of law. The Agency finds that the regulations are internally consistent and accord with all required laws

Comment 107.53

Independent of the APA, CEQA itself requires OPR to approve clear Guidelines: "The [G]uidelines shall *specifically include criteria for public agencies to follow in* determining whether or not a proposed project may have a 'significant effect on the environment."' (PRC§ 21083(b)6, emphasis added) OPR's 2017 Proposals also repeatedly violate this express CEQA statutory **requirement.**

Response 107.53

The Agency is not making changes in response to this comment, but agrees that the CEQA Guidelines provide criteria public agencies follow to determine the potential impacts from proposed discretionary projects, as the term “projects” is defined by Public Resources Code section 21065.

Comment 107.54

Appendix G of the CEQA Guidelines 7 has been used for decades as a legally¬ defensible presumptive list of thresholds for assessing the extent to which a project could have an adverse CEQA impact.

Response 107.54

The Agency is not making changes to in response to this comment. It disagrees with Commenter’s characterization of Appendix G. Appendix G states very clearly that it is “a sample form and may be tailored to satisfy individual agencies’ needs and project circumstances.” Appendix G does not contain presumptive thresholds. (*San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App. 4th 202, 227 (quoting *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690).) Please see Master Response 18 regarding Appendix G.

Comment 107.55

This Appendix plays a critical role in allowing agencies to screen projects between those that qualify for categorical exemptions based on the absence of an "unusual circumstance" of a significant adverse Appendix G impact, as well as the decision as to whether to prepare a Negative Declaration or EIR - or to prepare a subsequent or supplemental Negative Declaration or EIR for later project implementation activities.

Response 107.55

The Agency is not making changes based on this comment, as no suggested changes have been identified. Also, the comment’s reference to categorical exemptions is unclear. Please see Master Response 18 regarding Appendix G.

Comment 107.56

Although CEQA petitioners are entitled to make a "fair argument" that an impact not in Appendix G is nevertheless significant under CEQA, and agencies are allowed to adopt or amend CEQA thresholds that differ from the Appendix G checklist, the fact is that Appendix G provides the most critical practical tool for the actual implementation of CEQA by hundreds of state, regional, and local agencies. Avoiding ambiguous and vague Appendix G questions is of paramount importance in compliance with the APA and CEQA mandates applicable to the Guidelines. OPR's "comprehensive" update of the CEQA Guidelines fails to eliminate, and in fact expands, the vague, ambiguous and unlawful provisions in Appendix G.

Response 107.56

The Agency is not making changes based on this comment, as no suggested changes have been identified. The proposed changes to appendix G are not vague or ambiguous, and remain merely samples which lead agencies can use should they find them helpful. Please see Master Response 18 regarding Appendix G.

Comment 107.57

First, although OPR's explanatory text states that CEQA is not intended to apply to "private" views, OPR's Appendix G checklist continues to identify impacts to a "public" view as presumptively adverse. However, OPR offers no definition of what constitutes a "public" view. Is the view from a sidewalk to an empty lot a "public" view that is adversely impacted if a duplex is built on that lot? If not, why not - and if so, why?

Response 107.57

The Agency has made changes to this revision. Please see Master Response 18 regarding Appendix G.

The Agency has clarified in the 15-Day revisions that "public views are those that are experienced from a publicly accessible vantage point." A line of cases has addressed this issue, including, among others: *Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560; Eureka Citizens for Responsible Government v. City of Eureka (2007) 147 Cal.App.4th 357, 363, 374–375; Porterville Citizens for Responsible Hillside Development v. City of Porterville (2007) 157 Cal.App.4th 885, 889, 901; Banker's Hill, Hillcrest, Park West Community *Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 885, 889, 901; Banker's Hill, Hillcrest, *Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249; Pocket Protectors v. City of Sacramento (2004) 124 Cal.App.4th 903, 937; Bowman v. City of Berkeley (2004) 122 Cal.App.4th 572; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 485, 492; *Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 402–403.

Aesthetic issues are inherently fact-specific. The Appendix G question defers to lead agencies to determine whether a view is public or private.

Comment 107.58

Second, changes to the "character of a community" are among the most frequently alleged "significant adverse aesthetic impacts" of increasing the density and intensity of housing in existing communities, and OPR's "comprehensive" update has failed to acknowledge this highly charged and litigious issue, or provide the required "clear" and "plain language" for assessing the significance of this issue.

Response 107.58

The Agency is not making changes as a result of this comment. It is unclear what Commenter is seeking, or that this comment is within the scope of this regulatory package. The phrase "visual character" has long existed in Appendix G, and the Agency does not propose changes to it. The Agency has not proposed any changes that would result in a "character of the community" analysis. A court recently addressed this issue in depth in *Preserve Poway v. City of Poway* 245 Cal.App.4th 560 (2016).

Comment 107.59

Third, OPR also proposes to add a "zoning" conformance test to the same undefined "public" modified aesthetics impact threshold, but only within an "urbanized" area. Does this mean that building farmworker housing, even on a previously-developed location, that is visible from a public roadway is an adverse "aesthetic" impact? And does OPR's 2017 Proposals sweep in all zoning requirements, but ignore General Plan requirements, about preservation of the aesthetic "character" of existing communities? Again this threshold fails to provide the clear and plain language required by the APA and CEQA.

Response 107.59

The Agency is not making changes in response to this comment. The proposed changes asks “whether, if a project is in an urban area, would it conflict with zoning or other regulations governing scenic quality.” Please see Master Response 18 regarding Appendix G.

The Agency proposes these changes to align with the *Bowman* decision (*supra*), and to assist lead agencies in applying objective standards to the question of aesthetics.

Comment 107.60

Fourth, whether or what extent "aesthetics" is itself an "impact" is inherently subjective - and OPR provides no clear, unambiguous, or plain language description of what constitutes a significant adverse aesthetic impact under CEQA.

Response 107.60

The Agency is not making changes as a result of this comment. The statute itself directs lead agencies to consider the aesthetics. (Under CEQA, the “environment” means “the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance.” (Public Resources Code § 21060.5.) The Agency has provided discreet sample question that would allow an Agency to consider. As explained in Response to Comment 107.57, aesthetic issues are inherently fact-specific. Given that aesthetics has been a part of CEQA’s definition for over four decades, and neither the Legislature nor the courts have developed a “clear, unambiguous, or plain language description of what constitutes a significant adverse aesthetic impact under CEQA,” it is simply not reasonable to expect this Agency to do so. The proposed changes give agencies some guideposts. That the commenter thinks the Agency could have done better or more is not a basis to attack the validity of the proposed changes to Appendix G

Comment 107.61

Aesthetics is referenced but not defined in CEQA itself, so this is an excellent example of a gap that the CEQA Guidelines is supposed to fill for practitioners and the public.

Response 107.61

See response 107.60

Comment 107.62

Fifth, there are numerous examples of NIMBY reliance on CEQA's aesthetics threshold by blocking projects such as multi-family housing that they allege will change the "character of the community." Some NIMBYs are more blunt, and explain that the "character" they want to preserve excludes racial minorities, and

renters. There is no place in California law or policy for racial discrimination: it is unconstitutional, and barred by statute, at both the federal and state level. Given that multi-family housing is the top target of CEQA lawsuits statewide, OPR has a legal and moral duty to bluntly and unambiguously explain that CEQA can never be lawfully used to promote or defend racial or economic segregation under the code word "aesthetics" or phrase "character of community".

Response 107.62

See responses 107.58-107.60

Comment 107.63

To address these legal deficiencies, OPR should rely on the specific legal direction set by the Legislature in CEQA and explicitly pull back from expansive, abstract, and litigious ambiguity about aesthetics and CEQA. The Legislature directed that CEQA recognize impacts to scenic highways, and case law on aesthetics - like much of CEQA case law - is a contradictory muddle. OPR should revise Appendix G and the accompanying explanatory text to plainly state that blocking public views from scenic roadways and of scenic vistas which have been designated as scenic by state or local governments can be appropriately considered an adverse aesthetic impact under CEQA.

Response 107.63

See response to 107.57.

The comment urges the Agency to limit the analysis of aesthetic impacts by enumerating in Appendix G what is and what is not an aesthetic impact. This Agency does not have authority to make such limitations. (See, e.g., Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98, 112-114 (the Guidelines cannot dispense with the fair argument).) Please also see Master Response 18 regarding Appendix G.

Comment 107.64

Similarly, revised Appendix G should make clear that projects that comply with applicable land use requirements regarding the visual character of a project or project site, such as height, setbacks and design standards, etc. do not have a significant aesthetic impact under CEQA.

Response 107.64

The Agency declines to make changes in response to this comment. Please see Response to Comment 107.63.

Comment 107.65

Projects relying on a Negative Declaration or Mitigated Negative Declaration will also be subject to a broader range of legal challenges on this as well as other impacts topics, given the "fair argument" standard, but using CEQA's "aesthetics" impact as a threshold for preserving "the character of a community" is a prescription for continuing to use CEQA as a "redlining" tool to unlawfully protect and promote racial and economic segregation, in violation of the federal and state constitution and civil rights statutes.

Response 107.65

See response to 107.64. Much of this comment is outside the scope of this rulemaking. Nothing in the proposed updates suggests that lead agencies should use aesthetics as a “redlining tool”. Commenter conflates “visual character,” as that term is used in the CEQA Guidelines, with “character of the

community." Courts have addressed the latter, and it not to be a topic that falls within CEQA's concern for the environment. (*See, e.g., Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560.)

Comment 107.66

OPR should also definitively explain, in its "comprehensive" revision to the Guidelines, that "aesthetics" - whether the view from or of a kitchen window, or the shade cast by a tree or building on a neighboring property for some portion of some days, - all fall outside the scope of CEQA, and can never be a significant adverse CEQA impact. As noted above, NIMBY disputes about this CEQA aesthetic in court can continue in the context of "fair argument" disputes over Negative Declarations, but these disputes would be minimized with the required clear and plain language aesthetics test, and would be virtually eliminated in EIR lawsuits.

Response 107.66

See responses 107.57-107.65

Comment 107.67

II. Agriculture and Forestry Resources. This topic is one of many Appendix G question sets that conflate compliance - or lack thereof - with zoning requirements, and other land use contracts and laws, with an "adverse" physical impact under CEQA.

Response 107.67

The Agency is not making changes in response to this comment. The comment does not explain how compliance with zoning about agricultural uses would not provide a lead agency with useful information about potential environmental impacts. Further the Agency has not proposed any changes to the sample questions in this section. Therefore, this comment is outside the scope of this package. Please also see Master Response 18 regarding Appendix G.

Comment 107.68

I. CEQA requires consideration of adverse impacts to the physical environment, as well as adverse impacts to public health and safety.

The existence of a Williamson Act contract on land proposed for solar energy does not equate to a physical impact on the environment (Threshold II.b), just as the construction of a farmhouse on a 100-acre family farm does not equate to the "conversion" of the home site to non-agricultural use of the farm (Threshold II.a).

To address this deficiency, these thresholds should be revised, and re-aligned to ask the question of whether the project would result in a significant loss of productive agricultural or forestry lands.

Response 107.68

See response to 107.67

Comment 107.69

OPR also has an affirmative duty to clarify the scope of CEQA requirements in this "comprehensive update" to the Guidelines.

Response 107.69

See response to 107.67

Comment 107.70

Recognition of, and to provide clear and plain language explanation of, ongoing and unsuccessful litigation claims filed by CEQA petitioners, OPR should also clarify in its explanatory text that open rangeland used for grazing but not crop production, and land that is mapped as suitable for agriculture but has no baseline agricultural uses due to water supply or other constraints, is not appropriately identified as agricultural land for purposes of assessing project impacts on agricultural lands.

Response 107.70

See response to 107.67

Comment 107.71

Finally, the introductory text for this set of AF thresholds includes methodological recommendations for assessing impacts that precede the thresholds, which is inconsistent with the remainder of Appendix G. OPR should adopt a consistent approach in either recommending methodologies and assessment tools, or not; as discussed below regarding reliance on non-CEQA legal standards in CEQA, OPR should provide this type of recommendation for all CEQA topics for which there are other applicable legal standards.

Response 107.71

See response to 107.67. Also, please note, the provision to which commenter refers was added pursuant to Public Resources Code 21095, which the Legislature enacted in 1993. No evidence has been presented to the Agency regarding any problems arising from this provision. Therefore, the Agency declines to make any changes in response to this comment.

Comment 107.72

III. Air Quality. OPR's revisions to these Appendix G questions violate both the APA and the Supreme Court's rejection of petitioners' (and OPR's amicus) arguments in the BAAQMD decision8 that CEQA does not apply to the impacts of the environment on a project, absent express statutory authority to do so in relation to specific types of impacts or projects - unless the project "exacerbates" the existing environmental condition and thus creates a new or worse impact. OPR's revisions track its unsuccessful effort to avoid the Court's holding in BAAQMD, instead of recognizing and respecting this Supreme Court interpretation of CEQA. OPR's blatant disregard for Supreme Court precedent, and "magic thinking" that what the Court really meant was that existing environmental conditions be evaluated as "indirect impacts" under CEQA, also ignores several years of Legislative history since the Legislature declined to reverse BAAQMD (and the Ba/Iona case9 that preceded BAAQMD). It is also noteworthy that OPR clearly knows, and accepts, the BAAQMD Supreme Court's "exacerbation" holding with respect to one topical impact area (see Threshold XX.b, Wildfire). OPR's refusal to accept the Supreme Court's directive for all other topical impacts in the OPR 2017 Proposals is itself unlawful, and this deficiency alone renders numerous provisions of the OPR 2017 Proposals unlawful under CEQA.

Response 107.72

The Agency has not made changes in response to this comment. The comment alleges, without any analysis or explanation, that OPR is ignoring Supreme Court direction, and that questions related to air quality contradict the holding in the BAAQMD decision. The Agency disagrees with both assertions. Please see explanation in the Initial Statement of Reasons at pages 35 to 38 (explaining how the Guidelines have been updated to conform with the Supreme Court's ruling in BAAQMD).

Comment 107.73

First, Threshold III. b revisions replace the threshold of whether a project would "contribute substantially" to an air quality violation with the alternate text of whether a project would "result in a cumulatively considerable net increase" in an existing or projected air quality violation. Neither the original nor the revised formulation of this threshold provides the clear, comprehensible, or plain language required by the APA

Response 107.73

The Agency is not making changes in response to this comment. The comment objects to a provision that has existed in the Guidelines for many years and that the Agency is not altering. Please also see Master Response 18 regarding Appendix G.

Comment 107.74

If a project does not exceed or violate an air quality standard (which is the first test in Threshold III.b, what levels of project emissions does OPR believe would result in a "cumulatively considerable" increase? California's most populated areas are not in attainment with federal or state standards for one or more air pollutants - so does approving new housing in these locations result in a "cumulatively considerable" increase in air emissions, even though the likely consequence of refusing to approve housing is to force people to drive even longer distances between homes and jobs? Is building a new carpool lane in these regions a "cumulatively considerable" increase in air emissions, even though the consequence of not building the carpool lane is more pollution from longer gridlocked commutes?

Response 107.74

See response to 107.73. Also, many agencies rely on thresholds of significance developed by regional air districts. The introductory provision in the checklist addressing the air quality questions continues to state: "Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied upon to make the following determinations."

Comment 107.75

This text change is also internationally inconsistent with other portions of the Guidelines, which use the term "cumulatively considerable" to assess cumulative rather than project-level impacts.

Response 107.75

The Agency is not making changes in response to this comment. See response to 107.74.

Comment 107.76

Is OPR's addition of the term "net increase" suggestive of the need for a project to mitigate or avoid every molecule of emissions (from construction as well as occupancy) unless such mitigation is

"infeasible" - and if not "net increase", is more than one molecule of a non-attainment pollutant, or rather how many molecules (or pounds per day, or tons per year) are allowed before project emissions become "cumulatively considerable"? One noted CEQA law professor at UC Davis, who was formerly the head of the environmental division of lawyers for the California Attorney General's Office, has quipped that CEQA has become "Talmudic" in its complexity, ambiguity, and conflicting interpretations - but OPR's legal obligation under the APA is to create clarity and predictable compliance obligations, not promote full employment opportunities for the agency staff, lawyers and consultants who argue and litigate over OPR's impossibly ambiguous terminology choices.

Response 107.76

See response 107.75.

Comment 107.77

Second, OPR representatives have long argued against the plain language conclusion of the Supreme Court in the BAAQMD case10 that CEQA does not apply to the effects of the environment on a project, even though the Legislature has been repeatedly asked and has declined to reverse this Supreme Court decision. Specifically, OPR's refusal to modify Threshold III.b continues this blatant noncompliance pattern because it asks whether the project will "expose sensitive receptors to substantial pollutant concentrations" even if those pollutant California Building Industry Association v Bay Area Air Quality Management District. (2015) 62 Cal.4th 369 Ballona Wetlands Land Trust v City of Los Angeles, (2011) 201 Cal.App.4th 455 supra note concentrations come from existing ambient environmental conditions (e.g., building transit-oriented housing close to higher volume roads with frequent bus services or in downtown locations close to freeways, but worse ambient air quality). The Supreme Court said that this type of circumstance can only be considered if the project "exacerbates" an existing environmental condition, leaving practitioners with the need to understand what constitutes "exacerbation" and when this "exacerbation" is a significant impact under CEQA. OPR has simply declined to update the Guidelines to provide the necessary regulatory clarity from this important Supreme Court decision - because OPR has made clear that it does not like or agree with the Supreme Court. This lawless conduct is unacceptable and is another example of OPR's APA and CEQA noncompliance.

Response 107.77

The Agency is not making changes in response to this comment. Please see Response to Comment 107.72 regarding the BAAQMD decision. The provision to which the commenter refers asks whether a project would "expose sensitive receptors to substantial pollutant concentrations?" By asking what the project is doing to its surrounding environment, including sensitive receptors, the question is completely consistent with the Supreme Court's holding.

Comment 107.78

I. Biological Resources. Under Threshold IV.c, OPR proposes to replace the clear existing threshold of whether a project would adversely affect wetlands that are federally protected under Section 404 of the Clean Water Act, with a far more ambiguous reference to whether the project would affect a "state or federally protected" wetlands. There is significant ongoing controversy regarding what constitutes a "state" wetland, with different criteria established in the Coastal Zone, no current regulatory definition for what constitutes a state wetland outside the Coastal Zone, and various interpretative memoranda and regional or local plans that have conflicting - and both advisory as well as mandatory provisions - regarding wetlands. The existing threshold includes an express statutory

reference to applicable federal law; at minimum, to avoid ambiguity and the unlawful elevation through CEQA of "state protections" that have not completed the rulemaking process. This threshold must be revised to clarify that CEQA applies to "wetlands" as defined by applicable federal or state laws and regulations.

Response 107.78

The Agency is not making changes in response to this comment. There are multiple ways state agencies charged with protection of certain wetlands delineate those sensitive areas. The changes to this question seek to help lead agencies remember they may need to consider impacts beyond federal 404 standards when analyzing a project. If a lead agency does not find this question helpful, it is free to tailor a checklist to its own needs. Please also see Master Response 18 regarding Appendix G.

Comment 107.79

More generally, OPR is obligated to step into and resolve conflicts that are continuously litigated given the absence of clarity in the existing Guidelines. For example, Threshold IV.d states that a project could have an adverse biological impact if it would "interfere substantially with the movement of any native resident or migratory fish or wildlife species." This threshold has resulted in repeated assertions that a project that would interfere with the localized movement of common urban wildlife that have no protected status under any federal or state law, like ground squirrels and raccoons, and removal of unoccupied nests of robins or crows as part of tree trimming fire prevention activities, would have a significant adverse environmental impact under CEQA. There is no case law or Legislative directive that would result in such a massive expansion of CEQA, and OPR should clarify this disputed issue in its "comprehensive" update.

Response 107.79

The Agency is not making changes in response to this comment. No amendments or changes were proposed to the sections identified by commenter. Commenter provides no evidence of a problem with those provisions. Please also see Master Response 18 regarding Appendix G.

Comment 107.80

Finally, as discussed in greater detail below in relation to the integration of CEQA with other non-CEQA legal mandates, the Biological Resources thresholds appropriately refer to a project's consistency with regional natural resource regulatory plans approved by state and federal species protection agencies.

However, compliance with these regulatory plans should also serve as evidence that the project avoids significant adverse project-level or cumulative impacts to the species and habitat types covered by the approved regulatory plan(s). Accordingly, Threshold IV.a and b (impacts to federal and state protected species, and habitat types) should be combined with Threshold II.f (compliance with federal and state approved habitat and species regulatory plans).

Response 107.80

Please see Master Response 18 regarding Appendix G.

Comment 107.81

V. Cultural Resources. Two of the three thresholds in this section refer to other sections of the Guidelines, rather than restating the relevant threshold set forth in the cited section of the Guidelines. The purpose of Appendix G is to provide a clear, plain language checklist summary of relevant thresholds; the APA demands that technical language be presumptively avoided. These cross references should be replaced with text, consistent with the other sections of the Guidelines.

Response 107.81

The Agency is not making any change in response to this comment. Commenter takes issue with cross-referencing of specific CEQA guideline sections. There is no requirement to provide a sample check list that does not cross-reference relevant CEQA guidelines, and many practitioners find this helpful when trying to determine whether they have fully complied with CEQA's review requirements. Please also see Master Response 18 regarding Appendix G.

Comment 107.82

VI. Energy. OPR's 2017 Proposals add two brand new thresholds to Appendix G, both of which fail to comply with the APA.

Response 107.82

The Agency is not making any changes in response to this comment. The comment is factually incorrect. The energy-related questions are not new. They had existed in the checklist until they were removed in the mid-1990s. The Agency is merely reinserting the former questions back into the checklist.

Comment 107.83

First, Threshold VI.a asks whether construction or operation of a project would result in the "wasteful, inefficient, or unnecessary consumption of energy." OPR provides no criteria for either of these three new, separate thresholds – when is energy use wasteful, efficient, or unnecessary? Is installation of windows on the west-facing wall of an apartment project "wasteful" because this design would require more air conditioning during summer months? Is it "unnecessary" to install natural gas for heating and cooking, since - at much higher consumer costs - electric heaters and stoves can be used instead? The Legislature11 has expressly directed the Building Standards Commission to adopt building standards that consider both efficiency and cost-effectiveness, and the Legislature has on several occasions been asked to consider and has expressly rejected enacting a ban on natural gas appliances in homes. If a project complies with California's stringent energy efficiency and building code standards, it should not be open to being challenged in a CEQA lawsuit for its "wasteful, inefficient, or unnecessary" consumption of energy - and OPR should revise the OPR 2017 Proposals make this crystal clear to avoid endless CEQA lawsuits against the state's top litigation target, infill housing.

Response 107.83

The Agency is not making any changes in response to this comment. As explained in the Initial Statement of Reasons, determining whether a project will result in "wasteful, inefficient, or unnecessary consumption of energy" is a fact-specific inquiry that requires consideration of a project in its context. (ISOR, at pp. 38-41.) Additional guidance is contained in the proposed addition in Section 15126.2(b), and in existing Appendix F. Please also see Master Response 18 regarding Appendix G.

Comment 107.84

Second, Threshold VI.b asks whether a project will "conflict with or obstruct" a state or local plan for energy efficiency. While the term "conflict" is clear, what does it mean for a project to "obstruct" a plan?

Response 107.84

The Agency is not making changes in response to this comment. This is a sample checklist designed to help lead agencies consider ways they may comply with their obligation to identify and disclose, and where feasible mitigation, potentially significant impacts. Please also see Master Response 18 regarding Appendix G, and Master Response 19 regarding consistency with plans.

Comment 107.85

To address today's urgent housing crisis, how will this "obstruct" standard be applied to a state or local climate action plan calling for a per capita greenhouse gas emission threshold of 2 metric tons of carbon dioxide equivalent (MtCQ2e) by 2050 - where today's residents produce among the lowest per capita GHG emissions in the United States (at 11 MtCO2e), and the new housing will in part be served by electricity produced from natural gas "peaker" plants for evening peak loads (since storage of solar and wind daytime energy is not yet feasible), and that is occupied in part by people who must drive cars or take buses to work that are fueled in part by petroleum.

Response 107.85

The Agency is not making changes in response to this comment. See Response to Comment 107.84.

Comment 107.86

Testing these and all other thresholds against the most common targets of CEQA lawsuits - like housing, transportation and other infrastructure, and public services like schools and fire prevention - quickly devolves into a "Talmudic" vortex of uncertainty and conflicting views

Response 107.86

The Agency is not making changes in response to this comment. See Response to Comment 107.84.

Comment 107.87

This is precisely what both the APA, and the express CEQA statute directing OPR to prepare CEQA Guidelines, prohibits.

Response 107.87

The Agency is not making changes in response to this comment. See Response to Comment 107.84.

Comment 107.88

This is another attempt by OPR to avoid the *BAAQMD* Supreme Court deciscion, which prohibits the application of CEQA to impacts from the environment - inclusive of geological and soils issues like earthquakes and liquefaction - on a project. OPR makes the strained case that the environment's impacts on a project continue to fall within CEQA as an "indirect" rather than "direct" impact is flatly at

odds with the Supreme Court's holding, which limited consideration of the environment's impacts to a project to those impacts and projects subject to express Legislation, and to existing adverse environmental conditions that are "exacerbated" by the project

Response 107.88

The Agency is not making any changes in response to this comment. The changes in this section directly respond to the Supreme Court's ruling in the *BAAQMD* decision. Where the existing question asks whether a project would expose people to various geologic hazards, the revised question asks whether the project would cause direct or indirect adverse impacts due to various hazards. Commenter's complaint about indirect effects is difficult to discern. As explained in the Initial Statement of Reasons, the court in that case held that generally an agency need not analyze surrounding risks to a project, but further held that "when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users." (*BAAQMD*, *supra*, 62 Cal. 4th at 377.) CEQA's definition of "project" refers to an "activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment[.]" (Pub. Resources Code § 21065.) Further, CEQA's definition of "project-specific effect" refers to "all the direct or indirect environmental effects of a project[.]" (*Id*. at § 21065.3.) Nothing in the *BAAQMD* decision suggests such an analysis is beyond the scope of CEQA. Please also see Master Response 18 regarding Appendix G.

Comment 107.89

Attempting to infiltrate stormwater into clay soils that will cause surface flooding, or pumping stormwater into soils that are already prone to liquefaction, are examples of project impacts that would exacerbate a potentially hazardous condition that already existed in the environment. OPR's "indirect" sleight of hand is unlawful under CEQA as decided by the Supreme Court in the *BAAQMD* decision13, and accordingly exceeds the scope of OPR's authorizing statute and is an unlawful regulation under the APA. Threshold VII.a must be either deleted, or rewritten to conform to the exacerbation and express authorization exceptions to the Court's holding that CEQA does not apply to the environment's impact on a project.

Response 107.89

See response to 107.88 The Agency is not making changes in response to this comment.

Comment 107.90

Threshold VII.f adds a new threshold addressing project impacts to a "unique" paleological or geologic features. This threshold likewise fails the APA criteria for clarity: is the feature "unique" in the world, in the state, in the region, in the city, or on the project site? Or is "unique" for paleontology simply a previously undiscovered fossil species? What is even a potentially "unique" geologic feature? These ambiguous references promote litigious jousts among experts, and do not satisfy regulatory clarity requirements.

Response 107.90

The Agency is not making changes in response to this comment. This language is existing in the current checklist, but was simply relocated pursuant to Assembly Bill 52 (Gatto, 2014). Please also see Master Response 18 regarding Appendix G.

Comment 107.91

VIII. Greenhouse Gas. This topic remains the most legally uncertain of all impacts, notwithstanding the Legislature's express direction that OPR and CARB collaborate to develop Guidelines that explain how CEQA applies to greenhouse gas emissions and climate change (collectively referred to in these comments as "GHG"). The majority of the Supreme Court's decisions in recent years have addressed GHG, but not even the Supreme Court has been able to parse the existing GHG Appendix G thresholds to ascertain how and to what extent GHG emissions should be analyzed, when such impacts are significant, and how these impacts should be appropriately mitigated. In the Newhall case1 4, the Supreme Court identified several potential compliance "pathways" for addressing GHG under CEQA, which the Court opined "may" be sufficient - or may not. In the SANDAG case15, the Supreme Court upheld a regional plan that met near-term GHG reduction targets, while cautioning that its decision was not dispositive of longer¬ term planning horizons. A Supreme Court Justice, speaking at the 2017 Yosemite Conference, declined to answer a question asking for direction as to what agencies should do with GHG under CEQA, but observed that this was a topic that warranted further clarification by appropriate agencies. OPR itself explains that the existing GHG thresholds should more properly be applied to assessing a project's "incremental" GHG emissions rather than focused on the GHG emissions of each particular project - although OPR does not provide any clear or practical explanation as to what agencies are doing wrong now, or what they should do instead based on this "incremental" criticism.

Response 107.91

The Agency is not making changes in response to this comment. The Agency added the questions in the checklist in 2009. As the Agency explained at that time, the Appendix G “questions are intended to provoke a full analysis of [greenhouse gas] emissions where appropriate,” but “[m]ore detailed guidance on the context of such an analysis is provided in other sections throughout the Guidelines.” (Final Statement of Reasons (2009), at p. 75.) The comment’s complaints do not arise from the Appendix G questions, nor does the commenter provide any suggestions for improvement. Additional guidance is provided in the proposed changes to Section 15064.4.

Comment 107.92

OPR's 2017 Proposal also fails to acknowledge, explain, or provide any direction as to how agencies should use and/or rely on the new CEQA GHG thresholds adopted by CARB in the CARB 2017 Scoping Plan, or to the GHG thresholds adopted by several regional air quality control agencies - including a regional agency approach that was cited with approval in one of the Supreme Court's GHG CEQA decisions. Finally, OPR's 2017 Proposals include revisions to the CEQA Guideline that do address GHG emissions, but these revisions have not been integrated into Appendix G to provide the required plain language regarding significance; further comments on the GHG Guideline revision itself are provided below.

Response 107.92

The Agency is not making changes in response to this comment. The Air Resources Board did not adopt any binding CEQA thresholds. Please also see Master Response 18 regarding Appendix G.

Comment 107.93

In sum, OPR's 2017 Proposals fail to comply with OPR's statutory obligation to reconcile these and other relevant authorities to update the CEQA Guidelines to include clear and practical direction as to how to

address GHG under CEQA. Given the multitude of overlapping judicial and expert agency precedents, OPR's decision to avoid any modification to clarify the Appendix G GHG Thresholds is itself ample evidence of OPR's failure to comply with APA and CEQA's statutory mandates.

Response 107.93

The Agency is not making changes in response to this comment. Please see Responses to Comments 107.91 and 107.92.

Comment 107.94

Phase I") for identifying potentially significant contamination conditions, and describing the status of any investigation, cleanup, and regulatory activity on the site. Threshold VII.d should be replaced with the following plain language text: "Does the project site have any historic or existing contamination conditions, and if so has the site been remediated as required for the proposed project use by an authorized state or local environmental remediation oversight agency?"

Response 107.94

The Agency is not making a change based on this comment. The checklist question at issue is existing, and is a sample. If a lead agency finds it does not adequately assist it in assessing impacts, it is free to tailor it. The Agency has reviewed the proposed suggestion but finds that no changes are necessary. Further, though the comment states there is ample evidence that the lists referred to in the existing questions are not current, comment provides no such evidence.

Comment 107.95

Threshold VII.e is unlawfully vague: the "excessive noise" criteria must be linked to the decibel levels established in the applicable airport land use plan (or in the applicable local agency noise ordinance if no such plan exists).

Response 107.95

The Agency is not making a change based on this comment. The checklist question at issue is a sample. If a lead agency finds it does not adequately assist it in assessing impacts, it is free to tailor it.

Comment 107.96

Threshold VII.h is unlawful under BAAQMD as written since it addresses hazards from existing environmental conditions. As properly framed under BAAQMD, it duplicates thresholds relating to flooding and geotechnical risks that are located in the Hydrology and Geology thresholds. This must be deleted.

Response 107.96

The Agency is not making a change based on this comment. The checklist question at issue is existing, and is a sample. If a lead agency finds it does not adequately assist it in assessing impacts, it is free to tailor it. Please see Response to Comment 107.88.

Comment 107.97

X. Hydrology and Water Quality. The OPR 2017 Proposals appropriately delete duplicative thresholds from this section. However, OPR's revised thresholds fail to include the plain language APA and CEQA mandates.

Response 107.97

The Agency is not making changes in response to this comment. This comment generally sums up the view of the commenter, which view the Agency disagrees with, but is not seeking specific change.

Comment 107.98

Threshold IX.a first appropriately retains reliance on whether the project complies with adopted water quality standards or waste discharge permit requirements, but then adds a second, unlawfully vague "or otherwise substantially degrade surface or ground water quality" threshold. Water quality standards and waste discharge permits are required by statute to protect surface and ground water quality from degradation, and there are state as well as regional boards - and more than a thousand employees - who establish and manage these standards and permit programs. Compliance with legal mandates imposed in other parts of California statutes - from seismic safety, to water and air quality, to greenhouse gas emissions - have been repeatedly upheld in EIR cases as substantial evidence of the absence of an adverse environmental impact for the regulated complying project activity. The new text addition in this threshold must be removed to avoid this unlawfully vague language, and unlawful rejection of ample court precedent confirming compliance avoids significant impacts under these circumstances.

Response 107.98

The Agency is not making a change based on this comment. The checklist question at issue is a sample. Asking whether a project will impede existing water quality standards or degrades ground and surface supplies is a sensible, reasonable way to consider impacts of a proposed project. Moreover, the comment complains about a question that has existed in the Guidelines for years as question IX(f). The Agency has just consolidated and slightly rephrased those questions. The comment offers no evidence of any confusion with the existing question, and the Agency is aware of none. Please also see Master Response 18 regarding Appendix G. The Agency has addressed compliance with environmental regulations in the proposed updates to Sections 15064 and 15064.7.

Comment 107.99

Threshold IX.b would introduce substantial new uncertainty for all projects that would use groundwater and are located in areas of groundwater overdraft, even to the extent that the overdraft conditions are being remedied through other state laws and planning mandates such as the Sustainable Groundwater Management Act (SGMA) Deletion of the text providing an example of a potential adverse impact to groundwater - dropping the production rate of nearby existing wells - also eliminates an appropriate localized focus of this threshold, since even if a project complies with sustainable groundwater plans adverse localized impacts can occur and be significant.

Response 107.99

The Agency is not making a change based on this comment. The comment asserts that the proposed change would create substantial new uncertainty but offers no explanation of why that would be so.

Nothing in the updated question would prevent an agency from considering localized impacts. Please also see Master Response 18 regarding Appendix G.

Comment 107.100

This threshold should be converted into a two-part threshold applicable only to projects that rely on groundwater supplies: part one should ask about the project's compliance status with groundwater management plans (similar to the threshold for the extent to which the project's population growth is consistent with planned growth in General Plans), and part two should ask whether the project would adversely affect localized wells.

Response 107.100

The Agency is declining to make changes in response to this comment. See response 107.99.

Comment 107.101

Threshold IX.c is generally an improvement, except for the last clause which asks whether the project would "impede or redirect flood flows" even if such flood management is entirely consistent with flood management infrastructure and would not cause or contribute to any flooding hazard. This abstract question could be used to challenge any project that includes legally-mandated storm drains, detention facilities, and other flood management measures which by definition "impede or redirect" stormwater - which is arguably equivalent to the undefined term, "flood flows." The last clause should be deleted.

Response 107.101

The Agency is not making changes in response to this comment. This comment complains about a question that has existed in the Guidelines for years as question IX(h). The Agency has just consolidated and slightly rephrased those questions. The comment offers no evidence of any confusion with the existing question, and the Agency is aware of none. Please also see Master Response 18 regarding Appendix G.

Comment 107.102

XI. Land Use and Planning. The revised text is a significant improvement.

Response 107.102

No change is sought.

Comment 107.103

XII. Mineral Resources. No changes were proposed to these thresholds.

Response 107.103

No change is sought.

Comment 107.104

XIII. Noise. Revised Threshold XI.a is a significant improvement, but inappropriately conflates temporary and permanent increases in ambient noise and should be limited to permanent noise. A

separate threshold is needed for temporary, construction-phase noise - which is one of the most litigated issues for CEQA infill projects. The revised threshold for construction noise should appropriately refer to the noise element required in all General Plans, which defines community standards and expectations regarding noise, by stating: "Will project¬ related construction activities result in temporary noise that exceeds applicable 16 Cal. Wat. Code, §10720 noise thresholds adopted in the General Plan or by local ordinance by causing noise levels that exceed week day permissible construction noise, or weekend and evening construction noise prohibitions?"

Response 107.104

The Agency is not making changes in response to this comment. The proposed revisions ask whether the project will generate substantial “temporary or permanent noise…” The question also refers to general plan policies. The comment fails to articulate why a separate question is needed.

Comment 107.105

Threshold XI.b lacks the required clarity in identifying when ground borne noise or vibration levels are "excessive." This is precisely the type of opaque and ambiguous threshold that is prohibited by CEQA and the APA. "Excessive" ground borne noise or vibration can be adverse impacts, but without reference to a relevant legal (or alternate technical standard supported by expert study), this is an unlawful form of CEQA Guideline.

Response 107.105

The Agency is not making changes in response to this comment. This comment complains about a question that has existed in the Guidelines for years as question XII(b). The comment offers no evidence of any confusion with the existing question, and the Agency is aware of none. Please also see Master Response 18 regarding Appendix G.

Comment 107.106

XIV. Population and Housing. The first revised thresholds are helpful clarifications that improve predictability.

Response 107.106

No changes are sought.

Comment 107.107

XV. Public Services. No changes were made to this section, which is unlawful given the announced "comprehensive" nature of the OPR 2017 Proposals. Specifically, the open-ended

Response 107.107

The Agency is not making change in response to this comment. Public Resources Code Section 21083 gives the Agency broad discretion regarding which topics to address in any given update. As explained in the Initial Statement of Reasons, this update was based on input from stakeholders. The questions at issue in this comment have existed in that form for decades. Notably, commenter could have raised any issues related to these questions when the Agency solicited suggestions for improvement in July 2013. Or, in December 2013, when OPR sought input on the list of topics it was considering including in the

Guidelines update. Or, when OPR released its Preliminary Discussion Draft of the Guidelines update in August 2015. Of course, the Agency welcomes suggestions at this stage, but the commenter provides no authority for the proposal to eliminate facilities from the checklist. Please also see Master Response 18 regarding Appendix G.

Comment 107.108

Specifically, the open-ended list of "government facilities" that are subject to CEQA at all remains unresolved, which has led to confusion and litigation about the extent to which CEQA applies to libraries, jails, hospitals or ambulance services, that are partly subsidized by government funds, etc. The modified "government facilities" recognized by the legislature and judicial precedent are limited to schools, as well as fire and police stations. This list should be limited to these facilities, and if OPR believes it has the legal authority to include in CEQA changes to other types of government facilities that are not proposed as part of the project (or required as conditions of approval outside CEQA by permitting agencies), then OPR should provide the requisite statutory authority for this expansion to CEQA.

Response 107.108

Please see Response to Comment 107.107.

Comment 107.109

XVI. Recreation. The second of these unchanged thresholds simply restates CEQA's existing requirements that the "whole of the project" - including any new or expanded recreational facilities - must be evaluated to the extent they have an adverse physical effect on the environment. This is not a threshold, and should be deleted from Appendix G.

Response 107.109

The Agency is not making changes in response to this comment. The Agency did not propose any amendments or additions to this section, and is not persuaded it should alter it. Please also see Master Response 18 regarding Appendix G.

Comment 107.110

XVII. Transportation and Traffic. These threshold revisions are linked to the OPR 2017 Proposals' many provisions, and an accompanying complex technical guidance document, to mandate use of a new transportation metric for passenger cars and trucks - Vehicle Mile Travelled (VMT) - even if such vehicle usage does not cause any noise or air pollutant or safety or environmental impact. This VMT expansion of CEQA is addressed in greater detail in the comments that follow the Appendix G thresholds. With respect to the transportation changes to the Appendix G thresholds, however, there are several legal deficiencies that violate the APA and CEQA that require modified text.

Response 107.110

The Agency is not making changes in response to this comment. This question asks lead agencies to consider transportation impacts. As directed by the Legislature, the Agency has concluded that such impacts are best measured by analyzing the length of vehicle miles travelled, and as such it is appropriate for lead agencies to consider those impacts from that lens. The distance cars must travel affects greenhouse gas production, air quality, public safety, and infrastructure degradation. As a result,

it is entirely acceptable for the Agency to direct that this is the appropriate metric to analyze transportation impacts.

Comment 107.111

Threshold XVII.a deletes the existing reference to the requirement that the transportation plan, ordinance or policy at issue be "applicable" to the project.

Without preserving this "applicability" requirement, the revised threshold provides zero clear or practical direction on the universe of existing transportation plans, ordinances or policies that may - or may not actually apply to the project. For example, there are other contested CEQA expansions - such as the "vibrant communities" appendix, GHG numeric thresholds for projects and climate action plans, and undefined but "substantial" VMT reductions, included in the CARB Scoping Plan approved in 2017 Many of these Scoping Plan "Vibrant Communities" measures are absolutely not legally "applicable" - such as establishment of an "eco-system service fee" to charge urban area residents for management of open space areas elsewhere in California, and the requirement to establish urban growth boundaries. Varying transportation agencies, from varying regions, all have differing transportation plans, policies and ordinances. Deleting the term "applicable" puts all of these (and many more) transportation plans, ordinances and policies in play - while actually omitting references to state statutory requirements such as the Congestion Management Act and the circulation 17 CARB. California's 2017 Climate Change Scoping Plan, (Nov. 2017), https://www.arb.ca.gov/cc/scopingpla n/scoping plan 2017.pdf, (as of March 12, 2018) element mandates in General Plan law. The term "applicable" should be restored to this measure, as should references to highways and not simply "roadways."

Response 107.111

The Agency declines to make any changes in response to this comment. The comment objects to the Agency's proposal to delete "applicable" from Appendix G Question XVII.a. regarding conflicts with a program, plan, ordinance or policy addressing the circulation system. The Agency's proposal would not require a lead agency to follow a plan that it is not required by law to implement. However, if a project's inconsistency with a plan could lead to a significant adverse environmental impact, that environmental impact (not the plan inconsistency) would need to be analyzed. Therefore, removal of "applicable" is necessary to avoid confusion regarding what analysis is required. Please also see Master Responses 18 and 19 regarding Appendix G and consistency with plans.

Comment 107.112

Threshold XVII.b deletes a threshold requiring a compliance analysis of congestion management legal mandates, even though these mandates are informed by both air quality and safety standards that fall within the scope of CEQA - and even though OPR's authorizing statute for proposing VMT as a new CEQA metric instead of the "level of service" congestion delay metric expressly mandates that air quality and safety measures must still be addressed under CEQA. This metric must be revised to acknowledge the continuing role of traffic delays, and longer commute times from traffic gridlock, in calculating criteria, toxic, and greenhouse gas emissions from vehicles - and in assessing public safety and roadway noise issues. Threshold XVII.bis also invalid in relying on a cross- reference to another CEQA Guideline, rather than converting that Guideline into plain language text in the checklist as required by APA and CEQA.

Response 107.112

The Agency is not making changes in response to this comment. Air pollution, greenhouse gas emissions, safety and noise are addressed elsewhere in the checklist. Public Resources Code section 21099 states that automobile delay is not an environmental impact, and so it would not be appropriate for the Agency to include a question about delay in the environmental checklist. Please also see Master Response 18 regarding Appendix G.

Comment 107.113

XVIII. Tribal Cultural Resources. These are not proposed for change, although they violate the APA and CEQA in relying on statutory cross-references which are not even defined in the Guidelines. The Guidelines, as the regulations interpreting CEQA in plain and clear language, must be revised to provide clear direction on the statutory requirements, including by providing regulatory definitions to terms such as "sacred site" that are not defined in the statute itself. Given that this is a "comprehensive" update to the Guidelines, OPR is legally obligated to correct these flawed thresholds - and the fact that these were unlawful in form when originally adopted does not shelter these from these legal objectives given OPR's claimed "comprehensive" CEQA Guideline revision scope.

Response 107.113

The Agency is not making changes in response to this comment. First, nothing in the APA prohibits cross-refences. Specifically, the checklist is designed to help entities determine if they have met their obligations with respect to the Guidelines (regulations), and cross-referencing them, along with other laws that provide assistance and help entities figure out impacts provides another tool that can assist them in their analytical process. The fact that this is a comprehensive update does not mean that there is any legal obligation to change every word of the existing regulatory scheme—rather, it is intended to denote the breadth of this particular regulatory package in an effort to be transparent. The commenter provides no evidence that the existing checklist questions are a problem.

Comment 107.114

XIX. Utilities and Service Systems. These thresholds suffer from several legal deficiencies that must likewise be corrected as part of this comprehensive update.

Threshold XVIX.a, like the Recreational facility threshold, simply restates CEQA's basic requirement that the "whole of the project" - inclusive of required utility systems - must be evaluated in compliance with CEQA. This basic CEQA requirement can be clarified, to the extent OPR believes it needs to be clarified, by including these utilities in the Guidelines definition of "project." As written, however, it does not identify an applicable threshold for defining whether the utility components of the project would cause an adverse impact on the environment, and should thus be struck.

Response 107.114

The Agency is not making changes in response to this comment. Nothing requires the Agency to identify thresholds in the checklist. Please also see Master Response 18 regarding Appendix G.

Comment 107.115

Threshold XVIX.b restates a portion of the Supreme Court's Vineyard decision18, but improperly conflates the required cumulative analysis required to assess other reasonably foreseeable development

with the remainder of the project-level thresholds. While it would be useful for OPR to include cumulative impact thresholds in Appendix G, conflating the project-level and cumulative-level analyses in a single threshold introduces inappropriate inconsistency with other thresholds and should accordingly be modified to include a clear project-level threshold.

Response 107.115

The Agency is not making changes in response to this comment. The comment offers no analysis to support its assertions and offers no suggestion for improvement.

Comment 107.116

Threshold XVIX.d introduces a new undefined term, "local infrastructure", with respect to solid waste management. Under applicable state law19, local governments are obligated to divert most waste away from landfill and into recycling, reuse, composting, and other beneficial uses. These beneficial use waste facilities are often not present in a "local" location, and in fact there has been a significant reduction in the number of local recycling facilities and an increased consolidation of these facilities into regional or even multi-regional facilities. Other localities have declined to approve composting or other required solid waste facilities, and most urban communities now ship solid waste to less populated areas. Virtually all projects generate some level of solid waste, so introducing the new "local infrastructure" ambiguity - which conflicts with the reality of how solid waste is actually managed in urbanized areas - is both unlawful under the APA and Vineyard Area Citizens for Responsible Growth Inc. v City of Rancho Cordova. (2007) 40 Cal.4th 412 CalRecycle, 75 Percent Initiative, http://www.calrecycle.ca.gov/75percent/ (as of Mar. 12, 2018) CEQA standards, and inappropriately counterproductive with the state's many laws and policies encouraging the beneficial reuse of solid wastes.

Response 107.116

The Agency is not making changes in response to this comment. Commenter appears to take issue with language suggesting a lead agency consider the impact of waste on local infrastructure because most solid waste is dealt with, according to commenter, regionally. If a lead agency feels waste management infrastructure is significantly distant such that tailoring this question to include a regional component makes sense, nothing prevents it from so tailoring it.

Comment 107.117

Threshold XVIX.e is similarly unlawful and ambiguous: what is the plain language meaning of "negatively impact the provision of solid waste services"?

Response 107.117

The Agency is not making changes to this comment. The comment complains about language that the Agency has not proposed.

Comment 107.118

Threshold XVIX.f again elevates compliance with "federal, state and local" statutes and regulations into a CEQA threshold, instead of recognizing that these are environmental legal mandates that apply independent of CEQA, and actually mitigate rather than cause adverse environmental impacts.

Response 107.118

The Agency is not making changes to this comment. The comment is directed at provisions that have existed in the checklist for years, but offers no evidence of any problem with those provisions. Also, please note, the proposed updates to Sections 15064 and 15064.7 address the role of environmental standards in the CEQA process.

Comment 107.119

XX. Wildfire. This new set of thresholds was added based on a new state statute, and two of the new thresholds are entirely duplicative of the "hazards" category of threshold that already addresses wildfire risks (Threshold IX.f and Threshold XX.a are virtually identical, and Threshold XX.b has a significant overlap with Threshold IX.f). This new category should be consolidated with Hazards, rather than to unnecessarily expand and add duplicative new CEQA thresholds with commensurate increases in costs and litigation risks.

Response 107.119

The Agency is not making changes to this comment. Please see Master Response 12 regarding wildfire.

Comment 107.120

Threshold XX.b is also an appropriate and lawful interpretation of the BAAQMD "exacerbation" decision of the Supreme Court 20, which should be extended to all of the unlawful proposed thresholds that willfully ignore this decision in favor of the unlawful equivalency finding that an "indirect" impact is the same as the "exacerbation" Court test.

Response 107.120

See response to 107.119.

Comment 107.121

The second clause of Threshold XX.c is, like Threshold XVIX.a, a restatement of CEQA's core requirement that the whole of the project be analyzed - including in this the examples of project infrastructure. This clause should be deleted, since the mere existence of this project infrastructure does not result in any significant adverse impact, and this type of infrastructure needs to be evaluated under all applicable topical areas (e.g., Biological Resources), not simply wildfire.

Response 107.121

See response to 107.119.

Comment 107.122

Threshold XX.d unlawfully omits the BAAQMD "exacerbation" requirement, and must be revised accordingly.

Response 107.122

See response to 107.119.

Comment 107.123

XXI. Mandatory Findings of Significance. OPR's failure to provide clarity in this section of Appendix G is another example of OPR's failure to lawfully complete its asserted "comprehensive" update to the CEQA Guidelines in the OPR 2017 Proposals.

Response 107.123

The Agency is not making changes in response to this comment. The comment offers no evidence that the existing provisions have resulted in any confusion.

Comment 107.124

With respect to Threshold XXI.a, OPR must provide clear and plain text that explains the extent to which these statutory mandatory findings are simply restatements of the corresponding topical thresholds (e.g., is a project that will cause a fish or wildlife population to drop below self-sustaining levels the same as an adverse Biological Resources impact - and if so, why isn't this included in the Biological Resource thresholds?). If it is a project that has some significant unavoidable environmental impacts, when are these impacts "substantial" enough to warrant a mandatory finding of significance?

Response 107.124

The Agency is not making changes in response to this comment. The checklist question tracks the statutory requirement to identify mandatory findings of significance. (See Pub. Resources Code § 21083(b).)

Comment 107.125

For Threshold XXI.b, virtually all project-level CEQA decisions now occur within the context of a General Plan, regional plan (e.g., for regional infrastructure and for greenhouse gas reduction land use and transportation plans included in Sustainable Communities Strategies prepared under SB 375), or state plan or project (e.g., for statewide infrastructure like the High Speed Rail or Delta Tunnels). All of these program-level CEQA documents find significant unavoidable cumulative impacts, usually for more than a dozen topical CEQA impact areas. OPR has long shirked its duty to advise lead agencies and other stakeholders as to how to address the "mandatory" finding of significance for a project that is generally or even precisely consistent with an earlier programmatic EIR for which significant unavoidable plan-level and/or cumulative impacts have previously been identified.

Response 107.125

The Agency is not making changes in response to this comment. The comment complains that provisions that have existed in the checklist for decades are unclear. The commenter fails to offer any evidence that there is a problem with the existing language, and further fails to offer any suggested improvements.

Comment 107.126

And what is the plain language meaning of "cumulatively considerable" under CEQA?

Response 107.126

Please see Response to Comment 107.125.

Comment 107.127

Finally, Threshold XXI.c asks whether the project has substantial direct or indirect effects on human beings - but OPR again fails to provide clear language on how this relates to the earlier thresholds relating to human health and safety. Is this simply a surrogate for a mandatory finding for any project that has a significant unavoidable impact, or is it something different - and if so, what?

Response 107.127

Please see Response to Comment 107.125.

Comment 107.128

In conclusion, Appendix G is used tens of thousands of times each month, by hundreds of public agencies, throughout California. Appendix G remains full of vague, ambiguous, duplicative, and unlawful provisions notwithstanding OPR's assertion that its 2017 Proposals provide a "comprehensive" update to the CEQA Guidelines. There is no better, or more clear proof of OPR's failure to comply with the APA and CEQA than a close examination of Appendix G.

Response 107.128

The Agency is not making changes in response to this comment. Specific responses to comments concerns about Appendix G are provided above.

Comment 107.129

OPR's 2017 Proposals include the revisions to Appendix G as an "efficiency" improvement to CEQA; as demonstrated in Part A, the Appendix G revisions will result in only more cost and litigation risks, and do absolutely nothing to promote "efficiency." Four of the six other "efficiency" improvements included in the OPR 2017 Proposals suffer from precisely the same legal deficiencies, including but not limited to ambiguity, duplication, internal or external inconsistencies with legal mandates, which collectively make these proposed regulatory changes unlawful under the APA and CEQA.

Response 107.129

The Agency is not making changes in response to this comment. This comment is not directed at the rulemaking, nor does it seek specific change.

Comment 107.130

1. Using Regulatory Standards Under CEOA- §§ 15064. 15064.7. OPR proposes to update two existing sections of the CEQA Guidelines to more clearly explain how the hundreds of state environmental laws enacted since CEQA's 1970 enactment should be integrated into CEQA. However, instead of actually accomplishing this goal, this section of the OPR 2017 Proposals entirely ignore the role of public health and safety regulatory standards under CEQA, and leave hundreds of agencies guessing as to how or whether to apply which standards for which purposes under CEQA.

Response 107.130

The Agency is not making changes in response to this comment. The sections identified explain how to apply environmental standards as thresholds of significance, and cite to the legal authority for doing so.

Those sections provide one method, not the exclusive method, of determining the environmental impacts of proposed projects.

Comment 107.131

First, OPR's revisions are first unlawfully limited to regulations to protect the "environment." However, as noted above in Appendix G Threshold XXI.c, a CEQA analysis must also examine the extent to which a project would have a substantial adverse effect on human beings. Many of the CEQA thresholds, and hundreds of CEQA judicial decisions, involve CEQA impacts to human health and safety such as air quality, accident risks, seismic safety. This component of OPR's 2017 Proposals must be revised to include environmental, as well as health and safety, statutes and regulations.

Response 107.131

The Agency is not making changes in response to this comment. The comment misreads the proposed changes. Nothing in those sections preclude consideration of standards that protect human health.

Comment 107.132

Second, OPR references only regulations; in fact, CEQA impacts can and are also mitigated by the hundreds of post-1970 environmental and public health statutes, even before or in the absence of implementing regulations. Similarly, some statutes call for agencies to develop plans and programs to protect the environment or public health, again without the need for or existence of “regulations" based on these statutory legal mandates. OPR's 2017 Proposals must be revised to encompass both laws and regulations, and as prescribed by law approved implementing agency plans and programs.

Response 107.132

The Agency is not making changes in response to this comment. The comment misreads the proposed changes. Section 15064.7 refers to requirements in an “ordinance, resolution, rule, regulation, order, plan *or other environmental requirement*. (Emphasis added.)

Comment 107.133

Third, OPR provides only generalized text to help guide lead agencies to identify, and then consider whether, or to what extent, to use these environmental legal mandates. OPR shirks its duties under CEQA and the APA with this "punt" to lead agencies: OPR is the agency charged by CEQA to develop CEQA Guidelines which must provide with specificity direction to lead agencies

Response 107.133

The Agency is not making changes in response to this comment. OPR has not punted. CEQA does not mandate OPR or the Agency direct lead agencies as to how to apply thresholds of significance for purposes of analyzing potential impacts. CEQA entrusts lead agencies with determining the significance of the impacts of a proposed project. The comment demands the Guidelines do precisely what the courts have said the Guidelines cannot do, and that is to direct lead agencies to find that compliance with a regulation reduces impacts to a less than significant level for CEQA purposes. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-114.)

Comment 107.134

OPR then pours further salt on the wound by requiring each of every one of the hundreds of implementing CEQA agencies to provide substantial evidence in defense of their reliance on adopted regulations.

Response 107.134

The Agency has deleted the phrase to which the commenter objects ("and describe the substantial evidence supporting that conclusion") from the proposed changes to Section 15064(b).

Comment 107.135

provide substantial evidence in defense of their reliance on adopted regulations. Consider the practical effect of OPR's failure to do this job as part of its 2017 "comprehensive" Proposals: unlike stressed and overburdened local, special district and regional agency planning staffs, OPR staff is paid - each and every day, for each and every member of its staff - to figure out on behalf of lead agencies how to apply other environmental and public health laws, regulations and plans to CEQA. OPR's 2017 Proposals should be revised to include an appendix that "matches" federal and state agency statutes, regulations and plans to the corresponding impact assessment methodology, significance thresholds, and mitigation of adverse impacts, required by CEQA.

Response 107.135

The Agency will not make further changes in response to this comment. See response 107.133.

Comment 107.136

Fourth, the OPR 2017 Proposals do not reconcile other conflicting guidance issued by OPR or other expert agencies - or the effect of new appellate and Supreme Court cases. For example, in its SB 9722 rulemaking, OPR reported that there was no "one molecule" rule in CEQA thresholds; but OPR does not reference or reconcile that statement in this "comprehensive" update with the new presumptive "net zero" GHG CEQA threshold adopted by the California Air Resources Board in its 2017 Scoping Plan.

Response 107.136

The Agency is not making changes in response to this comment. Section 15064.4 allows lead agencies to rely on thresholds suggested by others, but does not require it. That section specifically states that a lead agency should consider " [w]hether the project emissions exceed a threshold of significance that the lead agency determines applies to the project[.]" (CEQA Guidelines § 15064.4(b)(2).) The Air Resources Board's Scoping Plan does not contain "presumptive" CEQA thresholds.

Comment 107.137

Similarly, in the same SB 97 rulemaking and in various briefs filed in CEQA lawsuits, OPR argued that CEQA mitigation should be "additive" to the mitigation value of compliance with other laws and regulations; this is directly at odds with both the Supreme Court's SANDAG decision23 (which upheld reliance on the SB 375 standard for GHG reductions required by 2020) and with the recent Alon decision24, which the Supreme Court declined to review or republish, and which concluded that compliance with the "Cap and Trade" program was satisfactory mitigation of GHG impacts for transportation fuels.

Response 107.137

The Agency is not making changes in response to this comment. The comment claims that the update is inconsistent with caselaw, but fails to articulate how. Therefore, no further changes are necessary.

Comment 107.138

OPR's omission of health and safety standards, its omission of statutes as well as statutorily-mandated plans and programs, its omission of a clear roadmap on how each of these should be applied under CEQA, and its omission of Guideline revisions that reconcile conflicting interpretations about how CEQA impacts can be appropriately mitigated by existing environmental laws and planning targets (rather than regulations) by the Supreme Court and CARB, is another example of OPR's unlawful shirking of its duty in completing a "comprehensive" update to the CEQA Guidelines .. OPR's failure translates into an increased, and completely unacknowledged, excess burden on other state and local agencies. It also translates into higher compliance costs and litigation risks for projects that are required to "reinvent the wheel" over and over again, to the benefit of the army of professionals who benefit from the ambiguities in the current CEQA Guidelines and who will reap a financial windfall from trying to parse through the ambiguous new CEQA Guidelines. Unlike OPR staff and CEQA practitioners, these ambiguous and incomplete new Guidelines will harm the Californians who desperately need CEQA to work more efficiently, with far less duplication and litigation under existing laws, and who suffer daily from homelessness, housing they can't afford, inhumane and anti-environmental commutes, and the personal and family harms created by the nation's highest poverty rate.

Response 107.138

The Agency is not making changes in response to this comment. This comment speaks to issues outside the scope of this rulemaking. The comment expresses frustration with the CEQA process generally. This Administration shares the concern about the complexity of the process, and so specifically undertook this update to identify efficiencies to the extent authorized by statute. Many of the changes that the commenter demands cannot be made in regulations. Where appropriate, the Agency further revised the proposal in response to these and other comments. Please see Master Response 20 regarding broader policy matters.

Comment 107.139

2/3. "Within the Scope" and Tiering - §15168 15152. Two of OPR's 2017 "efficiency" Proposals continue to endorse the longstanding Legislated CEQA streamlining tool of relying on a previously approved EIR when a project is "within the scope" of that EIR, and to completing only a more streamlined "tiered" subsequent CEQA analyses for subsequent projects for which an earlier EIR has been approved. The purpose of both approaches is to avoid unnecessary CEQA duplication, costs, delays and litigation risks where at least one prior level of CEQA compliance has already been completed.

OPR's 2017 Proposals, however, again completely avoid resolving the practical and ongoing uncertainty about whether either "within the scope" and/or "tiering" is appropriately applied to the details of the specific subsequent project, or whether "within the scope" and/or "tiering" is appropriately applied to the magnitude or location of the environmental impacts caused by a subsequent project.

Response 107.139

The Agency is not making changes in response to this comment. This comment acknowledges that use of program EIRs is one way to reduce redundancy. The comment also acknowledges that knowing whether a project can fit within prior environmental review is a tough question. Notably, the particular changes addressed in the comment were proposed by practitioners represented by the Association of Environmental Professionals and the California Chapter of the American Planning Association.

The comment ultimately complains that the Agency has not provided guidance that is detailed enough. As explained in the Initial Statement of Reasons, that determination is inherently fact specific, depending on both the details of the later activity and the scope of analysis in the program EIR. (ISOR, at pp. 50-51.) The proposed updates assist lead agencies by identifying factors that indicate whether a later activity is within the scope of a program EIR. The changes also assist lead agencies by noting that it is a factual determination, which is a signal to courts that agencies are owed deference on such questions. Specifically describing every circumstance an agency might encounter, however, is simply not possible.

Comment 107.140

The practical difference between this "is the project included" or "is there a new or worse significant impact" approaches is vast: under the former approach, the legal inquiry is almost entirely focused on whether the subsequent project was identified with particularity and itself evaluated in the earlier EIR, and under the latter approach, the legal inquiry is whether the subsequent activity would cause a significant new (or worsen a previously-identified significant) adverse impact. This is the single most common circumstance faced by CEQA implementing agencies and practitioners, and OPR simply avoids addressing or resolving this situation completely.

Response 107.140

See response 107.139.

Comment 107.141

For example, cities are strongly encouraged to adopt plans that encourage higher density housing and transit systems. A planning area may include a small or large neighborhood, but for purposes of this example consider a planning area that is only 10 blocks long by 10 blocks wide. Within this planning area, the specific distribution of housing density - which lots are 4 stories, which are 8, which are 12 - is unlikely to be specified given the unknown availability and market circumstances that will exist over the 10+ year duration of the plan. Instead, a density range will be considered in the planning area, and blocks eligible for increased density will be identified, and the environmental impacts of that increased housing density will be considered in the EIR. Mitigation measures to avoid adverse impacts are also required, such as pedestrian and bicycle safety measures to minimize accident risks in relation to the anticipated new density. Two years after the plan is adopted, a 6-story housing structure is proposed within the plan area on a former strip mall. The building design and location was never described with specificity, but it is absolutely consistent with the adopted plan, and an addendum is prepared that the building will cause zero new or worse significant adverse impacts. For this - the absolute most common and critical solution to expediting critically-needed new housing - example of CEQA "tiering" implementation, it is not possible to discern from OPR's 2017 Proposals whether the new building's absence from the plan is a fatal flaw triggering the need for a new EIR, or whether the absence of any

new or significant adverse impacts and general consistency of the new building with the density approved in the plan means that no subsequent CEQA documentation and processing is necessary.

Response 107.141

See response 107.139.

Comment 107.142

The same fundamental tiering ambiguity also exists for transportation projects. For example, a General Plan circulation element may include a transit corridor, but not whether new bus stops will or won't have nighttime security lights, or precisely how many parking spots will be removed for a particular stop, or whether a bench or windscreen or shade of whatever color will be installed. Use of existing rail for more commuter rail will prompt more localized traffic and parking at rail stations and will be described in the initial commuter rail service EIR, but the precise geometry of intersection improvements or number of parking spots for each and every train station will not be known or knowable when the commuter rail service is being planned and approved; when (if ever) is another round of CEQA required for each and every new train station?

OPR's failure to confront and revise the Guidelines to clearly address these real life tiering situations, is one of several examples of OPR's very academic approach to CEQA - what one CEQA law professor calls a "Talmudic" approach to CEQA that can be the subject of centuries of debates among experts in passionate disagreement with each other. This is precisely the opposite of what OPR is legally obligated to do in its "comprehensive" update to the CEQA Guidelines. The "tiering" Guidelines must be revised to address, with specificity, whether new CEQA documentation is required for projects that are within what was "generally" described in a prior plan, by clarifying that CEQA would apply - if at all - only to a significantly new or significant adverse impact not previously considered in the earlier EIR.

Response 107.142

See response 107.139.

Comment 107.143

4. Remedies and Remand - § 15234. To its credit, OPR takes on the CEQA litigation feature that - along with CEQA's tolerance for anonymous lawsuits, lawsuits filed by identified parties who are pursuing an expressly economic interest, and serial duplicative lawsuits - most often results in CEQA litigation abuse against environmentally benign and beneficial projects such as housing, transit, and renewable energy.

Response 107.143

The comment expresses it support for addressing remand in the Guidelines. No changes are required in response to this comment.

Comment 107.144

As several CEQA practitioners, including Shute Mihaly founder Clem Shute, have observed, the mere act of filing a lawsuit is often enough to shut a project down entirely because the lawsuit outcome (in many years) could be to vacate the project approval altogether. The Legislature expressly recognized this risk, and chose to relieve themselves of this risk in two specific bills designed to avoid delays and cost-overruns to its home town basketball arena and its Legislative office building remodel. While OPR

cannot extend this form of "remedy relief" to all CEQA lawsuits, it must in its new "Remedies and Remand" Guideline remind courts, agencies, and affected stakeholders that CEQA lawsuit remedies can appropriately consider the identity and non-environmental interests of CEQA litigants, consistent with the Supreme Court's direction that CEQA be broadly interpreted to protect the "environment" and not become a "gotcha" zone of minor technical glitches exploited by anonymous and economic litigants.

Response 107.144

The comment suggests stating in the remedy Guideline that courts may consider the identity and interests of litigants. The Agency declines to make changes in response to this comment. The purpose of this section is to provide guidance to agencies on possible outcomes of litigation. The comment urges the Agency to direct the conduct of the courts. This is something that the Agency is neither inclined nor empowered to do.

Comment 107.145

Each of OPR's four purported "substantive improvements" to CEQA are in fact substantial expansions to CEQA that include vague and ambiguous language, are both duplicative of and contrary to other statutes and laws, and collectively provide a virtual full employment act for "the CEQA industry" of consultants and lawyers that will continue to thrive under OPR's decision to promote expansive, ambiguous, litigious new requirements into CEQA. Instead of using nearly 50 years of CEQA experience, and a housing/poverty/homelessness/transportation crisis, to "improve" CEQA, OPR instead proposes to import into CEQA what the Legislature, and the Courts, have declined to require or even authorize.

Response 107.145

The Agency is not making changes in response to this comment. This comment introduces commenter's views on various changes made by the Agency, and mischaracterize the Agency's proposal. The proposed changes codify in the Guidelines rules that have been described in CEQA cases. Therefore, no response is required.

Comment 107.146

1. Energy Impacts- §15126.2. This is a blatant expansion of CEQA, based on a single case - and willfully ignores decades of contrary case law as well as the plain language of CEQA and the absence of any statutory authority to expand CEQA. This is one of several examples of OPR's very selective recognition of case law, including most notably its willful refusal to comply with BAAQMD with its sleight of hand "exacerbation = indirect = business as usual under CEQA" as described in the Appendix G comments.

Response 107.146

The Agency is not making changes in response to this comment. As explained in the Initial Statement of Reasons, the addition is necessary because several recent cases indicate that some lead agencies still fail to address energy impacts. As a result, it is important that lead agencies consider this analysis early and do so comprehensively, consistent with direction in clarifying the requirement in the Guidelines, litigation should decrease.

Comment 107.147

CEQA has long required consideration of whether a project's energy use was "wasteful, inefficient, or unnecessary." For the vast majority of projects, Courts have consistently held that this impact is appropriately addressed in the context of whether the project complies with California's notoriously-stringent energy efficiency building code, appliance and vehicle standards, and other legal mandates. An indoor mall proposed in Davis was found to have insufficiently studied energy under CEQA, based on that court's invalidation of an EIR that on less than one page summarily concluded that a conclusory statement regarding the project's compliance with building code standards was insufficient (200+ acre new shopping mall): the EIR did not identify energy demand, or evaluate energy use at all outside the occupied building structure context (e.g., during the construction and transportation) 27•

Response 107.147

The Agency is not making changes in response to this comment. The comment acknowledges that CEQA has long required consideration of energy impacts, and characterizes caselaw. No response is required.

Comment 107.148

As explained in the Appendix G Energy Thresholds context in the preceding section, this Guideline lacks the required clarity and plain language. Some commenters - including representatives of OPR - have questioned whether an indoor mall is an inherently wasteful use; others have questioned whether requiring energy-intensive air circulation and filtration systems for housing in one of the most temperate climates on the planet is an inherently wasteful use28 • These are just two of the more common disputes about what is a potentially "significant" energy impact under CEQA. OPR is legally obligated to provide a clear and practical threshold on this topic in its "comprehensive" update to the Guidelines, and it has failed to do so.

Response 107.148

The comment asserts that the proposed update is not clear because it does not state that compliance with building standards and vehicle efficiency standards means that a project cannot have a significant effect under CEQA. As explained above in Response to Comment 200.133, this is precisely what the court said the Guidelines may not do under CEQA in *CBE v. Resources Agency, supra*. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-114.) The proper use of regulatory standards is described in updates to Sections 15064 and 15064.7.

Comment 107.149

However, because energy efficiency is a standard prescribed by the Legislature29 for buildings, and the criteria by which the state Building Standards Commission and local governments may establish energy requirements for structures has likewise been prescribed in detail by the Legislature, compliance with these legal mandates is substantial evidence of the absence of an adverse energy impacts for structures.

Response 107.149

See responses to 107.148

Comment 107.150

Vehicular efficiency standards, including fuel mix and fleet mileage standards, are likewise prescribed under both federal and state laws and regulations - and projects that comply with such standards cannot have a significant adverse impact on vehicular energy efficiency under CEQA30.

Response 107.150

See responses to 107.148.

Comment 107.151

OPR should update the Guidelines to direct practitioners to clearly describe these and other energy efficient compliance mandates, which provide substantial evidence of the absence of an adverse energy impact under CEQA.

Response 107.151

See responses to 107.148.

Comment 107.152

Water Supply- § 15155. This new Guidelines substantially expands the required level of water availability under CEQA, and as such is anything but an "efficiency" improvement. It also goes far beyond the scope of the Supreme Court's definitive CEQA water supply opinion in Vineyard. This Guideline also inappropriately assumes that the lead agency has the legal authority to control water supplies by allocating water to a proposed project or some other project; however, this is not the case for the vast majority of cities and counties, for which water is supplied by water supply special purpose entities that are outside of the jurisdiction and control of the local lead agency.

Response 107.152

The Agency is making some minor adjustments to the proposed water supply language to more closely track the Court's holding in *Vineyard*, but not in response to this comment. The comment asserts without explanation that the proposed Guideline goes beyond the Supreme Court's holding in the *Vineyard* decision. The Agency will not make changes on the basis of a conclusory comment.

Comment 107.153

Also, as described above under the Appendix G comments, OPR's proposed threshold improperly conflates project- level and cumulative effects

Response 107.153

The Agency is not making changes in response to this comment. The comment offers no explanation of its complaint.

Comment 107.154

The Guideline also improperly bypasses the Legislature's comprehensive regulation of groundwater in the Sustainable Groundwater Management Act (SGMA)31, which establishes a comprehensive and preemptive governance structure for managing groundwater including mandates regarding sustainable

supplies and protection of groundwater resources by threats such as salt intrusion and drought preparation and response.

Response 107.154

The Agency is not making changes in response to this comment. The fact that the Legislature has elsewhere directed management of groundwater supplies does not relieve lead agencies from complying with CEQA by ensuring reliance on such supplies is sustainable and does not create any other direct or indirect potentially significant impacts.

Comment 107.155

Overall, this Guideline is invalid under CEQA: it expands CEQA well beyond any statutory or judicial authority.

Response 107.155

The Agency is not making changes in response to this comment. The Agency is authorized to update CEQA, and these changes do so consistent with decisions rendered by the Supreme Court. As such, the Agency is fully within its legal authority to include these requirements into the Guidelines. (Section 21083, Public Resources Code. Reference: Section 21151.9, Public Resources Code; and Sections 10910-10915, Water Code; *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 4th 412).

Comment 107.156

Notwithstanding this unauthorized OPR intrusion into conflicting water laws, and effort to import into CEQA and assign to lead agencies the role of implementing water laws for every community in the state of California, OPR again ducks its actual CEQA and APA statutory obligation in providing clear and practicable direction to lead agencies and CEQA practitioners.

Response 107.156

The Agency is not making changes in response to this comment. The Agency's edits are in plain English, provide information lead agencies need to evaluate water supplies pursuant to CEQA consistently with Supreme Court precedent, and are complete and clear.

Comment 107.157

Again, the most common practical situations are completely ignored by OPR. Some CEQA petitioners have asserted that CEQA effectively prohibits new housing in areas with depleted groundwater and standardized 10-year surface water delivery contracts; others have argued that reliance on an Urban Water Management Plan is invalid given the water supply uncertainties predicted from climate change; still others have asserted that CEQA requires a "net zero" approach to water supply, which requires new projects to pay to fund recycled water for other users in order to consume potable water.

Response 107.157

The Agency is not making changes in response to this comment. The comment complains about a variety of issues raised in litigation, but there is no suggestion that the arguments result from these

proposed changes, nor does the comment indicate that the proposal would make such issues worse. Most importantly, the comment offers no suggestions for improvement.

Comment 107.158

Pay to fund recycled water for other users in order to consume potable water. 34 Water is among the most frequently litigated CEQA issue, including CEQA lawsuits against housing projects, and OPR both expands what it unlawfully asserts is needed under CEQA and fails to provide the practical clear Guidelines revisions actually needed to apply the Vineyard decision, and both Water Supply Assessment and SGMA laws, under CEQA.

Response 107.158

See response to comment 107.156-107.157.

Comment 107.159

CEQA must be used to intentionally increase roadway congestion and worsen commutes to "induce" drivers to use public transit instead of cars;

Response 107.159

The Agency is not making any changes in response to this comment. This comment grossly mischaracterizes OPR's early drafts, and the Agency's proposal. Moreover, the comment does not offer any suggested changes.

Comment 107.160

Any mile travelled by a passenger vehicle or pickup truck, even by an electric vehicle, is a new CEQA "impact" called a Vehicle Mile Travelled (VMT) that is unrelated to any quantum of required greenhouse gas emission (GHG), or other public safety or environmental impact;

Response 107.160

Please see Response to Comment 107.159.

Comment 107.161

Building even one mile of new highway capacity - even for carpools, and even for transportation projects already approved by federal and state air quality and transportation agencies and approved by voters - is likewise presumptively a new adverse CEQA impact, because it "induces" more vehicular use.

Response 107.161

Please see Response to Comment 107.159.

Comment 107.162

OPR proposed two earlier "Discussion Draft " versions of this proposal, which prompted the most comment letters ever received by OPR for any CEQA Guideline proposal. All of these comment letters are hereby incorporated by reference into this comment letter, with each and every one of the objections raised in those letters restated in this comment letter; since these comments are already in

OPR's possession, physical re-transmittal of these letters is not repeated. Also incorporated, and raised in objection to this component of the OPR 2017 Proposals, is Attachment A.1 (Petition filed with the Office of Administrative Law, striking as an unlawful "underground regulation" the Transportation "Technical Guidance" issued concurrently with the OPR 2017 Proposals but put into immediate effect notwithstanding its failure to complete the rulemaking process required by statute). Also incorporated, as Attachment A.2, are all comments and legal arguments, including but not limited to all comments regarding the unconstitutional and unlawful mandate to reduce "vehicle miles travelled" and expand CEQA as set forth in the "Scoping Plan" 38 adopted in December 2017 by the California Air Resources Board.

Response 107.162

The Agency is not making changes in response to this comment. The Technical Advisory, letters received during OPR's - outreach, and any other pre-rulemaking commentary is outside the scope of this proceeding. The ARB Scoping Plan is also outside of the scope of this rulemaking.

Comment 107.163

As background, "transportation" impacts were quickly included in CEQA because of the "environmental" and "public health" consequences of the vehicular use by "projects" - most specifically in relation to air quality and public safety. For example, when CEQA was enacted in 1970, passenger cars emitted such high pollutant loads that heavily-congested locations such as intersections and toll booths had carbon monoxide levels that were high enough to cause people to faint or even suffocate. Congested conditions - up to and included gridlock - meant more localized pollution in congested locations, as well as more overall pollution as cars operated longer to get to destinations on congested roadways.

Criteria emissions - those for which ambient air quality standards are established to protect public health - have fallen 99% for today's fossil-fuel cars as compared with the passenger fleet in existence in the 1960's. Vehicular emissions remain extremely important, and as ambient air quality standards have become more stringent, vehicular standards - which now include state mandates on electric vehicles - have followed suit. Particulate emissions from diesel engines create a more localized health hazard, and as this hazard worsens the longer trucks are stuck on congested roadways. OPR and its sister agencies have already been implementing a "de facto" road diet, as congestion and commutes have steadily worsened to the point that vehicular emissions - including particulates and GHG - actually increased in 2017 statewide for the first time since the 1970s.

Meanwhile, public transit use has declined even as billions of dollars have been spent in California's urban areas - and University of Minnesota studies4041 have confirmed that far fewer than 10% of California's most urbanized metro area workforce can travel from home to job in less than one hour each direction.

Innovative transportation services have exploded in popularity, such as Uber and Lyft, which most studies conclude result in more, rather than less VMT. Automated vehicles, scheduled to roll out more broadly in 2018, likewise are predicted to result in more rather than less VMT. Actual VMT increases, the ever-increasing national and state rejection of bus ridership, the explosion of new transportation services and technologies, even CARB itself declined in December of 2017 to timely adopt new VMT reduction targets under SB 375, based on testimony from all major metropolitan transportation agencies and CARB staff that VMT was actually increasing with population and employment. Finally, apart from the very few half- mile circles around commuter rail stations and ferry terminals, OPR's 2017 Proposal is dependent on commuter bus service stops. To qualify, the bus stop must provide morning

and evening commuter service, with bus intervals of 15 minutes for at least one hour. Each qualifying bus line requires four actual buses, and eight shifts of bus drivers - bus lines that cost in excess of $2 million annually. However, bus ridership has dropped dramatically in California and elsewhere in the nation 42, and even the largest bus operators are dropping and adjusting routes, as well as experimenting with "on demand" ride services (or vouchers) similar to Uber and Lyft.

Response 107.163

The Agency is not making changes in response to this because it is narrative provided by the Commenter about Commenter's belief on why certain impacts were included in CEQA in the early 1980s.

Comment 107.164

Building sufficient highway and roadway capacity to accommodate vehicular use and mobility is also required by scores of federal, state and state-mandated elements of local transportation laws and plans (including but not limited to the Congestion Management Act itself 44 • The Legislature, and California voters, have repeatedly confirmed the importance of vehicular mobility in funding new projects. Finally, although climate laws such as SB 375 have redirected the vast majority of public dollars toward transit and away from highway and roadway capacity improvements, those improvements that remain have been evaluated under CEQA in program EIRs prepared by regional metropolitan planning organizations, which have then been reviewed and approved by federal and state agencies as meeting both air quality and greenhouse gas reduction mandates.

Response 107.164

The Agency is not making changes in response to this comment. Nothing in this rulemaking prevents highway capacity projects from complying with state or federal law. This comment is outside the scope of this rulemaking, and the premise underlying it is vague and unsupported.

Comment 107.165

Safety is also a critical component in vehicular mobility, and is required to be assessed under CEQA, including for example ambulance access, emergency vehicle access, safe accommodation of multiple transit modes (e.g., light rail, delivery trucks, passenger cars, bikes and pedestrians) which require improvements to intersections and roads.

Response 107.165

The Agency is not making changes in response to this comment. Nothing in the proposed Guidelines prevents lead agencies from analyzing safety as appropriate.

Comment 107.166

Finally, vehicular mobility is a major civil rights and equity issue: the Legislature authorized undocumented immigrants to obtain California Drivers' Licenses so they can get insured, and more safely travel to and from work; numerous studies have shown that owning and using an automobile is the single most important asset - after housing - required to bring a family out of poverty46; and minority communities are currently suffering from a lower home ownership rate than the pre-civil rights era of World War 2, and are uniquely far more likely to drive farthest to work as they are forced to

"drive until they qualify" for housing they can afford to own or rent - and hold jobs requiring physical presence ranging from construction and retail workers to teachers and firefighters. "Intentionally increasing congestion" causes unlawfully discriminatory impacts on the California minorities and other working families already suffering from inhumane commutes and the acute housing shortage. Finally, longer commute times - the result of OPR's "intentionally increasing congestion" strategy as explained in its earlier Discussion Drafts - means more than just increased pollution and GHG, and more public safety risks. Intentionally increasing commute times for the disproportionately minority workforce that is forced by the housing crisis to drive the greatest distances to work, and to be physically present on job sites to be paid, is a civil rights violation Longer commute times also means less time helping kids with homework, insufficient sleep and higher rates of high blood pressure and asthma, and much higher diesel pollution loads to communities located next to the chronically congested trucking routes that power the goods movement industry. Expanding CEQA to intentionally increase traffic congestion also unconstitutionally and unlawfully interferes with interstate and international commerce, putting at risk the millions of California households that rely on efficient goods movement in the global economy; in the state's most populous region in Southern California, the

Response 107.166

The Agency is not making changes in response to this comment. The Agency acknowledges commenter's concern about transportation equity. Though the comment focuses on vehicular mobility, other modes must also be considered. Dr. Robert Bullard, a leading scholar in the environmental justice movement, notes:

> Generally, the benefits of highways are widely dispersed among the many travelers who drive them, while the burdens of those roads are more localized. Having a seven-lane freeway next door, for instance, is not a benefit to someone who does not own a car. People of color are twice as likely to use nonautomotive modes of travel – public transit, walking and biking – to get to work, as compared to their white counterparts. In urban areas, African Americans and Latinos comprise 54 percent of transit users (62 percent of bus riders, 35 percent of subway riders, and 29 percent of commuter riders).

(Bullard, et al., HIGHWAY ROBBERY: TRANSPORTATION RACISM & NEW ROUTES TO EQUITY, 2004, pp. 3-4.) Dr. Bullard further explains: "Unraveling transportation equity issues requires an understanding of how different effects relate to each other, trying to understand direct and indirect impacts as well as the cumulative or counterbalancing impacts of various effects." (Id. at p. 26.) Thus, transportation equity expands beyond just vehicular mobility.

Moreover, OPR explained at the very outset of this Guidelines update process:

> OPR will look for alternative criteria that treat people fairly. The state's planning priorities are intended to promote equity. (Gov. Code, § 65041.1.) OPR seeks to develop criteria that facilitate low-cost access to destinations. Further, OPR recognizes that in its update to the General Plan Guidelines, OPR must provide planning advice regarding "the equitable distribution of new public facilities and services that increase and enhance community quality of life throughout the community, given the fiscal and legal constraints that restrict the siting of these facilities." (Gov. Code, § 65040.12.) In addition, OPR must also provide advice on "promoting more livable communities by expanding opportunities for transit-oriented development so that residents minimize traffic and pollution impacts from traveling for purposes of work, shopping, schools, and

> recreation." (Ibid.) Though this advice must be developed within the General Plan Guidelines, OPR recognizes that similar issues may be relevant in the context of evaluating transportation impacts under CEQA."

(OPR, "Preliminary Evaluation of Alternative Methods of Transportation Analysis," (December 2013), at p. 7.)

Other equity advocates that participated in this rulemaking process have observed that analyzing vehicle miles traveled will create an equity benefit. While recommending that further work be done to discourage displacement effects, the groups explained:

> The replacement of LOS with VMT will improve transit service and walkability, benefiting low-income households who are more likely to take transit and walk. In addition, the proposed guidelines will help streamline the development process of housing in low-VMT and transit-oriented locations, thereby helping increase the supply of housing options in areas with low transportation costs.

(See, Comments Submitted by Climate Plan, et al.)

Notably, nothing in this rulemaking prohibits or impedes communities from considering how best to ensure residents are able to access destinations. Nothing in the proposal mandates increasing congestion. At bottom, the commenter complains that the Agency did not address transportation equity in precisely the way that it prefers. As explained above, however, there are multiple approaches to improving transportation equity. On balance, the Agency finds that a measure of transportation impact that increases access to destinations, reduces impediments to transit, biking and walking, increases housing choices, and reduces pollution is the better choice.

Comment 107.167

OPR acknowledges none of these adverse environmental, public health, or discriminatory impacts of its decision to use CEQA to put California on a "road diet" to meet the Governor's 2050 GHG reduction goal - a goal expressly considered and rejected by the Legislature on a near annual basis, and by the Supreme Court under CEQA in SANDAG.

Response 107.167

The Agency is not making changes in response to this comment. The comment mischaracterizes the proposal. Please also see Response to Comment 200.166.

Comment 107.168

Senate Bill 74349 which OPR cites as its authorizing statutory authority - along with the Governor's unenacted climate goals - was a crony bill that provided "remedy reform" to assure timely completion of the Kings Arena. It was introduced and enacted in a classic "gut and amend" format in the closing days of the 2013 legislative session, by the then-Senate Pro Tern just ahead of his successful run to be Mayor of Sacramento. Based on widespread outrage that the Senate leadership was willing only to promote his own basketball team agenda with CEQA reform, SB 743 also promised some CEQA streamlining for "infill" housing projects, including the very straightforward Legislative "deletion" from CEQA of parking

and aesthetic impacts for certain infill projects. SB 743 also directed OPR to develop a different transportation metric under CEQA for neighborhoods - "transit priority areas" (TPAs) - located within half a mile of rail and ferry stops, and express commuter bus lines. SB 743 authorized, but did not require, OPR to adopt a different transportation metric for the 98% of Californians located outside TPAs.

Response 107.168

The Agency is not making changes in response to this comment. This comment consists of unsupported narrative. The comment does correctly note, however, that SB 743 directed and authorized the changes proposed relative to transportation impacts.

Comment 107.169

The policy, and politics, behind this transportation metric component of SB 743 were complex, but clear. The Legislature has repeatedly been asked to mandate reductions in VMT, including in early versions of SB 375 and in an Allen bill in 2016 50, and each and every time the Legislature declined to adopt a restriction on California's ability to drive ever-cleaner cars. There was widespread agreement, however, that in neighborhoods with frequent, high quality transit, CEQA should not be used to require "mitigation" by expanding the same roadways to reduce automobile delay.

Notwithstanding repeated pleas by hundreds of stakeholders including sister state agencies acting under unchanged transportation legal mandates under federal and state laws like Caltrans, OPR chose to subvert this Legislative rejection of a VMT reduction mandate. Instead of replacing automobile delay with VMT in TPAs, OPR decided to impose its version of a "road diet" and discriminatory "intentionally increase congestion" policy statewide, even in areas not served by transit.

OPR's transportation impact "substantive improvements" to CEQA are in fact unlawful: rejected by the Legislature, contrary to reality and feasibility as determined by CARB and the state's leading transportation agencies, and unconstitutional both as a civil rights and interstate commerce matter.

Response 107.169

The Agency is not making changes in response to this comment. The comment mischaracterizes the proposal and the comments submitted during the pre-rulemaking outreach phase. See response to comment 200.168. Please also note, SB 743 expressly suggested vehicle miles traveled as a replacement of level of service. (Pub. Resources Code § 21099(b)(1) (the Guidelines “shall recommend potential metrics to measure transportation impacts that may include, … vehicle miles traveled”).)

Comment 107.170

OPR's transportation impact "substantive improvements" also fail as Guidelines under CEQA and the APA for numerous reasons. For example, OPR's thresholds impose a 15% below "regional average" VMT for housing and commercial projects, and imposes a "no net increase" VMT threshold for retail projects. OPR does not define what constitutes an adequate "region," does not acknowledge or address the cost or complexity of trying to enforce a ''no net increase" market-capture zone analysis for restaurants and other (struggling) retailers, does not identify thresholds for the dozens of other uses (hospitals, colleges, tourist attractions, ski and beach resorts, professional sports facilities or soccer fields, churches, schools, etc.), does not acknowledge the fundamentally conflicting and unresolved conflicts between different

VMT models, and offers no practical or implementable measures for "reducing" VMT for the projects located in the 99% of California that are not in TPAs.

Response 107.170

The Agency is not making changes in response to this comment. This comment addresses OPR's technical advisory, a non-binding guidance document. The Agency has forwarded these comments to OPR for its consideration.

Comment 107.171

Nor does OPR offer any evidence that this statewide VMT reduction is in fact necessary to meet any GHG reduction mandate. The entire state of California contributes less than 1% to global GHG emissions, and in the only available study a UC Berkeley team concludes that building all required new homes exclusively in existing urban communities will decrease California's annual GHG emissions by 1.67 MMtCQ2e, which is less than 1% of the GHG reductions that the California Air Resources Board has determined are required to be achieved under Senate Bill 32.51 52 Since all of California emits less than 1% of global GHG, worsening the housing crisis, virtually ending home ownership opportunities by demolishing tens if not hundreds of thousands of existing single family homes and building only higher density housing units that are overwhelming rentals in their place, is an unconscionable and unconstitutional GHG reduction strategy given the huge, and far less costly, range of strategies that are readily available to reduce GHG emissions globally. Even within California, simply managing forest lands to prevent and minimize the severity of wildfires, while producing jobs and timber products for Californians that actually sequester GHG rather than emit GHG as is the case with the typical steel and concrete used in high density high rise buildings, is a simple and effective GHG reduction strategy that would result in much more dramatic GHG reductions - without worsening the housing, poverty, homelessness, and transportation crisis that disproportionately affects Californians majority minority and millennial households.

Response 107.171

The Agency is not making changes in response to this comment. The comment appears to object to California climate policies; however, that is beyond the scope of this rulemaking. Public Resources Code section 21099 required the transportation guideline to "promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses." The comment does not dispute that the Guideline does so. OPR's Technical Advisory explains at length the connection between the thresholds that it recommends and California's climate goals. Please also see Master Response 1 regarding the statutory directive.

Comment 107.172

OPR should follow the lead of cities that have adopted local CEQA thresholds that reject traffic delay as a CEQA threshold in transit-served TPA areas, for which there are existing "traffic analysis zone" maps readily available from regional transportation planning agencies that provide substantial evidence in support of the fact that people living near high quality transit travel less by car - and building more density nearer public transit systems is appropriately dependent on focusing street improvements to prioritize public transit, as well as those who bike, scooter, and walk with or without transit connections. Instead, OPR has established a complex new set of evaluation mandates, and a mere "presumption" -

which can and will be argued in CEQA lawsuits, and thus must be addressed in CEQA compliance documentation prepared in anticipation of lawsuits - that VMT is lower in TPAs.

Response 107.172

The Agency is not making changes in response to this comment. See response 107.171. Please also note, those cities that have already begun analyzing vehicle miles traveled have urged the Agency to not limit the Guidelines to transit priority areas.

Comment 107.173

And in every case, what OPR has not done under the SB 743 "CEQA streamlining for infill projects" legislation, as explained in greater detail on separate commentaries submitted for all versions of the VMT technical guidance and a related Caltrans guidance (all of which are available on these websites, and are incorporated by reference and repeated in their entirety in this comment letter), is to eliminate CEQA's existing requirements to complete traditional "level of service" traffic studies. LOS studies are required to calculate project-level VMT as prescribed by OPR; LOS studies are also required to calculate criteria, toxic and GHG emissions - and to evaluate public safety - which continues to be required under SB 743.

Response 107.173

The Agency is not making changes in response to this comment. The comment is factually inaccurate. Level of service studies are not required to calculate project level vehicle miles traveled. Level of service studies require a travel demand model run for each project to assess volumes at each intersection, then microsimulation modeling at each intersection to assess delay associated with those volumes. Studies of vehicle miles traveled require only use of a sketch model, which can draw data from a single travel demand model run undertaken for the whole region once every few years; no microsimulation modeling is needed. The claim that congestion studies are require to calculate criteria, toxic, and GHG emissions, or to evaluate public safety, are also all incorrect. Criteria pollutants and greenhouse gas emissions require vehicle miles traveled (see inputs to CalEEMod). Toxic air contaminant analyses require vehicle volumes or truck volumes, delay is not a factor in those analyses. Nothing requires agencies to perform a level of service analysis to address safety.

Comment 107.174

Greenhouse Gas Emissions - § 15064.4. Resolving the issue of how GHG and climate change should be addressed under CEQA is the single most litigated CEQA issue addressed by the California Supreme Court in recent years. Although OPR was directed, and CARB was invited, by the Legislature in SB 97, to develop CEQA Guidelines to explain to practitioners how to address GHG under CEQA, OPR instead adopted its usual utterly opaque and "Talmudic" provisions in the CEQA Guidelines - and in Appendix Gas commented upon above. OPR's Guidelines drew the expected response, which was utter confusion, compliance chaos, and more than ten years of lawsuits affecting both housing production as well as housing and transportation planning, in the Newha /153 and SANDAG54 cases. In Newhall, the Court identified four "compliance pathways" that "may" be compliant with addressing GHG under CEQA, but almost immediately the California Attorney General's office submitted comment letters objecting to one of the Supreme Court's compliance pathways (compliance with applicable GHG reduction laws). In SANDAG, the Supreme Court upheld reliance on the GHG reduction regional target established under SB

375 for a 2020 Sustainable Communities Strategy, but again cautioned that its holding did not extend to a definitive ruling on the adequacy of post-2020 plans. And in San Diego, 55 the Court invalidated a local government climate action plan - one of the "compliance pathways" identified in Newhall - because its GHG reduction measures were not sufficiently enforceable, even though the vast majority of GHG emissions are caused by activities wholly outside the jurisdiction and control of any local government. CARB and OPR also collaborated in developing the SB 32 Scoping Plan adopted in December 201756, including CARB's GHG expert agency determination that effectively adopts a "net zero" project-level GHG significance threshold, and numeric standards for local climate action plans that correspond to the per capita GHG emissions of some of the poorest nations on earth. (See Attachment B, The Two Hundred comment letter on the CARB Scoping Plan, also referenced above.)

The OPR 2017 Proposals do nothing to clarify how CEQA applies to GHG, how GHG reduction legislation and regulations (e.g., cap and trade and low carbon fuels, solid waste and composting waste diversion mandates, SB 375 sustainable communities strategies setting forth comprehensive regional transportation and land use plans that meet established GHG reduction legal mandates, the electric and zero emission vehicular mandates and related infrastructure mandates such as electric car charging building code infrastructure requirements in CalGreen, the 50% renewable energy portfolio mandate, various water and energy conservation programs, and the 50% renewable energy standard), and it completely ignores the CARB Scoping Plan CEQA thresholds for project-level "net zero" GHG emissions, climate action plans, above-and-beyond SB 375 VMT mandates, and "Vibrant Communities" appendix for eight state agencies to intervene without any corresponding statutory authority into local agency approvals of plans and projects to address the housing, transportation and poverty crises, in their entirety.

OPR has instead spawned even more confusion by asserting that GHG emissions should be more properly evaluated based on "incremental" project GHG emissions rather than the project-level quantitative evaluation and mitigation approach now commonly in use based on OPR's original guidance along with lead agency and practitioner parsing of judicial precedent. Yet OPR provides no direction on how to do this different "incremental" assessment - since every project-level analysis already addresses the "increment" of impacts attributable to a project.
OPR's 2017 Proposals utterly fail to explain, in plain language, how CEQA applies to GHG emissions - what level of analysis is required, can a project reasonably rely on compliance with state and local GHG mandates (laws, regulations, plans and programs) as adequate mitigation and/or a conclusion that a project's GHG emissions are less than significant, and how should cumulative impacts be addressed since the current housing crisis has prompted substantial out-migration of Californians to ever more distant housing locations in the state (with higher GHG emissions based on hotter climates and longer commutes), and to even higher per capita GHG emissions to the states most likely to receive California housing refugees (states with far lower housing, transportation and utility costs for average residents) such as Texas, Arizona and Nevada.

In the midst of the state's cruel housing, poverty, homeless and transportation crises, it shocks the conscience that OPR, which considers itself the state agency expert on planning and CEQA, has actually increased CEQA's ambiguity - and lawsuit risks - in how to deal with GHG and climate change under CEQA. California produces less than 1% of the world's GHG emissions, and California's per capita emissions are lower than all but two states (a new England 55 Cleveland National Forest Foundation et al. v San Diego Association of Governments et al. (2014). 180 Cal.Rptr.3d 54856 CARB. California's 2017 Climate Change Scoping Plan, (Nov. 2017), https://www.arb.ca.gov/cc/scopingplan/scopingplan2017.pdf (as of March 12, 2018)

Response 107.174

The Agency is not making changes in response to this comment. The Agency has incorporated additions and changes that reflect recent case law addressing greenhouse gas emissions. The comment repeats a theme seen above: in the commenter's view, the CEQA Guidelines are not clear enough to the commenter's liking. The comment then attributes California's housing shortage to the alleged lack of clarity. These claims lack credibility. They are unsupported by any facts or legal analysis. The Agency also notes that the comments do not provide any suggestions to improve the clarity of the Guidelines. Please also see Master Responses 8 and 20 regarding housing affordability and broader social policy.

Comment 107.175

As with all other legal deficiencies in this "comprehensive" update to the CEQA Guidelines, OPR's failure to comply with CEQA and APA also results in the unconstitutional and unlawful disparate impacts to minority families and other hard working Californians who are deprived of housing they can afford, who can safely and timely commute to jobs. It also conflicts with existing federal, state and local laws intended to assure consumer protection (e.g., building code requirements that increase housing costs must be cost-effective), transportation mobility (e.g., federal and state mandates to assure effective transportation networks that accommodate interstate commerce, and local General Plan circulation element requirements to assure safe and effective local transportation networks), and conflicting GHG mandates (e.g., AB/SB 32 and SB 375 mandates requiring agency GHG reduction implementation actions to accommodate population and economic growth and prosperity).

Response 107.175

The Agency is not making changes in response to this comment. Please see Response to Comment 107.174.

Comment 107.176

OPR's 2017 Proposals include 17 additional changes in the "comprehensive" amendments to the CEQA Guidelines. This list is both incomplete (e.g., regulatory definitions are required to clarify some statutory provisions, including those described above for GHG, transportation, and numerous other issues), and itself includes modifications that are unlawful under CEQA and the APA because they introduce more ambiguity, resulting in more litigation risks, which will continue to be used in CEQA lawsuits to oppose housing, transportation, and the other public infrastructure and service projects critically needed to address the housing, poverty, homelessness and transportation crises.

Response 107.176

The Agency is not making changes in response to this comment as this comment merely provides the commenter's perspective as an introduction.

Comment 107.177

1. Hazards - § 15126.2(a). As previously discussed in the context of the BAAQMD Supreme Court decision, OPR unlawfully conflates the Supreme Court's "exacerbation" standard for considering

the extent to which CEQA requires consideration of the existing environment's effect of a project, with a new "indirect impact" approach that is not supported by or consistent with the Supreme Court's decision. OPR and various advocacy groups have repeatedly attempted, and failed, to persuade the Legislature to overturn BAAQMD and its predecessor case Ba/Iona Wetlands and expand CEQA to require consideration of an existing environmental condition's impacts to a project rather than the project's impacts to the environment. This proposed revision to the CEQA Guidelines is not authorized by CEQA and simply "blinks away" the Supreme Court's BAAQMD decision. It is unlawful, and must be rewritten to provide clear and understandable direction on how the "exacerbation" standard articulated by the Supreme Court is to be applied for each particular impact issue. OPR got it right in its Wildfire threshold under Appendix G, as discussed above - and it should revise the 2017 Proposals to get it right for each topic addressed in Appendix G, with further consistent and corresponding explanatory text revisions to § 15162.2(a)).

Response 107.177

The Agency is not making changes in response to this comment. The revisions comport with the Supreme Court decision in that they direct lead agencies to consider impacts that arise because hazardous conditions are exacerbated. They specifically require that an environmental impact report "evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions…" The comment provides no analysis to support its assertions. Therefore, no change is necessary.

Comment 107.178

2. Baseline - § 15125. It is a testament to the "Talmudic" legal tradition created by OPR's affection for opaque and ambiguous Guidelines that lawsuits - including lawsuits elevated all the way up to the California Supreme Court - continue to include contested versions of the appropriate "baseline" condition against which project impacts should be evaluated. The current state of the law is completely clear: reliance on existing physical conditions is always legally defensible; reliance on either past or future reasonably foreseeable conditions is sometimes defensible if supported by substantial evidence in the record. Instead of drafting clear regulatory language that explains this law, and then clarifies when deviations from the "existing conditions" baseline is appropriate and what "substantial evidence" is required to deviate to a past or future baseline, OPR adds an opaque new "purpose" sentence in § 15125(a) that itself introduces new ambiguity: "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 (emphasis added)." How does this new "most understandable" text clarify when and to what extent deviations from existing conditions are appropriate? Further, CEQA requires consideration of project impacts - how does introducing a new distinction between "near-term" and "long-term" impacts affect the level of analysis required in all impacts under CEQA? Is "near term" simply intended to cover project construction (a well understood and litigated phase of the "whole of the project") - or is it more? Does "long-term" require a different set of assumptions about future conditions, and if so how does it relate to the existing CEQA requirement to consider "reasonably foreseeable" future conditions in the cumulative impacts assessment?

Response 107.178

The Agency has revised this section, as described below. While the commenter thinks the state of the law on this issue is "completely clear," many stakeholders disagree and suggested in the proposed changes to clarify recent cases. (See, e.g., Comments submitted by the American Planning Association, California Chapter (APACA), Association of Environmental Professionals (AEP), and the Enhanced CEQA Action Team (ECAT) (August 30, 2013).) The provision to which the commenter objects, the statement of purpose, was drawn from the cases.

Comment 107.179

OPR is not content to introduce this level of new uncertainty into the CEQA Guidelines: it triples down with even more undefined and ambiguous new text. New subsection § 15125(b)(l) adds a new requirement that the evaluation must address impacts from "both a local and regional perspective." How does this relate to the Appendix G thresholds: is something new intended here, or is this "local v regional" scope of required CEQA analysis captured in Appendix G - and if not, why not?

Response 107.179

The Agency is not making changes based on this comment. The perspective that a baseline must include is directed by statute and has existed in the Guidelines for decades. (See, Public Resources Code Sections 21002, 21003 and 21100.)

Comment 107.180

OPR then internally contradicts itself with its final subsection, § 15125(b)(3), which says that a lead agency may not rely on "hypothetical" conditions, such as those that "might be allowed" but "have never actually occurred" as the baseline. By definition, a future conditions baseline - expressly allowed in § 15125(b) if supported by substantial evidence - includes allowable new uses that have not yet occurred. This flat contradiction is beyond sloppy drafting: when applied in the context of assessing the impacts of housing, transportation, public services and other critical infrastructure projects, it increases compliance costs and litigation uncertainty, thereby exacerbating California's poverty, housing, homeless, and transportation crises.

Response 107.180

See response to comment 107.178. The provision to which the commenter objects is based on decisions from the California Supreme Court.

Comment 107.181

3. Deferral of Mitigation Details - § 15126.4. This is another example of OPR drafting that introduces unlawful new ambiguity into CEQA which is inconsistent with existing statutes and definitive court precedent. CEQA compliance is required at the earliest feasible time to assure that mitigation measures and alternatives will be meaningfully considered and adopted if feasible, to reduce significant adverse project impacts to the environment. The issue of how detailed mitigation measures need to be at this initial phase of project planning, when CEQA compliance must have occurred, has repeatedly been litigated.

Response 107.181

The Agency is making changes to this section, though not in response to this comment. This section captures the holdings of various court decisions.

Comment 107.182

In the absence of useful or clear CEQA Guidelines, CEQA's requirements on this issue has been defined by the courts. In Sundstrom, and as cited in the most authoritative CEQA judicial precedent treatise, mitigation measure details in Negative Declarations are required to show that there is no "fair argument" that the impact at issue would be significant and unavoidable. [For EIRs, in contrast, this issue was definitively addressed in the Richmond Chevron decision, which has been cited with approval in many other court decisions, which allows deferral of mitigation details as long as the mitigation measure includes a clear "performance standard" explaining the mitigation that will be achieved by the mitigation measure, as well as at least some examples of feasible mitigation measures that will achieve that standard.

Response 107.182

See response to comment 107.181

Comment 107.183

Courts have also made clear that changes to mitigation measures
that themselves result in significant new impacts not previously analyzed trigger the need for additional CEQA review.

Response 107.183

The Agency is not making changes in response to this comment. The comment does not suggest any changes to the proposal.

Comment 107.184

OPR's 2017 Proposals include unlawful new constraints on the "performance standard/feasible measure list" form of mitigation measure expressly allowed by courts. Specifically, OPR's revision to § 15126.4(a)(l)(B) asserts - with no authorizing statutory authority - that this form of court-approved mitigation measure is only allowed if it is "impractical or infeasible to include those details during the environmental review."

There is no better example of the harm caused to housing and transportation projects by this unlawful new constraint on mitigation measures than the rapidly evolving transportation technologies and services, and equally rapidly evolving pattern of retailing and medical services, now occurring throughout California. A fixed route "shuttle" required for a particular project to connect to a shopping center, a medical center, and a regional bus terminal may make sense - or it may run empty if on-demand private commuter vanpools, home delivery of internet purchases, and "telemedicine" check-in for routine medical appointments - make such fixed route shuttle service

an obsolete, expensive, and ineffective transportation solution. Instead, requiring a transportation "performance standard" - such as limiting single-occupancy private auto commuter trips - along with a list of feasible measures that could comply with this standard (e.g., carpool matching, subsidized vanpools or vouchers for on-demand ride services, secure bike parking at public transit nodes, and a fixed route shuttle) is in common use today as a completely lawful and practical CEQA mitigation measure.

Response 107.184

See response to comment 107.181. The commenter mischaracterizes the proposal and offers no analysis to explain its assertions. Therefore, no changes are necessary.

Comment 107.185

For no good reason - and with no legal authority - OPR would disallow this performance standard/feasible mitigation measure practical, lawful and common sense approach for reducing rush hour single-occupancy automobile use.

Response 107.185

See response to comment 107.184.

Comment 107.186

CEQA also requires annual Mitigation Monitoring and Reporting Plans (MMRPs), which provide an ongoing compliance check for compliance with the mitigation performance standard. Instead, OPR adds an unlawful new legal prohibition on this mitigation approach, which is that a lead agency must demonstrate that it is "infeasible" or "impracticable" to lock down all mitigation measure details in an EIR for a project that will last decades. OPR's "Talmudic" drafting traditions veers well into abstract academe, handing yet another ambiguous and litigious new windfall to the legions of CEQA litigants who make infill housing projects their top CEQA lawsuit target.

Response 107.186

See response to comment 107.184.

Comment 107.187

4.Common Sense Exemption - § 15061. This Guideline substitutes the term "general rule" for "common sense" in describing a class of discretionary government actions that would if "it can be seen with certainty that the activity in question may have a significant effect on the environment." The terminology change brings this Guideline into conformance with the definitive Supreme Court decision on this issue, see Muzzy Ranch63 • However, OPR misses the mark entirely in this "comprehensive" update to the CEQA Guidelines by failing to describe the types of government actions that are covered by this "common sense" exemption. For example, in the numerous projects that benefit from or require public funding from multiple agencies - from homeless shelters to affordable housing to transit systems to playground renovations - for which a lead agency has already completed CEQA, is the mere granting of some public funds by other agencies yet another

CEQA-triggering event? It is OPR's statutory role to parse through this and other "common sense" exemption circumstances and provide clear and plain CEQA Guideline direction to agencies and stakeholders. OPR has failed to fulfill its duty in this and the many other "comprehensive" Guideline update provisions commented on herein.

Response 107.187

The Agency is not making changes in response to this comment. Public agencies define which of their own activities fall within that exemption. (See CEQA Guidelines § 15022(a)(1)(A).)

Comment 107.188

5. Citations in Environmental Documents - § 15072/ § 15087. These Guidelines clarify that only documents "incorporated by reference" rather than those "referenced" in CEQA documents must be made available for public review. Like the "Common Sense Exemption" example noted above, with this modified text
OPR completely shirks its obligation to provide direction in its "comprehensive" Guidelines update on the three most common practical issues that arise in relation to referenced documents.

Response 107.188

The Agency is not making chances in response to this comment. This change was recommended by the California Building Industry Association (August 30, 2013). Further responses are provided below.

Comment 107.189

First, an increasing percentage of the public reads CEQA documents online, and lead agencies and practitioners commonly use a "hyperlink" to a document incorporated by reference. These Guidelines should be updated to recognize, and endorse, this practice.

Response 107.189

The Agency is not making chances in response to this comment. Nothing currently prevents the use of hyperlinked documents in an EIR made available online. No change is necessary.

Comment 107.190

Second, some referenced documents can be quite voluminous. For example, the "program EIR" commonly prepared for SB 375 plans typically includes multiple volumes, including comment letters and responses, and technical reports on numerous subjects, that span many hundreds or even thousands of pages. Where a document is "incorporated by reference" but readily available online, OPR should clarify that only the portion(s) of the document actually relied on in the CEQA document at issue need to be printed in hard copy for library and public review.

Response 107.190

See response to 107.189.

Comment 107.191

Third, both technical handbooks and scientific books are typically copyright protected, and cannot be reproduced in their entirety - or used by unlicensed readers. The Guidelines need to clarify that excerpts of these copyright and or limited license documents relied on in CEQA documents, rather than the entirety of the documents, satisfy these public disclosure and access requirements.

Response 107.191

See response to 107.189. Also, the Public Resources Code requires documents that are referenced in an environmental document to be publicly available. Commenter provides no authority for the change it requests.

Comment 107.192

The need for this level of Guidelines clarification is by no means abstract: disputes about whether all relevant documentation is available in hard copy are common in CEQA comment letters on Draft EIRs and in lawsuits, as are disputes about the need to print hyperlink documents.

Response 107.192

See response to 107.189.

Comment 107.193

6. Conservation Easement as Mitigation - § 15370. This text change recognizes an important court decision affirming reliance on an agriculture easement as mitigation for a project's permanent loss of agricultural lands OPR's proposed text change, however, neither includes the clear judicial precedent established by the Court case, nor addresses the ongoing and litigious dispute about preservation of agricultural or wildlands as mitigation under CEQA.

Response 107.193

The Agency is not making changes in response to this comment because the comment provides no suggestions nor any legal authority supporting any changes.

Comment 107.194

First, OPR goes well beyond the scope of the court decision cited by OPR and recognizes only "conservation easements" rather than "agriculture easements" (which can and are different forms of easements under applicable federal and state law). OPR also errs in recognizing only "permanent" easements even though the court case at issue involved a "permanent" loss of agricultural lands, and the court did not opine on the duration of agricultural easements for less than permanent losses of farmland. The lawful duration of the mitigation easement is also subject to both the "nexus" and "rough proportionality" constitutional requirements, which have been expressly incorporated into and made part of the CEQA Guidelines in § 15126.4(a)(4) (A, B). This Guideline must be revised to expressly recognize the mitigation measure validity of "agricultural" easements for loss of agricultural lands, and further endorse agricultural easements that are less than "permanent" if the project at issue results in only a temporary loss of agricultural lands.

Response 107.194

The Agency is not making changes in response to this easement. The change in this section is to add a non-exclusive example. The change does not alter the standards for adequacy of mitigation measures. No further changes are necessary.

Comment 107.195

Equally important in this "comprehensive" update to the CEQA Guidelines, is that this Guideline must also expressly recognize that "preservation" of agricultural or natural resources lands is valid CEQA mitigation for project losses of agricultural or natural resources lands.

Response 107.195

The Agency is not making changes in response to this easement. See response 107.194.

Comment 107.196

Attachment B: OPR Must Comprehensively Revise Its Fatally Incomplete and Flawed Economic Analysis OPR is required by statute to complete an economic study of the impacts of its 2017 Proposals, and has instead prepared a fatally flawed study that essentially quantitatively addresses only one portion of its proposed new transportation thresholds (its proposed new 'VMT" based transportation metric), and ignores the nearly 100 other proposed changes to the CEQA Guidelines. This is fatal "piecemealing" of the required economic assessment, which makes it legally invalid.

Response 107.196

The Agency is not making changes in response to this comment. The Agency's Standardized Regulatory Impact Assessment explained:

> Most of the changes proposed in this update consist of refinements and clarifications of existing requirements. The update related to transportation, however, will replacement [sic] one study methodology for another. …. Because the economic impacts of using one methodology instead of another are capable of estimate, the update related to transportation is the primary focus of this SRIA.

(SRIA at p. 4.) The SRIA further explained why many of the other changes do not lend themselves to quantitative analysis. The SRIA did provide a qualitative analysis for the remainder. (SRIA, at pp. 34-37.)

Comment 107.197

OPR's failure to assess the economic impacts of the whole of its 2017 Proposals significantly understates the cost of implementing this suite of vague, ambiguous, incomplete, duplicative, conflicting, and unlawful new requirements, as described in Part 1 below.

Response 107.197

See response to comment 107.196.

Comment 107.198

OPR has also confined even its VMT analysis to cost impacts for what one consultant advised would be a low cost VMT study ($5000) which would be $15,000 lower than what another consultant advised would be a higher cost ($20,000) study of traffic delay using the traditional Level of Service ("LOS") transportation impact metric. This "analysis" fails under even the most rudimentary scrutiny, as described in Part 2 below.

Response 107.198

The Agency is not making changes in response to this comment. This comment provides no contrary evidence that would change the analysis.

Comment 107.199

More fundamentally, QPR has ignored its political, legal and moral duty to be accountable to California's consumers - and its hard-working California families - who are suffering from the housing crisis, poverty crisis, homelessness crisis, and transportation crisis.

Response 107.199

The Agency is not making changes in response to this comment. Please see Master Response 8 regarding housing affordability.

Comment 107.200

Numerous non-partisan studies have confirmed that CEQA is one of the causative factors of this problem: CEQA lawsuits and lawsuit threats that derail, delay, and increase the cost of all housing, as well as homeless centers, transportation projects, and other infrastructure (how many CEQA lawsuits have been filed against High Speed Rail to date - and how many more are expected to be filed - and just how much money have taxpayers spent on "soft costs" like CEQA instead of actual construction of actual physical improvements that actually provide housing and other critical infrastructure?). QPR should expand its economic assessment to consider the "pass through" costs to consumers, and the differentially higher cost burdens to be paid by the majority minority California families and millennials, of its ambiguous and litigious 2017 Proposals.

Response 107.200

The Agency is not making changes in response to this comment. is the comment provides no evidence of “pass through costs” in CEQA. Moreover, CEQA analysis costs will substantially decrease under this proposal, and the share of development that will be streamlined will substantially increase.

Comment 107.201

Major New Cost Burdens Imposed by QPR 2017 Proposals. While many of the OPR 2017 Proposals impose significant new direct costs, or costs of litigation defense, delay and risk, the following provide just a few examples of why QPR's unlawfully piecemealed economic assessment fail to disclose or assess the adverse economic consequences of its proposals.

Response 107.201

The Agency is not making changes in response to this comment because it is introductory.

Comment 107.202

Major CEQA Compliance Costs and Litigation Risks for Voter-Approved Projects Already Included in Prior Approved CEQA Documents.

All of the new CEQA compliance mandates included in the 2017 QPR Proposals have been drafted to be effective immediately upon compliance, with no recognition or "grandfathering" of pre-existing CEQA documents that are presumptively valid under CEQA if not litigated - and those that were litigated and found to be fully in compliance with CEQA's statutory requirements and then- applicable Guidelines - creates new litigation risks and compliance uncertainties for the thousands of EIRs in use today to support subsequent project approvals and ongoing agency practices - including but not limited to implementation of local land use plans to authorize housing projects, and implementation of transportation plans to authorize transportation projects. Even the portion of the transportation metric threshold that OPR proposes to phase in over less than two years was in fact made effective upon immediate adoption of the VMT Technical Guidance document1, unlawfully issued as an underground regulation without completion of the required rulemaking process.

Response 107.202

The Agency is not making changes in response to this comment. The proposed changes do not alter the rules on use of existing environmental review. The transportation guideline does include a phase-in period for new reviews.

Comment 107.203

However, OPR is not authorized to impose new, or different, legal requirements in the CEQA Guidelines except as expressly authorized to do so by statute. The CEQA Guidelines are supposed to be practical and clear interpretations of existing CEQA requirements - based on enacted statutes and judicial precedent. OPR's new mandates to expand CEQA, and unlawful new restrictions on lawful CEQA compliance practices, add new compliance costs and litigation uncertainties into CEQA. Since OPR has decided to embrace sweeping and ambiguous new CEQA mandates into the 2017 Proposals, its economic assessment must acknowledge, quantify, and assess the economic consequences of requiring the preparation of hundreds of supplemental CEQA documents - each of which can be targeted by a CEQA lawsuit - to simply continue to implement housing, transportation, and other infrastructure projects that have already gone through the CEQA process.

Response 107.203

The Agency is not making changes in response to this comment. This comment mischaracterizes the proposed changes, as described more fully above. It also does not identify any flaw in the economic analysis.

Comment 107.204

These costs will be especially high, and could create fatal funding shortfalls, for the scores of infrastructure and affordable housing projects already approved by voters with bond funding. The bond funding amounts were calculated based on the pre-2017 Proposals - and certainly did not anticipate or account for new rounds of CEQA documentation, new and more costly mitigation, new litigation costs, delay, and defeat risks. OPR's willingness to simply toss voter-approved, taxpayer funded housing and

transportation projects back into the CEQA cost abyss must be expressly acknowledged, quantified, and assessed in a revised economic impact assessment.

Response 107.204

The Agency is not making changes in response to this comment. Please see Responses to Comments 107.202 and 107.203, above.

Comment 107.205

a. New Prohibitions on Use of Performance Standard Mitigation Measures.

As discussed in Attachment A at Section D.3, courts have long recognized and upheld the lawful status of mitigation measures that establish a clear performance objective that mitigates an impact, but provides for implementation flexibility with a list of measures that are feasible and can reasonably achieve the performance standard. OPR's proposed amendments to § 15126.4 would prohibit this lawful practice unless an agency proves, with substantial evidence, that specifying all details in each and every mitigation measure is infeasible or impracticable.

This counterproductive new CEQA straightjacket elevates form over function: the goal of CEQA is effective mitigation built in as early as possible in the project planning process (well before, for example, architectural drawings are finished in multi-phase mixed use projects for buildings that may not be built for 5 years or longer). Litigation about the interpretation and implementation of mitigation measures is also not hypothetical: one of the most notorious CEQA anti-NIMBY housing lawsuits involved the interpretation of a mitigation measure to "preserve" a non-historic building stucco facade as allowing the facade to be carefully removed, and then re-installed on the high-density housing tower that was being built on this transit corridor in Hollywood. A court decision decided that "preserve" could only be interpreted as "preserve in place" rather than "disassemble and reinstall" - and invalidated the approvals for this completed project, which in turn required tenants to be escorted out of their occupied housing units. This travesty resulted in multiple years of an empty high-rise apartment building in the midst of a housing crisis - and this one project alone cost millions of dollars.

Response 107.205

The Agency is not making changes to its economic analysis based on this comment. The comment mischaracterizes the proposal. Please see Responses to Comments 107.181-107.186, above.

Comment 107.206

OPR's unlawful invalidation of court-approved performance standard mitigation measures would substantially increase pre-litigation CEQA compliance costs at two levels: (a) in the initial CEQA document, by requiring far more mitigation design details to be worked out far ahead of actual construction and occupancy, as described in more detail in the example of the transportation mitigation measure requiring fixed route shuttle buses discussed in Attachment A.D.3; (b) as subsequent project approvals occur (e.g., for later phases) or simply as the operation of the project demonstrates the greater effectiveness of an alternate mitigation measure that causes no new significant impacts, revised mitigation measures with additional rounds of CEQA documentation and lawsuit re- openers. This component of the 2017 Proposals would also substantially increase litigation risks as untested new "infeasible" and "impracticable" restrictions on lawful performance standard

mitigation measures are used in the next rounds of CEQA lawsuits against favored housing project targets.

Response 107.206

The Agency is not altering or augmenting its economic analysis based on this comment. The comment mischaracterizes the proposal. Please see Responses to Comments 200.181-200.186, above.

Comment 107.207

New Ambiguities and Enhanced Compliance and Litigation Defense/ Risk Costs for Unlawful New Restriction on Reliance with Other Environmental and Public Health & Safety Laws.

As discussed in greater detail in Attachment A in Section B.1, QPR has unlawfully proposed to restrict integrating CEQA with other legal mandates that help avoid or minimize CEQA impacts, ignoring many court interpretations upholding this practice. OPR's 2017 Proposal on this issue increases CEQA compliance costs and litigation risks by requiring redundant CEQA mitigation measures and significance evaluations (often invented by costly CEQA consultants and applied unpredictably and inconsistently across similar projects even within the same jurisdiction.

Response 107.207

The Agency is not altering or augmenting its economic analysis based on this comment. The comment mischaracterizes the proposal. Please see Responses to Comments 107.130-107.138, above.

Comment 107.208

Instead of taking this opportunit to simply and accurately update the Guidelines to endorse reliance on other legal mandates that avoid or minimize CEQA impacts (such as health and safety mandates), to endorse legal mandate in whatever form such mandates apply (statutes, regulations, ordinances, plans and programs), and to identify the many court decisions that uphold this practice, OPR's 2017 Proposals instead impose an unlawful new cost on agencies (including a new state mandated cost on local government), and further increase compliance costs and litigation risks for critical new housing, transportation, and other projects.3

Response 107.208

The Agency is not altering or augmenting its economic analysis based on this comment. The comment mischaracterizes the proposal. Please see Responses to Comments 107.130-107.138, above.

Comment 107.209

a. Risk Costs for Reliance on Earlier Approved Plans and Projects

All urban and suburban California housing projects are proposed in a context that already has at least three prior levels of approved CEQA documentation: the General Plan adopted by the city or county, the Zoning Code adopted by the city or county, and the greenhouse gas reduction regional land use and transportation "Sustainable Communities Strategy" reviewed and approved by the region's transportation agency in consultation with the region's cities and counties, and then approved again by federal as well as state environmental and transportation agencies including the California Air Resources Board ("CARB").

Urban and suburban housing projects are the most frequent targets of CEQA lawsuits statewide.

Response 107.209

The Agency is not altering or augmenting its economic analysis based on this comment. This comment merely provides commenter's view of what is required for housing development approval in other contexts and according to other regulatory processes.

Comment 107.210

Instead of providing this much needed clarification, and affirmatively acknowledging favorable court decisions involving reliance on addenda and other forms of streamlined CEQA compliance for housing projects in communities that already have an SCS PEIR, a GP EIR, and/or prior CEQA compliance for Zoning Codes, as discussed in Appendix A.B 2/3, the QPR 2017 Proposals introduce new ambiguities and uncertainties - and fail to address the core, and continuously litigated, disputes about tiering and "within the scope" claims. OPR's economic assessment fails to acknowledge or assess either the additional costs, or additional delays, created by these new ambiguities - nor does it acknowledge the associated physical harms to the environment or public health by exacerbating the housing, homeless, poverty and transportation crises by giving CEQA litigants still more challenge opportunities to litigate against their favorite targets, including housing and transportation and other public infrastructure.

Response 107.210

The Agency is not altering or augmenting its economic analysis based on this comment. The comment mischaracterizes the proposal. Please see Responses to Comments 107.139-107.142, above.

Comment 107.211

e. New Ambiguities and Enhanced Compliance and Litigation Defense/ Risk Costs for Greenhouse Gas Emissions

As discussed further in Attachment A.C.4, instead of providing clear and practical direction on how to address GHG emissions under CEQA, QPR chastises CEQA practitioners for focusing too much on determining whether quantitative project-level GHG emissions are significant - and avoiding the apparently more appropriate GHG impact assessment methodology of the "incremental" evaluation of GHG impacts. This vague and ambiguous new mandate provides zero discernable practical direction to agencies or stakeholders. It also shirks QPR's statutory responsibility to update the CEQA Guidelines based on judicial interpretations, including major Supreme Court decisions such as Newhall, SANDAG, and San Diego climate action plan cases.

For example, in Newhall the Court invalidated a CEQA threshold based on a statewide GHG reduction goal and instead suggested that thresholds should be developed for different types of projects in different locations; the Court also identified four alternate compliance pathways that "may" be appropriate under CEQA. Justice Leu, responding to a question in the 2017 Yosemite Environmental Law Section Conference, declined to state what CEQA actually did require for GHG emissions - but made the obvious point that this was a topic ready for regulatory agency action. Instead of grappling with, and proposing Guideline updates that actually provide the statutorily-required practical direction on this impact issue, QPR simply chides practitioners for what they are not doing. QPR also declines to acknowledge, or reconcile, conflicting GHG thresholds developed by various expert regional and state air agencies.

This OPR 2017 Proposal will increase GHG compliance costs by introducing yet another ambiguous new analytical methodology, with no clear corresponding threshold. It will also perpetuate and expand CEQA lawsuit GHG claims, which along with the related topics of traffic and air quality are the most frequent claims made against housing in CEQA lawsuits.

Response 107.211

The Agency is not altering or augmenting its economic analysis based on this comment. The comment mischaracterizes the proposal. Please see Responses to Comments 107.174-107.175, above.

Comment 107.212

f. New Ambiguities and Enhanced Compliance and Litigation Defense / Risk Costs for Defending Baselines

As discussed in Attachment A.D.2, the 2017 Proposals impose ambiguous as well as restrictive new standards on how "baseline" conditions, against which the significance of project impacts are to be measured, thereby increasing compliance costs and litigation risks for a foundational component of the CEQA evaluation process that applies to every one of nearly one hundred

Response 107.212

The Agency is not altering or augmenting its economic analysis based on this comment. The comment mischaracterizes the proposal. Please see Responses to Comments 107.178-107.180, above.

Comment 107.213

f. New Ambiguities and Enhanced Compliance and Litigation Defense/ Risk Costs for Impact s of the Environment on Projects

OPR's decision to ignore the California Supreme Court's holding in *BAAQMD* [7] and unlawfully conflate the environment's impact on a project as an "indirect" impact of the project, as discussed in Attachment A.D.2, also expands the scope of the required CEQA analysis without Legislative authorization and in contravention of the Supreme Court decision. The Legislature has repeatedly declined to amend CEQA to require consideration of the environment's impacts on a project, which is a statutory constraint OPR likewise fails to acknowledge or obey.

As discussed in detail in the Appendix G comments included in Attachment A, this has resulted in the addition of more than a dozen CEQA thresholds with corresponding analytical impact analyses, mitigation mandates, and litigation costs and uncertainties. This is yet another example of an economic impact of the 2017 Proposals that are ignored in OPR's economic assessment.

Response 107.213

The Agency is not altering or augmenting its economic analysis based on this comment. The comment mischaracterizes the proposal. Please see Responses to Comments 107.72, 107.77, 107.88, above.

Comment 107.214

2. New Transportation Impacts/New VMT and Traffic Inducement Proposal Notwithstanding voluminous comments and objections to OPR's proposal to use CEQA's transportation impact thresholds to legally

mandate its unlegislated "road diet" policy of intentionally increasing congestion to induce public transit use (in an era of plunging bus and even decreases in rail transit ridership in California notwithstanding billions of public transit dollar investments, and in an era of the state's most acute housing crisis in history where minority and young workers are disproportionately forced to "drive until they qualify" for housing they can afford to rent to areas not served, or very poorly served, by timely public transit services to employment centers.

Response 107.214

The Agency is not making changes to its economic analysis based on this comment. The comment mischaracterizes the proposal. Please see Responses to Comments 107.159-107.173.

Comment 107.215

First, OPR lacks substantial evidence in the record supporting the $5000 VMT study cost. As several noted traffic experts, including those advising OPR have concluded, there are no professional standards or regulatory definitions that prescribe and resolve numerous variables with "VMT" based studies, numerous VMT methodologies resulting in very different results are available even within the same geographic area, there are no thresholds for dozens of common land uses (parks, schools, hospitals, hotels, etc.), and there is no evidentiary basis supporting a prescribed level of effectiveness for various purported VMT reduction 7 California Building Industry Association v Bay Area Air Quality Management District. (2015) 62 Cal.4th 369 strategies like providing secure bike parking (or not).8 Traffic-related objections are the most commonly litigated CEQA issue, and housing is the most common litigation target. Developing and then litigating such new issues into some level of judicial stability - a mandate given the vague and incomplete VMT regulations and guidance that QPR has elected to issue - is a decade-long exercise, with fights among experts and inconsistencies in practices and precedent inevitable.

Response 107.215

The Agency declines to make any revisions in response to this comment. The commenter suggests $5000 is an underestimate for a typical study of vehicle miles traveled. The comment provides no evidence to support its claim. The estimate in the SRIA, on the other hand, was provided by a practitioner who regularly undertakes such analyses. The estimates in the SRIA are consistent with evidence provided by local governments that analyze vehicle miles traveled in their environmental documents. The Agency finds that evidence to be more credible than the comment's unsupported assertion.

The comment further complains of a lack of standards. Again, the comment is at odds with the plain language of the proposed regulation:

> 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 [which states that good -faith effort and not perfection is required] shall apply to the analysis described in this section.

(Proposed Section 15064.3(b)(4).)

Comment 107.216

"Armoring up" for VMT lawsuit fights, and then actually litigating these complex issues into stability, will cost man millions of dollars more - and raise housing prices for all housing projects at risk of CEQA lawsuits - than the facile $5000 estimate offered up by QPR in its economic analysis.

Response 107.216

The Agency is not making changes to its economic analysis based on this comment. This comment presents the same flawed speculation as above. Please See Response to Comment 107.214.

Comment 107.217

OPR's economic assessment likewise avoids acknowledging or quantifying the economic consequence of intentionally worsening traffic congestion, including but not limited to traffic congestion that adds tons of air pollutants, adverse individual health consequences such as stress and high blood pressure, adverse family health and welfare consequences from exhausted parents forced into 3 or more hours of daily commute time that can never be used to help kids with homework or regular dinners - or the billions and billions of dollars of California's economy that requires efficient goods movement.

Response 107.217

The Agency is not making changes to its economic analysis based on this comment. This comment presents the same speculation as above. Please See Response to Comment 107.214.

Comment 107.218

Finally, OPR's economic assessment completely ignores the economic consequences of requiring its new transportation metrics to be applied to projects that have already been assessed in pre-2018 EIRs: the next discretionary approval for these projects must apparently be delayed for the 2 or more years required to complete a further round of CEQA review, and then the next 3-5 years for CEQA lawsuits (note that the Senate 2017 study of state agency CEQA practices shows that about half of Caltrans EIRs are litigated), and then the cost overruns from more studies, more delays, more mitigation, and more litigation uncertainties including attorney fee awards to CEQA petitioners. Taxpayer funded infrastructure projects, housing projects that comply with previously-adopted housing plans for which EIRs have been approved, and the other public service and infrastructure needed to serve these housing and transportation projects, will all experienced much higher CEQA costs under the QPR 2017 Guidelines.

Response 107.218

The Agency is not making changes to its economic analysis based on this comment. The proposal does not alter standards regarding the use of existing environmental reviews.

Comment 107.219

OPR simply ignores - completely - all of these costs, as well as the secondary costs of economic losses ranging from homelessness to increased high school dropout rates caused by California's housing, poverty, homeless and transportation crises. These are real costs, suffered by actual people as well as

the environment and the economy, that appear to be invisible to QPR. These costs must be identified, quantified, and disclosed as part of the required revisions to the "comprehensive" update of the CEQA Guidelines that QPR is statutorily required to complete under CEQA and the APA. OPR also ignores federal and states civil rights laws, and independent studies, confirming that vehicular transportation is a critical pathway out of poverty. In fact, public transit allows far fewer than 10% of Californians to commute to work in 60 minutes. 10 Intentionally increasing congestion to "induce" transit use for the disparate number of minority workers who must be physically present at their job to get paid, and who are forced by the housing crisis to live ever greater distances from tony coastal enclaves most likely to use CEQA and other tools to block new housing, is a fundamentally racist - and unlawful - policy and regulation. The fact that OPR's purported economic study ignores the racist consequences of its new transportation thresholds, and ignores both the increased fuel and other direct economic costs to California's majority minority households, as well as the lost opportunity time for families, health, and economic productivity from grinding daily commutes lasting more than three hours each day, is unconscionable - and unlawful.

Response 107.219

The Agency is not making changes to its economic analysis based on this comment. This comment presents the same flawed speculation as above. Please See Response to Comment 107.214.

Comment 107.220

Conclusion

OPR's economic analysis ignores the fact that estimated GHG reductions from the high cost housing, infill-only, "transit inducement" strategy of intentionally increasing traffic congestion is estimated to only result in about 1.67 MMTCO2e/year in GHG reductions. The OPR 2017 Proposals' poverty-worsening, housing crisis worsening, commute worsening, civil rights violations against Californians majority minority population would result, in turn, in reducing less than 1% of California's GHG reduction goal per the 2017 Scoping Plan adopted by CARB, within a global context in which the entirety of California produces less than 1% per year in GHG emissions. Even as a purported climate policy, the "necessity" of imposing new CEQA mandates that violate the civil rights of California's minority communities is entirely unsupported - and far more meaningful GHG reductions can be achieved, far more cost-effectively, without increasing the misery and poverty of California's middle income, minority, and millennial households. To cite just one example, instead of trying to make the life of California's dwindling middle class - and its minorities and millennials - ever more costly and challenging with these new CEQA expansions in transportation and other Guidelines, many millions of GHG emissions could be avoided by finally forcing state bureaucrats to allow for effective management of California's forests, which among other features provide both sustainable building materials as well as jobs and economic revenues for many of California's rural poor communities. As recently documented by the Little Hoover Commission, wildfire GHG emissions easily wipe out all GHG reductions achieved by California's legal mandates - and shockingly ineffective forest management practices in one fire that spanned the California-Mexico border left the California forest levelled while allowing 95% of trees to survive across the border in Mexico.

There are effective GHG reduction strategies (including forcing federal and state forestry and species bureaucrats to immediately start doing their job and allow for safe forestry management), and to the extent that the OPR 2017 Proposals were distorted to unlawfully elevate GHG reductions and climate above all other CEQA impacts, then OPR must expressly disclose and defend this climate-

first regulatory agenda, and then must disclose all economic as well as environmental consequences of its new regime. It is still a fundamentally unconstitutional and unlawful regime, but OPR has an independent statutory obligation to fully disclose the economic consequences of its proposals - and has failed to do so.

Response 107.220

The Agency is not making changes to its economic analysis based on this comment. Responses to specific comments are provided above

Comments Presented at the Public Hearing in Los Angeles, March 14, 2018

Comment T1.1

15064.3(b)(1), where this references to existing conditions, that ought to be baseline conditions. I think that's what you meant. But this allows lead agencies to choose an appropriate baseline, other than existing conditions.

Response T1.1

The Agency is not making changes in response to this comment. We are using existing conditions is more appropriate for this particular provision than baseline.

Comment T1.2

Secondly, section 15064.3(c), it shows the date July 1st, 2019 for applicability. We thought that was going to be January 1st, 2020. But whatever that date is, we believe that lead agencies are going to need a year after the rulemaking is complete, just to sort things out and minimize destruction. So that's on the word-smithing part of it.

Response T1.2

The Agency has made changes in response to this comment. Please see Master Response 7 regarding the phase-in period.

Comment T1.3

But our belief is to further minimalize disruption we believe that limiting the initial implementation only to transit priority areas is what ought to be done at first. There's going to be a lot of transitioning. And after all, the original -- the original subtitle of SB 743 was transit-oriented infill projects. And, in fact, legislators from both parties voted for this legislation. And a lot of them are going to be awfully surprised when they see how broadly these Guidelines are being applied statewide.

We believe that, at least initially, the Guidelines should be applicable only to transit-oriented projects, infill projects. And this allows the -- and then allow the lead agency to determine the appropriate measures of transportation impacts. For instance, they might conclude that even though VMT increases, greenhouse gases might decrease because of changes in the mix of how vehicles are powered.

Response T1.3

The Agency is not making changes in response to this comment. Please see Master Response 3 regarding the geographic application of the Guidelines.

Comment T1.4

The issue that I have is that until recently paleontological resources, or at least consideration of them, was lumped under cultural resources. And then due to AB 52, it has it that part of the language was to separate paleontological resources, again, fossils, from consideration under cultural resources. Unfortunately, AB 52 didn't stipulate where paleontological resources should go.

As they've been in cultural resources, they've been kind of a square peg in a round hole, I mean paleontological resources. And so it's ended up in this revision, this update, in geology and soils; again, a square peg in a round hole. And I would request that consideration be given to make paleontological resources their own standalone issue under CEQA.

Response T1.4

The Agency declines to place the Appendix G question related to paleontology into a separate, stand-alone section. The Agency does not dispute that paleontological resources are unique resources. The Agency finds that creating a distinct section for paleontological resources is not necessary in Appendix G. Agency notes that three key points remain unchanged by this proposed rulemaking package and would not change even if paleontological resources were moved into a separate section. First, a lead agency must adequately analyze and mitigate all of a project's potentially significant impacts, including impacts to paleontological resources. Second, a lead agency also has the discretion to establish the thresholds of significance for use in reviewing a project's environmental impacts. (See CEQA Guidelines, § 15064(b).) Finally, Appendix G is merely a sample initial study format that a lead agency can tailor to address local conditions and project characteristics. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112; *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 227; *Save Cuyama Valley v. County of Santa Barbara*, 213 Cal. App. 4th 1059, 1068; CEQA Guidelines, § 15063(f).) Thus, the Agency finds that it is not necessary to create a stand-alone section in Appendix G for paleontological resources. Creating a stand-along section does not expressly achieve the Agency's stated goals of making the CEQA process more efficient and resulting in better environmental outcomes.

Comment T1.5

Geology and soils, as it's currently -- as has currently been discussed and described in Appendix G of CEQA, is concerned primarily with earthquake rupture, soil expansion, landslides, issues totally unrelated to paleontological resources, which we can think of more as ancient biological resources, the remains and traces of prehistoric animals that record and document the history of life on our planet.

And here in the state of California, we have a remarkably rich paleontological record that includes billion-year-old fossils from the Death Valley region of microscopic early forms of life on this planet, 500-million-year-old trilobites (phonetic) from the Mojave Desert. Some of the oldest remains of dinosaurs in California are found in the Central Valley. And in San Diego County, we have 40- and 50-million-year-old land mammals, again, documenting this incredible richness of ancient life in this region. Of course, here in Los Angeles, we're blessed with the Rancho La Brea Tar Pits that have the most spectacular occurrences of fossilized creatures in the world. And the protection of these under CEQA could be enhanced by the development of this standalone paleontological assessment under CEQA.

Response T1.5

Please see Response to Comment T1.4, above.

Comment T1.6

I realize that part of the goal of these allocations is to streamline the process and adding, perhaps, a new issue under CEQA might seem as not streamlining the project. But I noticed that there have been some other new issues added to the checklist in Appendix G, including wildfire, tribal cultural resources, and also energy. And so I would ask you to consider that paleontological resources have this other status.

As it's currently written in the proposed upgrades, the question for paleontological resources is kind of oddly coupled, that it involves -- I'll just read it, "Directly or indirectly destroy the unique paleontological resource or site or unique geological feature." And there a couple of problems with this, one being that it's putting together geological resources and paleontological resources which totally unrelated issues are, and they're coupled together in this single question.

It seems that there's an existing area where aesthetics that dictate anything related to (indiscernible) that could be construed to imply geologic features. So removing geologic features from this question would make paleontological resources at least have a single issue under this question.

Response T1.6

Please see Response to Comment T1.4, above.

Comment T1.7

But then it talks about "destroy the unique paleontological resource," and the term "destroy" is somewhat unique within the overall Appendix G series of questions, which are more focused on adverse effects or adverse changes. And I would ask that you consider rewriting this question for paleontological resources to read, directly or indirectly cause a substantial adverse effect on a paleontological resource site, again as a standalone question under CEQA. And I think it would eliminate all of this problem of a square peg in a round hole, and also with this language that focuses on destruction. That's not an issue that we really think about in terms of most of the resources protected under CEQA. It's not the destruction, it's the adverse effect of those.

And then this term "unique paleontological resources," unique is not defined under CEQA. And it seems to be -- I mean, I'm unique, you're unique, we're all unique, so that would mean perhaps any fossil would be unique. So I would suggest having a more generic discussion in terms of paleontological resources.

Response T1.7

Please see Response to Comment T1.4, above.

Comment T1.8

Prohibit non-CEQA lawsuits for allowing petitioners to conceal their identities and economic interests.

Response T1.8

Please see Master Response 20 regarding broader policy issues.

Comment T1.9

Two, prohibit the duplicative CEQA lawsuits allowing parties to repeatedly sue over the same plan or projects implementing the plan for which CEQA compliance has already been completed.

Response T1.9

Please see Master Response 20 regarding broader policy issues.

Comment T1.10

Three, establish an amended, not-ended approach of directing corrections to any deficient environmental study, rather than vacate project approvals.

Response T1.10

Please see Master Response 20 regarding broader policy issues.

Comment T1.11

And, four, most importantly here in Los Angeles County, because we, BizFed, has endorsed many sales tax initiatives and other funding sources, like Measure M, a $120 billion transportation plan, Measure H supporting homeless services and supporting housing, that's another area where CEQA improvement to make sure that more of that can go towards that infrastructure to help transportation, to help our homeless and help those communities, rather than to the lawsuits and to the lawyers, which that only effects a small amount and only helps to supports them.

Response T1.11

Please see Master Response 20 regarding broader policy issues.

Comment T1.12

So we strongly support the statewide replacement of level of service with the vehicle miles traveled metric and the prioritization that that will give for transit-oriented development, active transportation and transit projects, especially in the infill context, and clarifications that discourage growth capacity expansion in the name of safety.

Response T1.12

The Agency appreciates the commenter's support.

Comment T1.13

On the recommendation side, we think that it is a major oversight that highway expansion projects would be exempt from the shift from LS (phonetic) to VMT and have that be at the discretion of the lead agency. And so we're also calling on Caltrans to commit to applying the VMT metric when they are the lead agency in road project. We think that it makes sense to strengthen the VMT threshold over time so that we are not just decreasing VMT compared to today, but that it is a goal of accelerating the decline of VMT by strengthening our standards over time.

Response T1.13

Please see Master Response 5 regarding roadway capacity projects.

Comment T1.14

We also want to highlight and seek opportunities to reduce the risk of displacement and gentrification by streamlining affordable housing in infill locations and not streamlining projects that will result in a net reduction of affordable rental units.

Response T1.14

The Agency will not make changes in response to this. Please see Master Response 20 regarding broader policy issues.

Comment T1.15

And we want to ensure that there is regular monitoring of implementation of these Guidelines and OPR's technical advisory to see if it's actually having the intended effects.

Response T1.15

The Agency is not making changes in response to this comment. This Guidelines update has generated significant public interest, and we expect that the public and agencies will provide input regarding implementation when the Agency next considers a CEQA Guidelines update.

Comment T1.16

We're having an issue with addendums being way far reaching from what they were intended to be which are minor changes in the projects. They are then not noticed to anyone. They don't come up before any planning board, so there's no way of anyone finding out what has been approved. For instance, we had a expansion on landfill approved with an addendum when it was in the middle of a hearing process. So we really think that -- and they didn't notify anyone, even though they are required, they have an agreement with the community to do so.

Response T1.16

The Agency is not making changes in response to this comment. It is outside the scope of this rulemaking.

Comment T1.17

Now there's just another one on another large project for sewer lines that go through tributaries and possibly endangered species habitat and nobody knew about it. We find out two years later.

Response T1.17

The Agency is not making changes in response to this comment. It is outside the scope of this rulemaking.

Comment T1.18

So what I came to ask you to do is as you are ensuring that the public is informed on notices, that you notice addendums, print them on websites, something to mail out, anyway, but just somehow there

needs to have an elimination of this Catch 22 where we didn't tell you, so you don't know, so you can't comment, so you can't say anything, so the addendum is approved with whatever it is. And they are being abused up and down the state.

So I ask that along with what you're doing to make sure that the notices are comprehensive and understandable to the public, that you notice addendums.

Response T1.18

The Agency is not making changes in response to this comment. It is outside the scope of this rulemaking.

Comment T1.19

So my comment is, I would like, in section 15082, to amend it to state that notices must be filed with the county clerks or cities that border the project. These cities are directly next to the project, they're adjacent. It's right at the corner of three cities.

Also state that for projects that will impact the public in adjacent cities, they will be notified, specifically that postings be made at the project site and that the lead agency make efforts to include impact to the public e.g. by news outlets, media and direct mailings.

And I would make the same comment on sections 15062 and 15075. That's -- and those are other things, like, I think, what it is, negative declarations or with a mitigating declaration. So that's one thing.

And I think the reasons are, if you look to CEQA, I understand the California CEQA was a California version of NEPA. And NEPA, if you look at the Council on Environmental Quality recommendations or regulations, they specifically say the city -- well, the federal agencies, when they're doing projects, should make a diligent effort to notify the public. And I think that there wasn't diligent effort to -- they simply put a website and notified people in a very short area, a small area.

And I think that the -- by notifying people, even if they oppose it, at least they can have input to the project and know what's going on. And the reason, I think, that having posters at the site are important is because that's how I found out about the -- this project was not from the city's posters but from individuals in the neighborhood who didn't want the project and they put up their own posters, but it was after the scoping meeting was held. So I'm requesting the City of Torrance hold another scoping meeting and notify everybody first.

And so I think that if your regulations are going to help cities do things better, I think part of the message is don't just rely on your local variance change for public input. Look at CEQA as a whole. Look at the broad area that are impacted by the project. And, let's see, what else?

Yeah, also, if you go into the CEQA rules, they're -- or the CEQ rules, they say use postings at the site, notify public by direct mail, use the media, use newspapers. And that -- if you go into the -- is it NAEP, National Association of Environmental Professionals, they have a best practice for public notification, and all of those things are in there as well. And it's just logical. If you include people, they're going to have less lawsuits and so forth, as was mentioned earlier. They're going to slow down projects and drive up the costs.

Response T1.19

The Agency is not making changes in response to this comment. It is outside the scope of this rulemaking. Notices and their filing locations are directed by statute, and the Agency is without authority to alter this.

Comment T1.20

The second thing I wanted to mention is, I guess in the appendices, you're talking about specific recommendations on how to approach some areas of concern, such as global warming and things like that. One of the things that I noticed, also, in this initial study was that the aesthetic impacts were just sort of glossed over without really much analysis.

And what I would recommend is you also have something for aesthetic impacts, and that a good model for it was developed in the nuclear industry, and then it was used by several other agencies, including the Air Force, where I used to work. And there's a document called Aesthetic Analysis, let's see, what is it, Aesthetic Impact Analysis of the Proposed Shallow Draft Barge Facility at Point Arguello, California. And it uses a technique that's fairly quantifiable. And it's been also used in Washington State and Seattle for transportation corridors and other things. But I think without any guidance, people just say, well, it looks okay to me and, you know, don't really analyze it very much. So that's the second comment I'd like to make.

Response T1.20

The Agency is not making changes in response to this comment. Aesthetics questions were updated in Appendix G to prevent the misuse of CEQA. The goal of these amended questions is to protect public views, rather than create ambiguous or subjective standards by which no developer or project proponent can ever really adhere. Therefore, the questions were updated to focus on consistency with local planning documents and ordinances, and to consider public views as those views experienced from publicly accessible vantage points.

Comment T1.21

You know, and it's all fine and mighty to be helping along the good sorts of project that help us reduce our VMT. But, for an example, we're seeing locally here is that, you know, it takes a lot of money. It's a lot of effort to be doing -- to be trying to support those alternative modes, but if at the same time we're pursuing VMT increasing through sprawl or any projects, we're really kind of shooting ourselves in the foot.

Response T1.21

Please see Master Response 2 regarding vehicle miles traveled.

Comment T1.22

So my -- we did some analysis on the Measure M suite of projects that we're seeing here in L.A. County. And the vast majority of that, we're trying to help people have alternatives to driving. There's a lot of transit investments, a lot of transportation investments. And the reduction in daily VMT that's projected by all but one of those projects included is a reduced 7.8 million miles of VMT per day.

Response T1.22

The Agency is not making changes in response to this comment. It is outside the scope of this rulemaking.

Comment T1.23

And so we've done -- contracted independent researchers or experts in travel doing modeling. And from that one project, we've cut in half all the VMT reductions that we're otherwise achieving. So $2 billion worth in a freeway to support sprawl really undermines the $118 billion worth of VMT-reducing projects. It's -- you know, we kind of find that it's really counterproductive towards trying to relieve our congestion or trying to reduce the amount of driving that people need to do to meet their needs if we -- if we're still sort of turning a blind eye to the VMT impacts of those 18 highway expansion projects.

So, you know, I think we know where that loophole -- how that came to be. I think it's largely legacy highway expansion projects in this SCAG region that kind of want to be able to proceed without us really calling into question their merits of being built. But that, you know, we -- I question that possibility of blissful ignorance of not considering the GHG and VMT impacts of those highway expansion projects, because that path through our current plans and projects that are in the pipeline, it's really -- the status quo, it's not bliss. It's not -- we're not on a path to meet our climate goals. There's a VMT gap out there that we don't have a plan of how we're addressing.

We're seeing lawsuits getting filed across the state on highway capacity expansion projects. Many of those projects ultimately don't come to fruition, but in the meanwhile we're really wasting away a lot of transportation dollars that could rather be spent in trying to reduce VMT and really improve mobility.

Response T1.23

Please see Master Response 5 regarding roadway capacity projects.

Comment T1.24

So we'd really like to see induced VMT analysis on the projects that are most likely to induce VMTs along those highway expansion projects statewide. I think we've got a great opportunity here to try to bring our CEQA process, our environmental impact reporting in alignment with our climate goals, with our scoping plan.

So I propose, you know, in a best-case scenario, we're really like to see these Guidelines close that loophole and go back to the earlier proposed version where we're doing VMT-induced impact analysis statewide for all transportation projects -- sorry, not the transit, so expansion projects statewide.

And then sort of second best-case scenario were a number of environmental orgs and folks that are very serious about trying to meet our climate targets are calling on Caltrans to commit to doing VMT analysis for all highway projects, which is the lead agency.

So we urge you to encourage your sister agency to take that step, that commitment towards bringing project delivery process into greater alignment with our climate goals. I think, you know, our -- we've got a lot of opportunity here with new revenue from SB 1, a lot of transportation dollars going out there. We've got an opportunity, really, to change course and bring about and support with the new planning paradigm that will lead to a more vibrant future for our state.

Response T1.24

Please see Master Response 5 regarding roadway capacity projects.

Comment T1.25

So we wanted to show our support for the statewide replacement of a level of service with vehicle miles traveled and the emphasis on public health, environmental justice and climate goals, especially the emphasis on the active transportation.

Response T1.25

No changes are sought by this comment. The Agency appreciates commenter's participation.

Comment T1.26

And so with that, we have two suggestions that we wanted to bring forward today, and that we wanted to ask you to apply the vehicle miles traveled based approach to all projects, including road capacity projects. This is especially important in the areas that I work in, in the Inland Empire, Riverside County and San Bernardino County, because we're seeing a lot of increased road capacity and road expansion projects, like the High Desert Corridor is an example of an issue, the 91 Corridor. So, you know, we really want to ask you to apply the vehicle miles, rather than approach it across the board.

Response T1.26

Please see Master Response 5 regarding roadway capacity projects.

Comment T1.27

Second, we want to suggest that the Guidelines provide approaches to avoid displacement, especially of existing residents, like low-income communities and communities of color.

Response T1.27

Please see Master Response 20 regarding broader policy issues.

Comment T1.28

We sent into a coalition letter providing specific suggestions on strategies that OPR's technical advisory can encourage affordable housing and infill locations and reduce the risk of displacement.

Response T1.28

Please see Master Response 20 regarding broader policy issues.

Comments from the Public Hearing in Sacramento, March 15, 2018

Comment T2.1

We are in strong support of the statewide replacement of level of service with vehicle miles traveled, as you probably know. And we're in strong support of much of the Guidelines, including preference for active transportation projects, transit-oriented development, consistency with sustainable community strategies, and the clarification --

(Microphone stops working.)

MS. WISE: Thank you for the clarification to discourage roadway capacity expansion in the name of safety, so thank you for those.

Response T2.1

No changes are sought by this comment. The Agency appreciates commenter's participation.

Comment T2.2

That said, we do have some recommendations. We're very concerned that the Guidelines exempt roadway capacity projects from using the VMT metric. With the proposed rulemaking, the state has determined that the best approach to examining transportation impacts is VMT, and yet at the same time the state exempts roadway capacity projects which arguably have the greatest impact.

So to close this loophole, we recommend that Caltrans commit to applying the VMT metric, including induced VMT analysis when they are responsible -- when they are the responsible agency. And I realize, again, that you're not Caltrans hosting this, but I want to make that recommendation clear.

Response T2.2

Please see Master Response 5 regarding roadway capacity projects.

Comment T2.3

Our second recommendation is to strengthen the VMT threshold over time to align with long-range climate goals. So a lot of thought and consideration went into the recommended VMT threshold. But as our climate needs change and our climate goals change and the technical advisory and the scoping plan change, we'd like to see the state commit to updating the VMT threshold over time to be consistent with the scoping plan goals for VMT reduction.

Response T2.3

This comment goes beyond the scope of this rulemaking. It refers to thresholds suggested in OPR's Technical Advisory. The Agency has forwarded these comments to OPR for its consideration.

Comment T2.4

Third, we recommend reducing the risks of gentrification and displacement, so I want to make clear that we think the replacement of LOS with VMT will help advance social equity, but we want to reduce any displacement risks, and we have two specific recommendations for the technical advisory to do so.

One is to streamline affordable housing -- 100 percent affordable housing in infill locations consistent with SB 226 and existing streamlining.

Response T2.4

Please see Master Response 20 regarding broader policy issues.

Comment T2.5

And the second specific recommendation is more in regard to anti-displacement, and that is to not streamline or add to the exemptions of presumption of less than significant projects that result in a net reduction of affordable rental units, so that we're not streamlining projects that result in displacement.

Response T2.5

Please see Master Response 20 regarding broader policy issues.

Comment T2.6

And fourth, we commend regularly monitoring the implementation of these Guidelines, as well as OPR monitoring the technical advisory, as so much work has gone into this with staff, as well as stakeholders across the state. We'd like to make sure that these -- that the Guidelines are working, and to recommend concrete changes if not. And it seems that OPR's annual planning survey could be a great opportunity for that monitoring, particularly on the roadway capacity measurements.

Response T2.6

The Agency is not making changes in response to this comment. This Guidelines update has generated significant public interest, and we expect that the public and agencies will provide input regarding implementation when the Agency next considers a CEQA Guidelines update.

Comment T2.7

We respectfully ask that the exclusion for transportation projects that induce VMT be removed. We believe all projects should be measured by the same fundamental metric, a per capita VMT-based metric that uses appropriate reduction targets at this threshold. This fundamental metric should apply to all projects, including transportation projects that reduce VMT and land use projects, no matter where they are or if they are reuse projects. We are concerned that suggestions, like ITEs, to only apply VMT to certain areas of a city would lead to confusion, added CEQA burden on infill projects, and open cities up for litigation.

Response T2.7

Please see Master Response 5 regarding roadway capacity projects.

Comment T2.8

My name is Dan Alison. I'm a citizen, not representing an organization. And I would like to speak today specifically about 15064.3(b)(2), the exemption for transportation. I believe that it is wrong. The rest of the document is wonderful. It really will help move things along for infill development and reduce the prevalence of greenfield development, and that's all to the good. But the problem is, is transportation drives greenfield development, rather than greenfield development driving transportation. And if we exempt transportation, we're still going to get a lot of greenfield development.

Specifically, the -- it doesn't do anything to reduce transportation VMT. It allows an agency to use anything it wants. And I am certain that almost every single agency in this Sacramento region where I live will not use VMT. They're locked into level of service and love it. And even a discussion about a possible change to VMT had them up in arms. They like things the way they are and they will not

change, unless they're forced to change. Possibly two cities in this region will, all the counties will not, all the rest of the cities will not change. They'll continue doing the same thing they've always done.

And, sure, a request a Caltrans to use VMT instead of level of service is a great thing, but a lot of the projects happen at a more local level, at the region, county and city level.

Capacity expansion is exactly the problem. Most of our greenhouse gas emissions are from transportation, or at least it's the biggest single source. And if we allow capacity expansion without, apparently, any limits, nothing good will come out of this. Nothing else that we can do encourage infill and reduce greenfield will counteract that. Transportation is the issue. And I think it was the original intent of the legislators to make sure that level of service was no longer used for transportation projects, and I'm very disappointed to see this exemption in there.

Thank you for your time.

Response T2.8

Please see Master Response 5 regarding roadway capacity projects.

Comment T2.9

We do support them on the whole. Most of our work at Coalition for Clean Air is addressed at reducing emissions from transportation. And that's because over 80 percent of the air pollution in the state of California comes from mobile sources of pollution, primarily both personal and freight transportation. And in order to actually reach both our air quality and climate standards we need to reduce vehicle miles traveled, and that's something that the state has not been doing well at, at all.

In fact, I was at an event recently where Governor Brown addressed the 50th anniversary of the Air Resources Board. And he noted that after he had called for a 50 percent reduction in petroleum used in cars and trucks, actually, petroleum use in cars and trucks has gone up. And that's primarily -- well, it's really entirely due to the increase in vehicle miles traveled. We're making some progress in cleaner engine technologies. We're making a little bit of progress in cleaning up fuels. We're not really making progress on reducing VMT.

Response T2.9

No changes are sought by this comment. The Agency appreciates commenter's participation.

Comment T2.10

So these Guidelines will help with that. They certainly weren't -- won't solve the whole problem, but they're a piece of the solution in changing this perverse level of service criterion that actual has been a disincentive to infill development and an incentive to sprawl-inducing development.

We do not support the highway exemption at all. We think that is a very bad idea that goes contrary to the entire thrust and purpose of these Guidelines, so we hope that that can be fixed. But on the whole, we'd like to see these actually go into practice.

Response T2.10

Please see Master Response 5 regarding roadway capacity projects.

Comment T2.11

And so, you know, looking at our recommendations again here, it's -- we really want to see -- to apply the VMT-based approach to all projects. This exemption is something we want to understand, you know, how we can address this issue for the highway exemption.

Strengthen the VMT threshold over time to align with the long-range climate goals. In all the efforts that we do in different policy areas, we really want to see a coordination among helping the state reach its goals and what is already aligned, so we'd really like to see that strengthened in these Guidelines. Advancing the components of social equity is really critical to not displace people in the process of making this transition and implementing this new method.

One of the ways that we can see improvements along the way is that if we can strengthen the Guidelines in respect to how to monitor the implementation as we see the results going forward. And again, to reiterate, clarifying how to determine consistency with -- at the SES (phonetic).

Lastly, clarification of how to determine low VMT areas in map-based screening approaches.

And if there's any other questions or, you know, ways that we can work with you to help strengthen these Guidelines, we would be available for that.

Response T2.11

Please see Master Response 5 regarding roadway capacity projects. The remainder of this comment goes beyond the scope of this rulemaking. It refers to thresholds suggested in OPR's Technical Advisory. The Agency has forwarded these comments to OPR for its consideration.

Comment 2-1 – California Building Industry Association, *et al.*

Comment 2-1.1

The above-referenced coalition of organizations (Coalition) appreciate that some of the revisions address a couple of the issues we raised in our previous comment letter dated March 15, 2018. Unfortunately, the overwhelming majority of the concerns we raised remain unaddressed.

California remains in a severe housing crisis and unfortunately, the proposed Guidelines increase cost and add delays to producing the 3.5 million new homes needed in California. Higher housing costs produce a disparate impact on communities of color (as the Department of Housing and Community Development has pointed out), increase commutes (and their negative environmental impacts) for Californians, and are a contributing factor to homelessness. All of these points and many others were raised in our previous comments, which are attached for your convenience. We would appreciate it if you could address all of our comments, including those attached.

Response 2-1.1

Please see Responses to Comment Letter 44. Please also see Master Response 8 regarding housing affordability.

Comment 2-2 – Los Angeles County Business Federation

Comment 2-2.1

We have previously submitted comments to the January 2018 version of proposed amendments to the CEQA Guidelines. We were disappointed that virtually none of our suggested revisions were made, nor were any of our concerns addressed.

Response 2-2.1

This is introduction and no change is required. The suggested revisions made in commenter's March 2018 letter are addressed in the responses to Comment 58.

Comment 2-2.2

(1) Prohibit anonymous CEQA lawsuits allowing petitioners to conceal their identities and economic interests;

Response 2-2.2

This suggestion to limit who is able to file a court challenge based on CEQA is beyond the scope of this regulatory package. It would require statutory change from the Legislature.

Comment 2-2.3

(2) Prohibit duplicative CEQA lawsuits allowing parties to repeatedly sue over the same plan, or projects implementing a plan, for which CEQA compliance has already been completed;

Response 2-2.3

This suggestion to limit the ability to file court challenges based on CEQA is beyond the scope of this regulatory package. It would require statutory change from the Legislature.

Comment 2-2.4

(3) Establish a "mend it, not end it" approach of directing corrections to any deficient environmental study rather than vacating project approvals; and

Response 2-2.4

This suggestion to prohibit courts from ordering agencies to vacate project approvals is beyond the scope of this regulatory package. It would require statutory change from the Legislature. Please also note, the Agency has proposed a new section in the CEQA Guidelines explaining to lead agencies and the public that courts may, under specified circumstances, allow certain portions of a project approval to stand, and project work to proceed, while deficiencies in an environmental document are corrected. The new Guidelines section implements Public Resources Code Section 21168.9.

Comment 2-2.5

(4) Prohibit CEQA lawsuits against voter-approved infrastructure projects, and against projects receiving voter-approved approved funding (e.g., for homeless housing).

Response 2-2.5

This suggestion to prohibit legal challenges to certain types of projects is beyond the scope of this regulatory package. It would require statutory change from the Legislature.

Comment 2-2.6

New revisions included in the July 2018 version further increase CEQA's compliance costs and litigation risks. For example, our concerns about the addition of a new CEQA impact of driving even an electric car one mile, have increased further given the VMT mitigation workshop presentations that make clear your intention to impose thousands of dollars in new VMT-related mitigation costs, annually in perpetuity, on new housing and employment projects.

This new VMT impact requirement becomes effective in 2020, at which point projects requiring new discretionary agency approvals - even projects that already have development agreements and projects fully consistent with previously-approved EIRs – will be required to undergo a new CEQA process which goes against Principles #2 and 3 even though this new requirement is at no fault of the project applicant. To impose an annual and in perpetuity increase in housing costs, and impose the equivalent of a new employee tax, without Legislative or judicial authorization is unlawful. It is also a shockingly regressive new government mandate on those already suffering from the housing crisis and creates a major new economic disincentive for new jobs.

Response 2-2.6

The comment objects to "impose thousands of dollars in new VMT-related mitigation costs, annually in perpetuity, on new housing and employment projects." The Agency's proposal includes no such requirement. The Public Resources Code requires public agencies to mitigate significant environmental impacts. (Pub. Resources Code § 21002.) Lead agencies have discretion to choose which mitigation is most appropriate for the project. Today, lead agencies require mitigation for impacts related to congestion. Under the new rules, lead agencies will mitigate a project's vehicle miles traveled, if significant. Some mitigation, reducing vehicle trips for example, may be the same under either measure. Mitigating vehicle miles traveled may be less expensive than mitigating congestion. As explained in the Standardized Regulatory Impact Assessment, "[w]hereas LOS mitigation tends to consist of expanded infrastructure, VMT mitigation could include lower cost actions such as including mixed-use components, facilitating transit connections, and expanding bicycle and pedestrian pathways." Ultimate mitigation costs depend entirely on the project under consideration and what the lead agency determines to be feasible. This rulemaking package does not mandate any particular mitigation measure.

The comment also alleges that "projects that already have development agreements and projects fully consistent with previously-approved EIRs – will be required to undergo a new CEQA process[.]" Nothing in this rulemaking package requires projects to undergo a new CEQA process. The Public Resources Code limits additional review when a project has already been evaluated under CEQA. (See also Pub. Resources Code § 21166.) No changes are required in response to this comment.

Comment 2-2.7

We also object to other new changes, including for example a new applicant ownership disclosure mandate that is vague, impracticable, and appears aimed at affirmatively encouraging expanded use of CEQA to advance economic rather than environmental objectives. We hereby restate in full our prior comments and objections to these CEQA Guideline revisions, urge that you revise these Guidelines to address our earlier concerns, and reserve all rights to seek judicial as well as other remedies if these Guideline revisions are approved.

Response 2-2.7

The comment objects to changes in the Guidelines requiring lead agencies to include information about project applicants on notices of determination and notices of exemption. Those changes implement statutory requirements added by AB 320 (Hill, 2011). No change is required in response to this comment.

Comment 2-3 - California Council for Environmental and Economic Balance

Comment 2-3.1

However, as CCEEB previously commented, requiring both criteria (2) and (3) to be met in each case is inconsistent with case law which provides that either performance standards (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899) or a menu of mitigation options (*Defend the Bay v. City of Irvine* (2004) 119 Cal. App.4th 1261), can separately suffice to justify deferred mitigation. That these are alternative options is also correctly stated in the Agency's Initial Statement of Reasons (ISOR).

Response 2-3.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 2-3.2

The current modifications revise subsection 15126.4 (a)(1)(B) to provide that mitigation may be deferred when the lead agency: *"(1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure."* In effect, in place of the requirement to commit to a menu of candidate measures from which the ultimate mitigation must be selected, the modified language requires a demonstration that at least some types of feasible mitigation exist. This is an improvement, and we appreciate the attempt at a creative solution to this provision. Unfortunately, however, the new modification is not supported by case law, because it has another effect: it eliminates the *first option* described in the ISOR, to commit to a menu of candidate measures which is itself sufficient, *without* adopting performance standards. The menu-only option must be retained as provided in *Defend the Bay* and similar cases.

Response 2-3.2

Please see Master Response 15 regarding deferral of mitigation details.

Comment 2-3.3

Accordingly, consistent with case law and the ISOR, CCEEB reiterates its prior comment that the Agency should revise subsection 15126.4 (a)(1)(B) to read "*commits itself to the mitigation and (1) adopts specific performance standards the mitigation will achieve, or (2) lists the potential actions to be considered, analyzed, and potentially incorporated in the mitigation measure."*

Response 2-3.3

Thank you for your suggested revision. The Agency had previously considered this suggestion but chose not to incorporate it. Please see Master Response 15.

Comment 2-3.4

However, another recent case, *World Business Academy v. State Lands Commission* (2018) 24 Cal.App.5th 476, is also relevant to the application of CEQA baselines. This case was decided on June 13, 2018, subsequent to the last comment opportunity for the Agency's proposed Guidelines update.

World Business Academy upheld the State Lands Commission's reliance on a CEQA exemption when renewing leases for the Diablo Canyon nuclear power plant. In that case, the petitioners urged that numerous potentially significant impacts to public health and the environment from continued operation of the plant necessitated CEQA review. On the contrary, the court of appeal found, all of the claimed "impacts" were in fact existing baseline conditions not attributable to the lease renewal. In addition, the court of appeal rejected the petitioner's arguments against applying a similar case, *Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal.App.4th 549.

Response 2-3.4

The comment discusses recent CEQA cases addressing baseline. The cases are consistent with the changes that the Agency proposes in Section 15125, so no further change is required.

Comment 2-3.5

In CCEEB's previous comments, we proposed adding a new subsection (f) to CEQA Guidelines Section 15125 to incorporate the holding of *Citizens for East Shore Parks*, as follows:

> For renewals and extensions of authorizations for an existing facility, structure or activity, the existing facility, structure or activity is considered part 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 the environmental analysis is commenced. The continued presence and effects of such existing facilities, structures or activities without change shall not be considered to cause any potentially significant environmental impact or contribute to any potentially significant cumulative impact.

OPR and the Agency did not address this issue in their revisions to CEQA Guidelines Section 15125, possibly concerned that the then-pending *World Business Academy* case might have a different outcome. As it turned out, the *World Business Academy* decision strongly endorsed *Citizens for East Shore Parks*.

Accordingly, CCEEB reiterates its recommendation for a new CEQA Guidelines Section 15125(f) as stated above. If the Agency declines to address this issue in the current rulemaking, we request that OPR and the Agency consider doing so in a later rulemaking.

Response 2-3.5

Thank you for your suggestion. The Agency declines to adopt the change suggested in the comment. The Guidelines must be broadly written for the most common types of projects encountered by most lead agencies. The comment seeks guidance for projects that consist of renewals of approvals for existing facilities. Most of such projects would either follow the analysis in Public Resources Code Section 21166, or the categorical exemption in CEQA Guidelines section 15301. In light of the cases that the comment cites, no further guidance is needed.

Comment 2-4 – California State Lands Commission

Comment 2-4.1

Thank you for the opportunity to comment on the California Natural Resources Agency's proposed 15-day revisions to the previously proposed revisions to the State CEQA Guidelines (15-Day Revisions) (Guidelines). California State Lands Commission (CSLC or Commission) staff appreciates your agency's efforts to engage the public and stakeholders to improve the efficiency, clarity, and relevance of the Guidelines, and in this spirit of collaboration we offer our comments on the 15-Day Revisions. Due to the CSLC's broad jurisdiction over state lands, including sovereign tide and submerged lands and school lands, the CSLC frequently acts as a CEQA lead agency, as well as a responsible agency and a trustee agency. For example, in the Senate Environmental Quality Committee 2017 CEQA Survey Report, CSLC is listed as the fourth among state agencies for number of total CEQA projects, fourth for CEQA projects requiring an EIR, and third in the number of CEQA lawsuits

Response 2-4.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 2-4.2

However, the phrase "beyond the date of project operations" implies that a future condition could be evaluated at a time when project operations have been completed. Commission staff recommends that the 15-Day Revision to subdivision (a)(2) be changed to mirror the language present in (a)(1) so that the subdivision reads as follows:

> (2) A lead agency may use projected future conditions (beyond the date **when the project becomes operational** ~~**of project operations**~~) 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.

Alternately, the phrase "beyond the date project operations begin" could be used in subdivision (a)(2).

In addition to increasing clarity, either of these rewordings would more closely align with the relevant language from case law, "well beyond the date the project is expected to begin operation" (*Neighbors for Smart Rail v. Exposition Metro. Line Constr*. *Auth*. (2013) 57 Cal.4th 439, 453).

Response 2-4.2

Thank you for the suggestion. The regulatory language, when read in conjunction with the relevant case law, is clear that date the project becomes operational is the dividing line between an existing conditions baseline and a projected future conditions baseline. Accordingly, no change is needed.

Comment 2-4.3

The revision above uses the term "performance standard" mostly in the plural but also once in the singular, which could lead to confusion over whether a single performance standard would be permissible for a mitigation measure in this context. Therefore, Commission staff recommends the following minor changes for clarity:

> (B) . . . . The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review, provided that the agency (1) commits itself to the mitigation, (2) adopts **the** specific performance standard**(**s**)** the mitigation will achieve, and
> (3) identifies the type(s) of potential action(s) that can feasibly achieve **the** ~~**that**~~ performance standard**(**s**)** and that will be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standard**(**s**)**.

Response 2-4.3

Thank you for the suggestion. The regulatory language, when read in conjunction with the relevant case law, is clear that one performance standard may suffice for certain mitigation measures. Accordingly, no change is needed.

Comment 2-4.4

CSLC staff observes that non-urbanized areas, such as unincorporated portions of a county, may be subject to land use regulations or laws governing scenic quality. Therefore, Commission staff recommends that the 15-Day Revision be changed to read as follows:

> c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from **a** publicly accessible vantage point.) If the project is in an urbanized **or non-urbanized** area,

would the project conflict with applicable zoning and other regulations governing scenic quality?

Commission staff recommends the same change for the corresponding section of Appendix N: Infill Environmental Checklist Form.

Response 2-4.4

Appendix G is provided as a non-binding guidance for agencies. A county with regulations governing scenic quality may tailor its checklist to use the questions in Appendix G for "urbanized areas." Therefore, no change is needed in response to this comment.

Comment 2-4.5

Navigation impacts on the state's navigable waterways:
This important impact consideration does not fit well within the current Appendix G Environmental Checklist. It is an impact consideration that could apply to recreation, transportation, and perhaps public services, yet seems to be entirely absent from Appendix G. As a lead, responsible, and trustee agency, the Commission always evaluates impacts to navigation, which is central to the agency's mission and protection of the Public Trust and public rights.

Response 2-4.5

Thank you for your suggestion. As explained above, Appendix G is a sample form that is general in nature and may be tailored as appropriate by the lead agency. The commenter may, therefore, update its own checklists, and work with other lead agencies to update theirs. No change is needed at this time in response to this comment.

Comment 2-4.6

Aquatic Invasive Species (AIS):
The Commission is charged with preventing or minimizing the introduction of nonindigenous AIS species to California waters by regulating marine vessel ballast water and biofouling. Additionally, the Commission also considers AIS impacts to inland and freshwater environments as part of its CEQA review of projects. To assure that lead agencies and project applicants are aware of these requirements and concerns, CSLC staff requests inclusion of aquatic invasive species (AIS) impacts as a stand-alone impact consideration for the biological
resources section of Appendix G.

Response 2-4.6

Thank you for your suggestion. Please see Response to Comment 2-4.5, above.

Comment 2-5 - Caltrans Division of Environmental Analysis

Comment 2-5.1
I am Caltrans' statewide coordinator for paleontological resource issues and am commenting on the proposal to move the Appendix G question regarding

paleontological resources from the Cultural section to Geology. While this would be an improvement, I recommend that paleontological resources and unique geologic features be treated separately as a standalone section in the CEQA checklist of Appendix G instead. Paleontology is a subset of geology however, the types of concerns addressed in the current geology section are really about public safety, while the question regarding paleontological resources and unique geologic features is about protecting scientific resources that belong to the public. These issues and the goals of their related questions are very different. As a reviewer of environmental documents, I am concerned that if preparers see that paleontological resources and unique geologic features are included in the existing geology section of the CEQA checklist they will be inclined to include the discussion of these scientific resources with their discussion of faults, earthquake and landslide potential, etc. This would lead to confusion and may result in inadequate coverage of the resource issues.

Response 2-5.1

Thank you for your comment. This comment is outside the scope of the changes made in the 15-day revisions. However, the Agency notes that Appendix G is provided as nonbinding guidance. Lead agencies have the authority to determine the appropriate significance thresholds and place impact analyses where appropriate for that particular project. Please see Master Response 18 on Appendix G.

Comment 2-6 – City of Lemon Grove

Comment 2-6.1

Vehicles Miles Traveled (VMT) should reflect/promote a jobs/housing balance as a part of the qualifying criteria for VMT reductions. Currently it is not addressed. **We recommend that Section 15064.3.b.1 be revised to include projects within one half mile of employment centers (zoned for 0.75 floor area ratio or more) to cause a less than significant transportation impact.**

Response 2-6.1

Thank you for your suggestion. The comment suggests adding a presumption of less than significant impacts for projects that locate near employment centers. The Agency included a presumption for projects located near transit stations because the research literature identifies transit proximity as a factor that reduces vehicle miles traveled. The comment did not specify evidence that would support the suggested presumption. Note, however, that agencies may develop their own thresholds of significance that are supported with substantial evidence. Please also see Master Response 4 regarding the presumption for projects located near transit.

Comment 2-6.2

Currently new housing projects are allowed to locate in areas with poor air quality without mitigation (e.g., Housing next to a freeway). Mitigation measures like planting broad leaf trees and installing HVAC and carbon filtration systems can help reduce exposure levels of new residents to be a less than significant impact. **We recommend that in addition to sensitive receptors (e.g., hospitals, schools, daycare facilities, elderly housing and convalescent facilities), require that, parks, housing and places of employment are included as either sensitive receptors or other land uses exposed to substantial pollutant concentrations as a part of CEQA Checklist III (Air Quality) c (previously d).**

Response 2-6.2

Thank you for the suggestion. Appendix G is a sample form that may be tailored by lead agencies to include mention of additional sensitive receptors. Please also see Response to Comment 9.3. No change is needed in response to this comment.

Comment 2-6.3

A transit agency consultation should not be required for smart growth transit oriented development projects. This implies a similar process to tribal consultations. Transit agencies are notified of General Plan projects and their amendments and do not need further notification during a plan's implementation. **We recommend that Sections 15086(a)(5) & 150072(e) be revised as follows: For a project of statewide, regional, or area wide significance, the lead agency should "notice" transit agencies with facilities within one-half mile of the proposed project (not consult)**

Response 2-6.3

Thank you for the suggestion. CEQA encourages agencies to consult with other potentially affected agencies early in the environmental review process. (See, e.g., CEQA Guidelines § 15083.) Stakeholders recommended that the Guidelines encourage such consultation with transit agencies when projects will be located nearby. The proposed addition is not a mandate. No change is needed in response to this comment.

Comment 2-6.4

Appendix G under current regulations asks whether a project would substantially adversely affect a federally protected wetland. California law protects all waters of the state, while the federal Clean Water Act governs only "navigable waters". Since nothing in CEQA's definition of environment limits consideration to federally regulated resources, **we recommend that Appendix G further define all waters of the State to be "navigable waters" in federally protected wetlands or another defined location. We desire lead agencies to consider impacts to wetlands that are protected by either the state or the federal government, but request that these areas be further defined. Wetlands are described as areas that are wet or seasonally wet which could include any location in the City.**

Response 2-6.4

Thank you for the suggestion. The Agency recognizes that differences exist between the state and federal definitions of wetlands. It was the intent of the Agency to clarify in Appendix G that lead agencies should consider impacts to wetlands that are protected by either the state or federal government. Further, Appendix G provides examples of protected wetlands: "including, but not limited to, marsh, vernal pool, coastal, etc." Thus, additional clarification is not necessary.

Comment 2-7 – Allan Cooper

Comment 2-7.1 to 2-7.10

The California Natural Resources Agency's proposed Notice of Proposed Rule Making to update the Guidelines Implementing the California Environmental Quality Act are intended to "unburden" lead

agencies in their CEQA tasks as well as to address current case law. Unfortunately, this update to the Guidelines will further undermine the intent behind CEQA.

Response 2-7.1 to 2-7.10

This is an introductory paragraph. Responses to the specific issues raised are provided below. No change is required in response to this comment.

Comment 2-7.11

Section 15004 allows lead agencies more latitude in determining when the agency can enter into agreements prior to completing environmental reviews. One should question the advisability of entering into agreements without the knowledge and insight that can be gleaned from environmental reviews.

Response 2-7.11

The comment raises concern about the ability of agencies to enter into agreements prior to completing CEQA review. The CEQA Guidelines, and cases interpreting CEQA, have long recognized that the precise time at which an agency should commence environmental review depends on circumstances surrounding the project. Review must be completed early enough to shape a project, but not so early that analysis would be speculative. The changes in Section 15004 are based on case law addressing this balance particularly in the context of entering into agreements. No change is required in response to this comment.

Comment 2-7.12

Section 15063 allows the lead agency to contract out the initial study. Though this initial study prepared by consultants must reflect the lead agency's "independent judgement", there is no way to determine the lead agency's "independent judgement" once the agency is removed from this decision making process. This will also result in the lead agency having no accountability to either their elected officials or to the public at large.

Response 2-7.12

This regulatory change is based on statute. See Public Resources Code, § 21082.1. Agencies must find that the initial study, supporting either a negative declaration or an environmental impact report, reflects the agency's independent judgment.

Comment 2-7.13

Section 15064 allows the lead agency to establish arbitrary and factually insupportable "thresholds of significance" to assist in determining the significance of potential impacts because describing the substantial evidence that would support compliance with the thresholds is deemed to be too "burdensome".

Response 2-7.13

The comment misstates the content of proposed Section 15064(b)(2). Courts have long recognized that thresholds of significance may assist lead agencies in analyzing impacts. Please note, subdivision (f) of Section 15064 states: "The decision as to whether a project may have one or more significant effects

shall be based on substantial evidence in the record of the lead agency." No change is required in response to this comment.

Comment 2-7.14

Section 15064.3 allows the lead agency to avoid commissioning a new transportation impact analysis if it can be tiered to a previously completed "regional transportation plan EIR". This will lessen the lead agency's ability to deny a project based on unmitigable traffic impacts.

Response 2-7.14

The comment objects to the provision in 15064.3 that refers to tiering. Please note, the Legislature expressly encourages agencies to tier environmental analysis. (Pub. Resources Code § 21093.) Please also note, a lead agency can consider traffic impacts outside of the context of CEQA and can condition or deny a project if appropriate. No change is required in response to this comment.

Comment 2-7.15

Section 15064.4 undermines the determination of cumulative impacts of greenhouse gas emissions by disallowing the incremental greenhouse gas contributions made at the state, national or global level.

Response 2-7.15

To the contrary, the regulation notes that a project's incremental contribution may be cumulatively considerable even if it appears relatively small compared to statewide, national or global emissions. No change is required in response to this comment.

Comment 2-7.16

Section 15126.4 requires the lead agency to identify deferred mitigation measures in advance of project completion that are known to be "feasible". Of course there is no definition of "feasibility" and this will lead to the elimination of many mitigation measures.

Response 2-7.16

Mitigation must always be feasible. See Public Resources Code, § 21002.2, subd. (b). Section 15364 defines feasible as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." No change is required in response to this comment.

Comment 2-7.17

Section 15182 provides CEQA exemptions to all residential, commercial and mixed use "transit-oriented" projects. Depending on how "transit-oriented" is defined could result in most projects within an urban setting being exempted from CEQA review.

Response 2-7.17

This section is taken directly from Public Resources Code, § 21155.4. Transit priority area is defined in Public Resources Code, § 21099. Note, this exemption applies where an agency has already prepared an environmental impact report for a specific plan that includes the project. No change is required in response to this comment.

Comment 2-7.18

Section 15234 strengthens the appellant's case in a successful court challenge to a project by not requiring that approval of the project would "benefit the environment".

Response 2-7.18

The purpose of this new section is to explain to public agencies and the public how CEQA litigation may affect project implementation. It does not change project approval requirements. No change is needed in response to this comment.

Comment 2-7.19

Section 15301 stipulates that changes to existing bicycle facilities, pedestrian crossings and street trees will be exempt from CEQA.

Response 2-7.19

Commenter is correct. This categorical exemption will be subject to the exceptions listed in Section 15300.2. No change is needed in response to this comment.

Comment 2-7.20

Appendix G allows the lead agency to eliminate aesthetic considerations for certain projects within transit priority areas.

Response 2-7.20

Commenter is correct. This language is taken directly from Public Resources Code, § 21155.4. No change is needed in response to this comment.

Comment 2-7.21

Appendix N provides a sample environmental checklist for streamlined review of infill projects.

Response 2-7.21

Commenter is correct. This checklist was added in 2012 pursuant to SB 226 (Simitian, 2011). No change is needed in response to this comment.

Comment 2-8 – County of San Diego

Comment 2-8.1

The County of San Diego is currently drafting comments regarding the CEQA guidelines 15 day notice. Would it be acceptable for the county to submit late comments beyond the July 20 deadline?

Response 2-8.1

The comment requests an extension of the comment deadline. Given the length of time that these CEQA Guidelines have been under development, the Agency has determined that the deadline cannot be extended.

Comment 2-9 – Metropolitan Water District of Southern California

Comment 2-9.1

Metropolitan Comment: Senate Bill 743 directed the Office of Planning and Research (OPR) to adopt guidelines "pursuant to Section 21083 establishing criteria for determining the significance of transportation impacts of projects within transit priority areas." There either needs to be a clear distinction between using Vehicle Miles Traveled (VMT) for analysis of impacts of a project within transit priority areas verses the impacts of a project outside priority areas, or the OPR needs to state that it is their intent to apply VMT to all projects types in all locations.

Metropolitan Proposal

Metropolitan recommends providing a clear distinction between using Vehicle Miles Traveled (VMT) for analysis of impacts of a project within transit priority areas verses the impacts of a project outside priority areas, in order to be consistent with Section 15064.3(b), and providing additional clarification.

Response 2-9.1

The Agency declines to make any changes in response to this comment. Section 15064.3 states that vehicles miles traveled is the most appropriate measure of transportation impacts for projects throughout the state. The one limited exception is for roadway capacity projects, for which the Guideline states that lead agencies may measure such projects using any metric, provided the analysis is consistent with CEQA. Please see Master Response 3 regarding the geographic application of the guideline.

Comment 2-9.2

Metropolitan Comment: This section provides criteria specifically for land use and transportation project in subsections (1) and (2) respectively. However, there is no guidance for the many other project types that require analysis under CEQA. This section needs to address other types of projects outside of transit priority areas. If the intent was to analyze other project types "qualitatively" in accordance with subsection (3), it is unclear how "availability of transit, proximity to other destinations ... " is applicable to (for example) a utility construction or maintenance project in a rural undeveloped area. Furthermore, subsection (3) states that a "qualitative analysis of construction traffic may be appropriate." There is no guidance on how to qualitatively analyze construction traffic, nor how that relates to a quantitative analysis of Vehicle Miles Traveled. This is problematic in that lead agencies are required to provide substantial evidence in the record to support their findings. Qualitative analysis increases risk of legal arguments as opposed to quantitative methodologies.

Metropolitan Proposal

Metropolitan recommends that a new subsection called "Other projects" be created, and provide guidance and methodology for analyzing impacts of other project types outside of transit priority areas.

Response 2-9.2

The Agency declines to make any changes in response to this comment. It is not possible for the Guidelines to specifically describe an analysis methodology for every type of project. In fact, recognizing that methodologies may differ, the Guideline states that lead agencies have discretion in how to analyze vehicle miles traveled. The choice of methodology just needs to be explained and documented in the record.

Comment 2-9.3

3. Updating the Environmental Checklist - Proposed Amendments to Appendix G

OPR proposes to reorganize and revise Appendix G to eliminate redundancy, reframe or delete certain questions more properly dealt with in the planning process, and add certain questions it contends are required by existing law but are often overlooked. Metropolitan believes most of the proposed revisions appear to be of a common sense and non-controversial nature however, some clarification regarding the relevant information is requested.

Response 2-9.3

The Agency declines to make any changes in response to this comment. This comment is general in nature, and more specific responses are provided below.

Comment 2-9.4

Metropolitan Comment: Regarding Aesthetics Item (c), the statement addresses whether a project conflicts with zoning rather than physical environmental impacts. Also, the term "scenic quality" is subjective and ambiguous as it is not clear what it means to mitigate scenic quality, and Metropolitan suggests using "scenic resources ," which is already in the regulations.
Suggested text on this section is double underlined.

Metropolitan Proposal
Revise proposed text in the Aesthetics question of Appendix G§ I(c):

c) Substantially degrade the existing character or quality of **public views of** the site and its surroundings? If **the project** is in **an urbanized area, would the project** cause a significant impact due to conflict with applicable zoning and other regulations ~~**governing**~~ relating to scenic **quality** resources?

Response 2-9.4

The Agency declines to make any changes in response to this comment. Appendix G is a sample checklist only, and agencies, such as the commenter, may tailor it as appropriate to their circumstances. Please also see Master Response 18 regarding Appendix G.

Comment 2-9.5

B. Biological Resources - Proposed Revision to Appendix G § IV(c)

Metropolitan Comment: Regarding the proposed language addition of state or federally protected wetlands, the term "protected" is not defined. Previously this section referenced Section 404 of the Clean Water Act, a federal regulation which "protects" and regulates impact to wetlands. When using the term "protected" it is helpful to have a reference to which regulation specifically protects and regulates the resource. Suggested text on this section is double underlined.

Metropolitan Proposal
Revise proposed text in the Biological Resources question of Appendix G§ IV(c):

c) Have a substantial adverse effect on ~~**state or** federally protected~~ wetlands ~~as defined by Section **404 of the Clean Water Act** protected~~ under state or federal law, (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

Response 2-9.5

The Agency declines to make any changes in response to this comment. Appendix G is a sample checklist only, and agencies, such as the commenter, may tailor it as appropriate to their circumstances. Biological resources need not be protected by regulations in order to be a resource of concern under CEQA. Please also see Master Response 18 regarding Appendix G.

Comment 2-9.6

C. Energy Impacts - Proposed Revisions to§ 15064(b)(2) & Appendix G § VI (a)

Metropolitan Comment: It is not clear what is meant by the term "wasteful, inefficient, or an unnecessary consumption of energy" located in question (a), and no guidance has been provide on establishing a threshold, nor methodology to quantify the impacts from the use of energy.

Definition or metrics should be provided for clarification. At a minimum, the threshold should be whether a project would cause "significant" energy impacts. *See Tracy First v. City of Tracy,* 177 Cal. App. 4th 912, 933 (2009) (holding that the city satisfied its Appendix F requirements to analyze energy impacts where the city found that a project would not have significant energy impacts).

Question (a) asks if a project would "result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources during project construction or operation?" Per our previous comment, it is difficult to address this without a clear definition of "wasteful inefficient, or unnecessary," methodology for analyzing, or threshold for analysis. A conflict between a project and a particular plan (even for renewable energy) may not necessarily lead to a significant environmental impact. The analysis should be whether such a conflict will result in significant effects.

Response 2-9.6

The Agency declines to make any changes in response to this comment. Appendix G is a sample checklist only, and agencies, such as the commenter, may tailor it as appropriate to their circumstances. Additional guidance regarding analysis of energy impacts is provided in Section 15126.2(b) and Appendix F of the CEQA Guidelines. Please also see Master Response 18 regarding Appendix G.

Comment 2-9.7

D. Transportation - Revisions to Appendix G§ XVII(b}

Metropolitan Comment: This question asks whether the project would "conflict or be inconsistent with CEQA guidelines Section 15064.3, subdivision (b)." It is difficult to answer this checklist question in a meaningful way given the unclear nexus between vehicle miles traveled and a significant impact on the environment; the unclear relation between vehicle miles traveled and a qualitative analysis of construction impacts, especially for projects that area not transportation or land use related; and lack of guidance on thresholds and methodology.

Response 2-9.7

The Agency declines to make any changes in response to this comment. Appendix G is a sample checklist only, and agencies, such as the commenter, may tailor it as appropriate to their circumstances. Moreover, the Agency disagrees that there is not a nexus between vehicle miles traveled and environmental impacts. There are many. Please see Master Response 2 regarding vehicle miles traveled as a measure of environmental impacts. Additional technical guidance is available in OPR's Technical Advisory on evaluating transportation impacts. Please also see Master Response 18 regarding Appendix G.

Comment 2-9.8

E. Wildfire - Revisions to Appendix G§ XX

Metropolitan Comment: This section states: "If located in or near state responsibility areas or lands classified as very high fire hazard severity zones. ..,. It is problematic to include the words "or near" in this section. There is no clear direction on what distance from a mapped jurisdictional area qualifies as "near". This open-ended requirement creates additional risk of legal arguments against lead agencies if the distance is subjective. These zones are mapped and established in order to provide additional prescriptive regulations for areas within these boundaries. This question could result in "regulatory creep" outside of these boundaries.

Metropolitan Proposal
Metropolitan recommends deleting the words "or near" from this section.

In conclusion, Metropolitan supports OPR's intent to update the CEQA guidelines and provide an environmental review process that is more efficient, effective, and meaningful for agencies,

applicants, and the public. We appreciate the opportunity to work with OPR on these changes and are grateful for the due diligence and outreach provided. If you have any comments or questions concerning the suggested revisions above, please do not hesitate to contact.

Response 2-9.8

The Agency declines to make any changes in response to this comment. Appendix G is a sample checklist only, and agencies, such as the commenter, may tailor it as appropriate to their circumstances. Fires do not respect administrative boundaries; therefore, the Agency finds it appropriate to encourage agencies to consider wildfire impacts for projects located in or near wildfire zones. Please see Master Response 12 regarding wildfire. Please also see Master Response 18 regarding Appendix G.

Comment 2-10 – Middletown Rancheria of Pomo Indians of California

Comment 2-10.1

As a general matter, we are concerned that the proposed amendments to the CEQA Guidelines are setting a low bar as the minimum requirements of the CEQA rather than encouraging public agencies to provide more tribal involvement in the review process and greater environmental protections as they implement the CEQA. The CEQA must be interpreted to provide the fullest possible protection to the environment consistent with statutory mandates including without limitation protection of tribal cultural resources.1 Many of the proposed amendments to the CEQA Guidelines appear to further dismantle CEQA and conflicts with the purpose and intent of Assembly Bill 52 (AB 52) and Senate Bill 18 (SB 18) creating numerous problems for lead and responsible agencies increasing the risk for additional litigation.

Response 2-10.1

The Agency appreciates commenter's comment; however, it will not make changes in response to this comment. No specific amendments or additions made during the 15 days were identified by commenter. The Agency believes all changes made during this regulatory update are consistent with CEQA's broad mandate for environmental protection.

Comment 2-10.2

Further, the amendments process of the CEQA Guidelines fails to sufficiently address tribal concerns, and involved little outreach and engagement of interested tribes and tribal stakeholders. Notably missing from the voluminous proposed amendments to the CEQA Guidelines "package,'' released by the California Natural Resources Agency on January 26, 2018, are consideration of tribal cultural resources and applicable statutory and regulatory provisions for identification and protection of such resources. As such, we urge the California Natural Resources Agency to extend the comment period on the proposed amendments to the CEQA Guideline for at least another thirty (30) to sixty (60) days to allow for meaningful participation and input from tribes.

Response 2-10.2

The comment asserts that the package appears to address many interests but not necessarily tribal concerns. The Agency notes that it sent letters to tribal chairs specifically to solicit input on this package. The Agency also notes that it engaged in government-to-government consultation, as requested. The comment further asserts that the package does not include consideration of tribal cultural resources. Please note, the Agency's last update to the CEQA Guidelines, in 2014, was devoted solely to tribal cultural resources. The Agency also included updates to Appendix G in response to comments related to tribal consultation.

Comment 2-10.3

The proposed amendments are extensive and require time for proper review and comments to the hundreds of pages of "package" materials and information released since January 26, 2018. Extending the public comment period will also serve the State's interest in receiving comments that will identify issues and offer recommendations to support the objective to update the Guidelines which results in "a smoother, more predictable process for agencies, project applicants, and the public."

Response 2-10.3

The comment requests additional time to review and comment on the rulemaking package. The Agency appreciates the concern regarding the complexity of the proposal, but declines to extend the comment period. This package of updates has been under development since 2013. Tribes and representatives of tribes provided input at every stage of development of the package. As noted above, the Agency sent separate invitations specifically to tribal chairs to solicit input at this stage. The Agency continues to work to improve its outreach, and notes that it exceeded all minimum requirements here.

Comment 2-10.4

The proposed amendment adds subsection (b)(2) to Section 15064 of the CEQA Guidelines which provides that an agency may use "thresholds of significance" as amended in Section 15064.7, to "assist lead agencies in determining whether a project may cause a significant impact." The proposed amendment of Section 15064.7 permits the lead agency to adopt thresholds of significance for use on a case by case basis, and allows existing regulatory standards to be used as thresholds of significance. Viewed together, the proposed amendment to Sections 15064 and 15064.7 expressly provides that lead agencies may use thresholds of significance in determining significance, and that regulatory standards may be used as thresholds of significance. This is problematic for purposes of tribal cultural resources as thresholds use may be biased by archaeological standards and assessments, and create the potential for litigation regarding tribal cultural resources contrary to the intent of AB 52 to ensure that the identification and assessment of project impacts on tribal cultural resources include meaningful consultation and consideration of tribal values. Thus, the Guidelines should be modified to require adoption of and/or include a clear process of meaningful tribal consultation with tribes on the development or use of any thresholds of significant.

Response 2-10.4

The comment expresses concern that tribal perspectives should be considered in the development of thresholds of significance. The Agency agrees with commenter that lead agencies would benefit from

consulting with tribes before developing certain thresholds. Please also note, however, tribes may request consultation on projects early in the CEQA process, and include the determination of significance, including the use of thresholds of significance, as part of that consultation. (Pub. Resources Code § 21080.3.2.) Thus, because the statute provides an opportunity for tribes to meet directly with lead agencies on the determination of significance, no change is needed in this rulemaking package.

Comment 2-10.5

The proposed amendment to Section 15126.4 allows the lead agency to defer "specific details" of mitigation measures when it is "impractical or infeasible" to include details during the project's environmental review. It is important that mitigation measures be specified during the environmental review process to allow the lead and responsible agencies to make accurate findings as to whether there are feasible options to avoid or substantially lessen project impacts.2 The Tribe is concerned with deferral of mitigation details as it often results in deferral of significant aspects of a mitigation measure necessary for the proper identification of culturally appropriate mitigation.

Response 2-10.5

The Agency appreciates the Tribal perspective, but is not making changes in response to this comment. Courts have already permitted deferral of mitigation details. (*See, Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200; *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260; and *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899.) Thus, the Agency is simply clarifying when, based on those decisions those decisions, a lead agency may appropriately defer mitigation details. Please note, however, even if certain details regarding mitigation measures are deferred, the lead agency must still have substantial evidence to support its finding that the measure will reduce impacts. Also, please note, regarding mitigation of impacts to tribal cultural resources, tribes may include a discussion of appropriate mitigation measures in consultation with lead agencies. Thus, no change is needed in response to this comment.

Comment 2-10.6

We have experienced agency confusion with respect to attempts to defer meaningful consultation to discuss feasible culturally appropriate mitigation under the pretext that identification and mitigation of tribal cultural resources are too costly and difficult and thus "impractical" prior to project approval. Archaeological preservation and mitigation methodologies are frequently used improperly in establishing performance standards for mitigation of impacts to tribal cultural resources. Often times the resources are assessed in terms of scientific significance criteria only. Under AB 52, identification of tribal cultural resources requires the consideration of the tribal value of the resources. We have had to challenge agencies We have experienced agency confusion with respect to attempts to defer meaningful consultation to discuss feasible culturally appropriate mitigation under the pretext that identification and mitigation of tribal cultural resources are too costly and difficult and thus "impractical" prior to project approval. Archaeological preservation and mitigation methodologies are frequently used improperly in establishing performance standards for mitigation of impacts to tribal cultural resources. Often times the resources are assessed in terms of scientific significance criteria only. Under AB 52, identification of tribal cultural resources requires the consideration of the tribal value of the resources. We have had to challenge agencies assigning archaeologist to assess the presence of tribal cultural resources, something they are simply not qualified to do as they cannot define the inherent tribal values of the resources. Tribes possess the expertise and information about their resources, its value and

significance. Therefore, tribal input and participation must be sought and considered early in the development of any mitigation measure without deferral to post project approval which makes meaningful consideration of avoidance such as project redesign or other feasible culturally appropriate mitigation unlikely. Deferring meaningful tribal cultural resource identification, avoidance and mitigation to project level review creates the potential for costly litigation and project delays, and is contrary to the legislative intent of AB 52 and SB 18.

Response 2-10.6

Commenter appears concerned that deferral of mitigation details will result in its resources not being adequately considered early in the process. Deferring mitigation details does not allow an Agency to defer understanding the potential for impacts associated with a proposed project. Accordingly, for all the reasons in response 2-10.5, the Agency declines to make changes in response to this comment.

Comment 2-10.7

Guidance regarding tiering and AB 52 compliance should be developed to ensure proper identification, consideration and protection of Tribal cultural resources.

Response 2-10.7

The Agency is not making changes in response to this comment. Commenter appears to suggest clarifying language that would hold deferred mitigation to a differing standard with respect to tribal cultural resources, and remove the term "impracticability," when considering whether mitigation is possible. The changes sought are not consistent with case law and CEQA's statutory requirements. Courts do not differentiate between types of impacts when considering whether mitigation deferral is appropriate, but rather, what facts are known to the lead agency, as well as the availability of potential feasible mitigation options. Commenter appears concerned, not about deferral of mitigation, but deferral of analysis on the underlying impact to the resource itself—something that is not permitted where a lead agency has substantial evidence that a potentially significant impact could occur. Tribes participating in consultation with lead agencies will have an opportunity to express their concern about deferral of the analysis, and present lead agencies with information on potentially significant tribal cultural resources that could be impacted. Once the lead agency has such information, whether and how it mitigates its impacts will be a separate consideration that must follow section 15126.4 and other guidelines.

Comment 2-10.8

The Tribe's foremost concern with the proposed amendment to Section 15152 and 15168 relates to the permitted tiering of documents and analysis that inadequately considers tribal cultural resources or are otherwise not compliant with AB 52. Tiering often results in utilization of an inaccurate baseline for analyzing impacts to tribal cultural resources in violation of the CEQA. This is an existing problem that would only get worse if tiering is made easier without specific guidelines on tiering and AB 52 mandates. Prior to the adoption of AB 52, tribal cultural resources were often inappropriately evaluated solely in terms of scientific or historical significance criteria without consideration of the tribal value of the resource. Proper consideration of tribal cultural resources consistent with the intentions and mandates of AB 52 requires early consultation on the identification and proper consideration of significance and mitigation analysis with interested tribes prior to project approval. Therefore, we request that language

be added to provide that if an agency chooses to tier off of a document or analysis prepared prior to July 1, 2015, the effective date of AB 52, that tribes shall be provided a notice of preparation of subsequent document or a notice of the agency's determination describing how the base tiering documents and analysis satisfies AB 52 mandates. Additionally, guidance regarding tiering and AB 52 compliance should be developed to ensure consideration and protection of tribal cultural resources.

Response 2-10.8

Commenter is concerned that lead agencies will tier from program EIRs that were certified before consultation requirements in AB 52, (Gatto, 2014) became effective, and that such documents may not adequately address tribal cultural resources. The comment further requests that agencies provide notice to tribes if they intend to tier from documents. The Agency declines to make the suggested change. As discussed in the regulation, if a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration. This may include, depending on the project and the scope of analysis in a program EIR, effects on tribal cultural resources. As made clear in other changes to this section, the determination of whether the later activity falls within the scope of a program EIR is a factual determination to be made based on substantial evidence in the record. Please also note, as a result of SB 18, cities and counties have been required to consult with tribes before adopting updates to general plans and specific plans since 2004. Also, Governor Brown's Executive Order B-10-11 (2011) requires that "[e]very state agency and department shall encourage communication and consultation with California Indian Tribes." Thus, an increasing number of program EIRs are likely to have expressly addressed tribal cultural resources. Thus, the Agency finds that no change is necessary in response to this comment. Further, because the requested change would add a requirement not found in statute, the Agency cannot add it to the Guidelines.

Comment 2-10.9

The proposed amendment to Section 15269 of the CEQA Guidelines would expand the CEQA exemption for emergency projects to include 'emergency repairs... that require a reasonable amount of planning to address an anticipated emergency." This expansion is vague and overbroad, and appears inconsistent with the definition of emergency. The CEQA defines "emergency" as "a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services." If there is planning involved, the presumption should be that environmental review could be conducted.

Emergency response actions can cause extensive damage and destruction to tribal cultural resources. The Middletown Rancheria has worked with federal, state and local agencies on many emergency management and recovery activities such as the 2015 Valley Fire, 2016 Clayton Fire and recent Napa fires (not official name) emergency recovery and management related activities and projects. We have established and continue to establish mechanisms with the agencies for the protection and treatment of tribal cultural resources potentially impacted and found in conjunction with such emergency projects.

Response 2-10.9

The Agency is not making changes in response to this comment. Commenter appears to believe that changes to the use of the emergency exemption would expand that exemption beyond the definition of emergency, which requires sudden, unexpected occurrences or imminent and clear danger with the

need for immediate action. This ability to plan does not render the exemption meaningless. (*See*, *CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal. App. 4th 529, finding that the emergency exemption applied when a bluff that was projected to collapse did, threatening homes behind it that CEQA Section 21080, subdivision (b)(4) exempts not only projects that mitigate the effects of an emergency but also projects that prevent emergencies which we can anticipate from known risks such as bluff collapse.) Please note, the exemption addressed in this comment was created by the Legislature and interpreted by the courts. The Agency proposes the changes in this section to be consistent with those court decisions. Please also note, this regulation has been further clarified to state that the planning must be required "to address an anticipated emergency."

Comment 2-10.10

It has been mutually beneficial for the Tribe and the agencies to cooperate to ensure adequate consultation, collaboration, and tribal monitoring of activities in conjunction with emergency recovery and management, and activities in the planning areas. Such partnership utilizes established processes and resources of the agency and the Tribe to expedite cultural resources protection and treatment related to emergency management and recovery activities. We are concerned that the proposed amendment would undermine such efforts if aggressively used.

The Tribe request that the proposed amendment be eliminated, or at least clarified to ensure that it is consistent with the definition of "sudden, unexpected occurrence" where there is an imminent risk of the emergency occurring at the site at issue. Otherwise, the intention of the emergency provision could be subverted to justify exemption of CEQA requirements for repair projects whether there is a serious threat or not, and create a potential end run around tribal consultation and consideration of tribal cultural resources.

Response 2-10.10

The Agency is not making changes in response to this comment. See Response 2-10.9. Please also note, the Agency appreciates the comment's concern regarding protection of tribal cultural resources during emergency activities. The Native American Heritage Commission has developed guidance addressing this topic. (See, Protecting California Native American Sites During Drought, Wild Land Fire, and Flood Emergencies: A Guide to Relevant Laws and Cultural Resources Management Practices (2015), available online at: http://nahc.ca.gov/wp-content/uploads/2017/03/Protecting-CA-NA-Sites-During-Drought-Wild-Land-Fire-and-Flood-Emergencies.pdf.)

Comment 2-10.11

Furthermore, there is often agency confusion and lack of understanding with regard to the jurisdiction of the Native American Heritage Commission (NAHC) which is not part of the CEQA. Thus, we also request that references be added to the CEQA Guideline to clarify that even if a project is exempt from CEQA requirements, the project may contain properties or features (e.g., burial sites, sacred sites, funerary items) that falls under the jurisdiction of the NAHC which compliance remains applicable.

Response 2-10.11

The comment suggests pointing lead agencies to rules in the Public Resources Code, outside of CEQA, addressing tribal cultural resources so that agencies approving projects that are exempt from CEQA are

aware. The Agency declines to adopt this proposed change, however. The purpose of the CEQA Guidelines is to guide lead agencies on the requirements of CEQA. Therefore, it is beyond the scope of this rulemaking to address statutes outside of CEQA.

Comment 2-10.12

The proposed amendment to Section 15301 of the CEQA Guidelines would expand the categorical exemption to include "former" use of an existing facility. The proposed amendments contradict and violate CEQA by expanding the language of the existing facilities exemption. Well-established case law holds that exemptions shall be construed narrowly and may not be expanded beyond their terms or CEQA's statutory purposes. Allowing an exemption to be based on a prior condition ignores this important requirement of CEQA and circumvents necessary environmental review. For example, a vacant or unused facility or feature located on or near a sacred site of the Tribe being proposed for increased or expanded use may not have been adequately assessed for impacts to tribal cultural resources. The exemption of such project would undermine CEQA's requirements to establish existing conditions and identify and mitigate a proposed project's impacts on those existing conditions. Thus, the reference to "former" use should be eliminated from this proposed amendment. Please see comments related to our concerns with exemption from CEQA review under section IV of this letter above.

Response 2-10.12

The comment suggests pointing lead agencies to rules in the Public Resources Code, outside of CEQA, addressing tribal cultural resources so that agencies approving projects that are exempt from CEQA are aware. The Agency declines to adopt this proposed change, however. The purpose of the CEQA Guidelines is to guide lead agencies on the requirements of CEQA. Therefore, it is beyond the scope of this rulemaking to address statutes outside of CEQA.

The Agency is not making changes in response to this comment. (See Master Response 16 on the existing facilities exemption)

Comment 2-10.13

The proposed amendment to Section 15357 creates an exception to the definition of a "discretionary project" and vastly expands the definition of "ministerial" projects for which no environmental review is required. The existing language contrasts a discretionary project requiring agency approval and CEQA review to "situations where the public agency or body merely has to detinning whether there has been confinity with applicable statutes, ordinances, or regulations." The proposed amendment adds the undefined term, "or other fixed standards." Thus, the proposed amendment would enable agency approval with no CEQA review of a project where the agency claims confinity with "other fixed standards." The Tribe request that reference to "or other fixed standards" be eliminated from this proposed amendment.

Please see related comments and discussions with regards to exemption under sections IV and V of this letter above.

Response 2-10.13

The Agency is not making changes in response to this comment. The proposed change does not alter existing law, but rather clarifies what has been the practice since 1974 by explaining that the "key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project." Some practitioners become confused as to when in the process of project development CEQA is triggered, and this clarification will help them arrive at the answer sooner, and with a better understanding of the scope of CEQA's coverage. (*See*, *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal. App. 3d 259; *Mountain Lion Foundation v. Fish & Game Comm*. (1997) 16 Cal. 4th 105; *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal. App. 4th 286; *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal. App. 4th 924.)

Comment 2-10.14

Extend the comment period on the proposed amendments to the CEQA Guideline for at least another thirty (30) to sixty (60) days to allow for meaningful participation and input from Tribes.

Response 2-10.14

The Agency is not making changes in response to this comment. Please see Response to Comment 2-10.3.

Comment 2-10.15

Modify the Guidelines to require and include a clear process of Tribal Consultation with Tribes on the development or use of any ''thresholds of significance."

Response 2-10.15

The Agency is not making changes in response to this comment. See response 2-10.4. This comment is outside the scope of the changes made during the 15-day revision.

Comment 2-10.16

Add language to the Guidelines to require that in the event an agency chooses to tier off of a document or analysis prepared prior to July I, 2015, the effective date of AB 52, that interested tribes shall be provided a notice of preparation of subsequent document or a notice of the agency's determination describing how the base tiering documents and analysis satisfies AB 52 mandates.

Response 2-10.16

See Response 2-10.8. The Agency will not make changes in response to this comment as it is outside the scope of the proposed 15 day amendments, and it lacks authority to make the proposed changes.

Comment 2-10.17

Guidance regarding tiering and AB 52 compliance should be developed to ensure proper identification, consideration and protection of Tribal cultural resources.

Response 2-10.17

See Response 2-10.8. The Agency will not make changes in response to this comment as it is outside the scope of the proposed 15 day amendments, and it lacks authority to make the proposed changes.

Comment 2-10.18

Eliminate the proposed amendment expanding CEQA exemption for emergency projects, or at least clarify such provision to ensure consistency with the definition of "emergency," and limit its application to serious emergency repair projects that qualifies as a "sudden, unexpected occurrence."

Response 2-10.18

The Agency is not making changes in response to this comment. *See responses 2-10.9-2-10.12.*

Comment 2-10.19

Add language to the Guidelines to clarify that activities or projects exempt from the CEQA requirements may contain properties or features (e.g., burial sites, sacred sites, funerary items) that falls under the jurisdiction of the NAHC which is separate from the CEQA review and remains applicable.

Response 2-10.19

The Agency is not making changes in response to this comment. *See Response 2-10.11*

Comment 2-10.20

Eliminate "former" use from the exemption for existing facilities.

Response 2-10.20

The Agency is not making changes in response to this comment. *See Response 2-10.12.*

Comment 2-10.21

Eliminate "or other fixed standards" from the definition of "discretionary project."

Response 2-10.21

The Agency is not making changes in response to this comment. *See Response 2-10.13.*

Comment 2-11 – Christine Mulholland

Comment 2-11.1

Rather than rewrite in my own words, I am sending his comments, with my full approval of all he has written. CEQA has been a very important document, giving both lay citizens, their representatives, and developers the opportunity to gather important information. Please do not weaken it.

Response 2-11.1

The Agency declines to make any changes in response to this comment. It is introductory in nature. Specific responses to specific comments are provided below.

Comment 2-11.2

The California Natural Resources Agency's proposed Notice of Proposed Rule Making to update the Guidelines Implementing the California Environmental Quality Act are intended to "unburden" lead agencies in their CEQA tasks as well as to address current case law. Unfortunately, this update to the Guidelines will further undermine the intent behind CEQA by 1) allowing the lead agency to enter into agreements before CEQA review is undertaken; 2) allowing lead agencies to contract out initial studies; 3) allowing the lead agency more latitude in defining thresholds of significance; 4) allowing the lead agency to tier traffic impact studies onto regional plan EIR's; 5) disallowing the cumulative addition of greenhouse gas emissions from a single project onto existing regional emissions; 6) disallowing deferred mitigations that are deemed infeasible; 7) exempting CEQA review for all transit-oriented projects; 8) strengthening the appellant's case in a successful court challenge; 9) eliminating aesthetic considerations for projects within transit priority areas; and 9) further enabling lead agencies to streamline CEQA review for all infill projects

Response 2-11.2

The Agency declines to make any changes in response to this comment. The Agency disagrees that any of the changes will undermine the intent behind CEQA. This comment is introductory in nature. Specific responses to specific comments are provided below.

Comment 2-11.3

My detailed critique of this update to the Guidelines is as follows:
Section 15004 allows lead agencies more latitude in determining when the agency can enter into agreements prior to completing environmental reviews. One should question the advisability of entering into agreements without the knowledge and insight that can be gleaned from environmental reviews

Response 2-11.3

The comment raises concern about the ability of agencies to enter into agreements prior to completing CEQA review. The CEQA Guidelines, and cases interpreting CEQA, have long recognized that the precise time at which an agency should commence environmental review depends on circumstances surrounding the project. Review must be completed early enough to shape a project, but not so early that analysis would be speculative. The changes in Section 15004 are based on case law addressing this

balance particularly in the context of entering into agreements. No change is required in response to this comment.

Comment 2-11.4

Section 15063 allows the lead agency to contract out the initial study. Though this initial study prepared by consultants must reflect the lead agency's "independent judgement", there is no way to determine the lead agency's "independent judgement" once the agency is removed from this decision making process. This will also result in the lead agency having no accountability to either their elected officials or to the public at large.

Response 2-11.4

This regulatory change is based on statute. (See Public Resources Code, § 21082.1.) The comment's suggested addition is not needed because as the comment notes, Section 15084(e) already requires agencies to exercise their independent judgment. Section 15074(b) applies the same requirement to negative declarations.

Comment 2-11.5

Section 15064 allows the lead agency to establish arbitrary and factually insupportable "thresholds of significance" to assist in determining the significance of potential impacts because describing the substantial evidence that would support compliance with the thresholds is deemed to be too "burdensome".

Response 2-11.5

The additions in subdivision (b)(2) are drawn from caselaw discussing the use of thresholds of significance. Both existing sections 15063 (initial study) and 15128 (effects found to not be significant) require at least a brief explanation of the reasons a lead agency reached a conclusion regarding significance. The Agency has, however, deleted the proposed addition that would require a description of the substantial evidence that supports the conclusion. While such evidence must exist in an agency's administrative record, it can be incorporated by reference in an agency's environmental document. No further change is necessary.

Comment 2-11.6

Section 15064.3 allows the lead agency to avoid commissioning a new transportation impact analysis if it can be tiered to a previously completed "regional transportation plan EIR". This will lessen the lead agency's ability to deny a project based on unmitigable traffic impacts.

Response 2-11.6

The Agency declines to make any changes in response to this comment. The comment incorrectly states that a lead agency will not be able to deny a project based on significant and unavoidable impacts if it tiers analysis from a prior EIR. The Agency has not changed the rules on tiering. Please see CEQA Guidelines section 15152.

Comment 2-11.7

Section 15064.4 undermines the determination of cumulative impacts of greenhouse gas emissions by disallowing the incremental greenhouse gas contributions made at the state, national or global level.

Response 2-11.7

The Agency declines to make any changes in response to this comment. The comment does not accurately characterize the changes in section 15064.4. As the Agency explained in the Addendum to the Initial Statement of Reasons:

> the Agency proposes to add a sentence clarifying that the focus of the lead agency's analysis should be on the project's effect on climate change. This clarification is necessary to avoid an incorrect focus on the quantity of emissions, and in particular how that quantity of emissions compares to statewide or global emissions. … The Agency proposes to further clarify that lead agencies should consider the reasonably foreseeable incremental contribution of the project's emissions to the effects of climate change.

(Addendum to Initial Statement of Reasons, at p. 2.) Thus, far from undermining a cumulative impacts analysis, these changes strengthen it.

Comment 2-11.8

Section 15126.4 requires the lead agency to identify deferred mitigation measures in advance of project completion that are known to be "feasible". Of course there is no definition of "feasibility" and this will lead to the elimination of many mitigation measures.

Response 2-11.8

The Agency declines to make a change in response to this comment. The CEQA Guidelines already define "feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (CEQA Guidelines § 15324.)

Comment 2-11.9

Section 15182 provides CEQA exemptions to all residential, commercial and mixed use "transit-oriented" projects. Depending on how "transit-oriented" is defined could result in most projects within an urban setting being exempted from CEQA review.

Response 2-11.9

As indicated in the 15-Day Revisions, the Agency revised Section 15182 to provide a cross-reference to the statutory definition of "transit priority area" in Public Resources Code section 21099(a)(7).

Comment 2-11.10

Section 15234 strengthens the appellant's case in a successful court challenge to a project by

not requiring that approval of the project would “benefit the environment”.

Response 2-11.10

The Agency removed that phrase from section 15234 because it is not found in either the statute or case law.

Comment 2-11.11

Section 15301 stipulates that changes to existing bicycle facilities, pedestrian crossings and street trees will be exempt from CEQA.

Response 2-11.11

The comment makes no suggestion for changes, so no change is needed.

Comment 2-11.12

Appendix G allows the lead agency to eliminate aesthetic considerations for certain projects within transit priority areas. Appendix N provides a sample environmental checklist for streamlined review of infill projects.

Response 2-11.12

The change in Appendix G and Appendix N that the comment notes is mandated by Section 21099 of the Public Resources Code.

Comment 2-12 – Natural Resources Defense Council, *et al*.

Comment 2-12.1

On behalf of the undersigned organizations, we thank you for the opportunity to provide comments on the 15-day revisions to the CEQA guidelines for evaluation of transportation impacts. Our organizations are committed to successful development and implementation of these guidelines, and we have been engaged closely at every step of the process for developing new CEQA guidelines under SB 743. We support the expedient completion of these guidelines so Californians can enjoy the benefits of a cleaner, healthier and safe environment.

Response 2-12.1

This is introduction and no change is required. The Agency thanks the commenter for providing a public comment.

Comment 2-12.2

As mentioned in our March 2018 comment letter, we strongly support the statewide replacement of Level of Service with Vehicles Miles Traveled. This shift will help improve accessibility through more

efficient land use patterns, transit service, and walkability, aligning CEQA with the state's climate goals and advancing public health and social equity. We object to allowing lead agencies of road capacity projects the discretion to use Level of Service rather than Vehicle Miles Traveled as the metric of significance as directed in SB 743.

Response 2-12.2

Thank you for your comment. The issue identified is beyond the scope of these 15-day revisions.

Comment 2-12.3

Among the changes introduced in the 15-Day Revisions, we have particular concerns about the language explicitly stating, "to the extent that such impacts have already been adequately addressed at a programmatic level, such as in a regional transportation plan EIR, a lead agency may tier from that analysis as provided in Section 15152."

Response 2-12.3

The comment expresses concern about the provision in Section 15064.3 that notes that agencies may be able to tier from programmatic review, including regional transportation plan EIRs. Commenter's issues with the quoted language are addressed in the responses below.

Comment 2-12.4

Concern: It is unclear which transportation metric should be used to prepare a programmatic EIR, such as a regional transportation plan, general plan, etc.
Recommendation: The Natural Resources Agency should revise the CEQA guidelines to align with SB 743 direction to use VMT as the metric of significance, and explicitly state that programmatic EIRs should use VMT in all contexts.

Response 2-12.4

The comment suggests that it is unclear which metric should be used in a programmatic review. The Agency disagrees. Subdivision (b)(2) of Section 15064.3 states the exception to the general rule that transportation impacts are best measured using vehicle miles traveled. The limited exception is roadway capacity projects, which lead agencies may assess using whatever measure they deem appropriate and consistent with CEQA and other requirements. A programmatic review of such projects would follow the same rules. For the reasons described in Master Response 5, the Agency declines to adopt the suggestion in this comment.

Comment 2-12.5

Concern: It is unclear whether a lead agency for a road capacity project using LOS as its metric of significance can tier off of a programmatic EIR that used VMT as its metric of significance.

Recommendation: The Natural Resources Agency should revise the CEQA guidelines to clarify that a transportation project can only tier off a programmatic EIR if both use VMT as their metric of significance.

Response 2-12.5

The comment suggests that agencies should only be able to tier from documents that analyzed transportation impacts of roadway capacity projects using the vehicle miles traveled metric. The Agency declines for the reasons described in Master Response 5.

Comment 2-12.6

Concern: Some regional transportation plans may not achieve adequate VMT reductions to achieve ARB Scoping Plan goals for reducing VMT to levels that meet State climate change goals.
Recommendation: The Natural Resources Agency should revise the CEQA guidelines to clarify that a transportation project can only tier off a regional transportation plan EIR if that RTP achieves adequate VMT reductions to meet ARB Scoping Plan goals for reducing VMT to levels that meet State climate change goals.

Response 2-12.6

The comment suggests that agencies should not be able to tier from programmatic documents where the plan does not achieve sufficient reductions in vehicle miles traveled. The requested change is not necessary. Case law addresses requirements that apply to regional transportation plans. (*See, e.g., Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 17 Cal.App.5th 413.)

Comment 2-12.7

Concern: Many adopted regional transportation plan EIRs were analyzed using level of service as the metric of significance for transportation impacts. However, under SB 743, vehicle congestion "as described solely by level of service or similar measures of vehicular capacity or traffic congestion shall not be considered a significant impact on
the environment."
Recommendation: The Natural Resources Agency should revise the CEQA guidelines to clarify that a transportation project can only tier off a regional transportation plan EIR if that RTP used VMT as its metric of significance in its EIR and mitigated any impacts to less than significant.

Response 2-12.7

Please see Response to Comment 2-12.5.

Comment 2-12.8

Concern: If an RTP EIR has mitigated its impacts on VMT, but the mitigation measures have not been implemented or are unlikely to be implemented, can a project that has significant impacts on VMT tier off the RTP EIR?
Recommendation: The Natural Resources Agency should revise the CEQA guidelines to clarify that a lead agency that wants to tier off a programmatic EIR for a transportation project shall evaluate the project's VMT impacts in its project EIR if the project is likely to increase VMT.

Response 2-12.8

The comment requests a change to require analysis of vehicle miles traveled as part of a project-specific EIR. The Agency declines to adopt this suggestion for the reasons stated in Master Response 5. Moreover, the existing CEQA Guidelines already address the rules on tiering in Section 15152. No additional changes are needed.

Comment 2-12.9

Thank you again for allowing us the opportunity to comment on the guidelines. The revisions have the potential to transform the planning processes and development decisions that will help create safe, healthy, walkable and equitable neighborhoods for people of all ages, incomes and abilities

Response 2-12.9

Thank you for your comment. As a closing comment, no changes are required in response.

Comment 2-13 – Natural Resources Defense Council, *et al*. (2)

Comments 2-13.1 – 2-13.9

These comments duplicate those in Comment 2-12.

Responses 2-13.1 – 2-13.9

Please see Responses 2-12.1 to 2-12.9.

Comment 2-14 - Placer County Water Agency

Comment 2-14.1

Placer County Water Agency (PCWA) appreciates the opportunity to comment on the California Natural Resources Agency's draft California Environmental Quality Act (CEQA) Guidelines revisions. We are providing this comment letter pursuant to OAL Notice File No. Z-2018-0116-12. We seek only to clarify that the proposed changes to CCR 15155 (f) regarding water supply analysis add requirements to the water supply analysis conducted by the CEQA lead agency, as held by the California Supreme Court in Vineyard Area Citizen for Responsible Growth (2007) 40 Cal.4th 412, rather than the water supply assessment conducted by water agencies such as PCWA.

Response 2-14.1

The Agency will not make changes in response to this comment. The comment appears concerned that the addition in Section 15155(f) would apply to water agencies that prepare water supply assessments pursuant to the Government Code. As the comment notes, the Initial Statement of Reasons explains that the changes are intended to guide lead agencies on the required contents of a CEQA analysis of water supply. Subdivision (f) states the contents required in the analysis in an "environmental document." "Environmental document" is already defined in the CEQA Guidelines as "Initial Studies, Negative Declarations, draft and final EIRs, documents prepared as substitutes for EIRs and Negative Declarations under a program certified pursuant to Public Resources Code Section 21080.5, and documents prepared under NEPA and used by a state or local agency in the place of an Initial Study, Negative Declaration, or an EIR." Thus, it is clear that the additions in subdivision (f) do not affect the requirements of water agencies implementing the Water Code.

Comment 2-14.2

The initial statement of reasons issued by the California Natural Resources Agency on January 26, 2018 makes clear that this is the intent of the drafted changes. (ISOR at p. 47) However, as drafted the proposed changes to section (f) could potentially be read to imply that the additional analysis may be the purview of water agencies such as PCWA, rather than the responsibility of lead agencies. Lead agencies are better equipped than water agencies to conduct this important analysis via the more comprehensive CEQA process. This potential confusion may stem from the closeness of the terms "water supply analysis" and "water supply assessment" when read by a general audience of CEQA practitioners. As you know, the water supply assessment is prepared by the water agency, or city or county lead agency, pursuant to sections 10910-10915 of the Water Code. (CCR§ 15155 (a)(4).) A water supply analysis, however, is prepared by the lead agency and may encompass the water supply assessment.

Response 2-14.2

The Agency will not make changes in response to this comment. The Agency disagrees that there is ambiguity for the reasons described in Response to Comment 2-14.1.

Comment 2-14.3

For further clarity, we request that the final version of CCR Section 15155 make the following non-substantive change to the proposed text, identified below in underline.

(f) The degree of certainty regarding the availability of water supplies will vary depending on the stage of project approval. A lead agency should have greater confidence in the availability of water supplies for a specific project than might be required for a conceptual plan (i.e. general plan, specific plan). An analysis of water supply in an environmental document may incorporate by reference information in a water supply assessment, urban water management plan, or other publicly available sources. **The lead agency's water supply** analysis shall include the following:

(1) Sufficient information regarding the project's proposed water demand and proposed water supplies to permit the lead agency to evaluate the pros and cons of supplying the amount of water that the project will need.

(2) An analysis of the reasonably foreseeable environmental impacts of supplying water throughout life all phases of the project.

(3) An analysis of circumstances affecting the likelihood of the water's availability, as well as the degree of uncertainty involved. Relevant factors may include but are not limited to, drought, salt-water intrusion, regulatory or contractual, and other reasonably foreseeable demands on the water supply.

(4) If the lead agency cannot determine that a particular water supply will be available, it shall conduct an analysis of alternative sources, including at least in general terms the environmental consequences of using those alternative sources, or alternatives to the project that could be served with available water.

Response 2-14.3

The Agency is not making this proposed change in response to this comment. The added language is not necessary to ensure it is a lead agency who must comply with this requirement.
See Reponses 20-14.1-.2.

Comment 2-15 – Antero Rivasplata, AICP

Comment 2-15.1

Thank you for the opportunity to comment on the proposed CEQA Guidelines amendments and now on the 15-day revisions. The proposed revisions are generally very useful in removing redundancies and providing clarity.

Response 2-15.1

The Agency is not making changes in response to this, but appreciates commenter's participation

Comment 2-15.2

Despite the changes embodied in the 15-day revisions, many of my prior comments, particularly related to energy use, have not been addressed. I offer some additional comments on the 15-day revisions that I think would clarify the proposed language and avoid inadvertent misinterpretations by practitioners. These comments are my own and do not reflect the opinions of my employer. My comments and suggested revision language follow.

Response 2-15.2

The Agency is not making changes in response to this, but appreciates commenter's participation. This comment introduces those that follow. Specific responses are provided below.

Comment 2-15.3

Section 15269.

15269(b): the added language could be misinterpreted as allowing planning for long-term projects, rather than those necessary to address an emergency. I suggest the following replacement language: (b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety, or welfare. Emergency repairs include those that require a reasonable amount of planning to address an anticipated emergency, subject to the limitations described in subsection (c).

Response 2-15.3

Please see Response 2-10.9. Subdivision (b) is not intended to be limited by subdivision (c). Rather, subdivision (b) permits some planning for an impending emergency and some knowledge that condition could lead to immediate danger (like bluff collapse). The language added in the 15-Day Revisions makes clear that planning must be tied to an impending emergency. Therefore, no change is needed.

Comment 2-15.4

The proposed revision to the definition of "discretionary project" should mention that discretion also includes the ability to apply mitigation measures. This is consistent with the decisions in Sierra Club v. County of Sonoma (2017) 11 Cal.App.5th 11, Sierra Club v. Napa County Board of Supervisors (2012) 205 Cal.App.4th 162, and San Diego Navy Broadway Complex Coalition v. City of San Diego (2010) 185 Cal.App.4th 924:

"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 public agency can use its subjective judgment to decide whether and how to carry out or approve a project and apply necessary mitigation. 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).

Response 2-15.4

The Agency is not making changes in response to this comment. The addition in the 15-Day Revisions explains: "The key question is whether the public agency can use its subjective judgment to decide whether *and how* to carry out or approve a project." (Emphasis added) The ability to mitigate is included in the phrase "and how to carry out the project" so the suggested addition is not necessary.

Comment 2-15.5

Appendix G Environmental Checklist Form:
The revision to item 11 relating to Native American tribal consultation would establish a new requirement for a consultation plan that is neither supported by statute nor necessary to successful consultation. Preparation of a formal plan is not necessary in all circumstances. I recommend deleting that proposed requirement.

11. Have California Native American tribes traditionally and culturally affiliated with the project area requested consultation pursuant to Public Resources Code section 21080.3.1? If so, has consultation begun is there a plan for consultation that includes, for example, the determination of significance of impacts to tribal cultural resources, procedures regarding confidentiality, etc.?

Response 2-15.5

The Agency is not making changes in response to this question. First, Appendix G is a sample form and a lead agency may tailor it as appropriate. Further, this question does not require a formal plan. It simply asks the preparer of the initial study whether he/she has considered whether and how to address impacts to tribal cultural resources subsequent to required consultation. This open ended question is more consistent with the intent of AB 52 to establish a dialog with tribes if requested.

Comment 2-15.6

Appendix N: Infill Environmental Checklist Form
Make the same change to item 13 as recommended for item 11 in Appendix G, above.

Response 2-15.6

See Response 2-15.5

Comment 2-16 - Sacramento Metropolitan Air Quality Management District

Comment 2-16.1

The Sacramento Metropolitan Air Quality Management District (SMAQMD) thanks the Governor's Office of Planning and Research (OPR) and the Natural Resources Agency (NRA) for the opportunity to review the July 2018 Proposed 15-Day Revisions (Revisions) to the California Environmental Quality Act (CEQA) Guidelines. Following are SMAQMD comments on the Revisions.

Response 2-16.1

The Agency appreciates Commenter's participation.

Comment 2-16.2

§15064 Determining Significance of Environmental Effects
California's ambitious greenhouse gas (GHG) reduction and air quality goals require a team effort to achieve. For example, air quality management districts help ensure air quality and GHG emissions standards at the regional level; and their thresholds are informed by a thorough knowledge and understanding of the air quality conditions and conformity considerations for the geographic area of their jurisdiction. As such, thresholds of significance should be more broadly defined in §15064(b)(2). Under the current proposal, thresholds of significance are defined according to §15067(a). This should be broadened to include the entirety of §15067, to include the full range of applicable thresholds.

Response 2-16.2

The Agency is not making changes in response to this question. The reference to subdivision (a) is appropriate because that subdivision specifically defines "threshold of significance." The remaining subdivisions discuss in detail how thresholds may be identified, and, if appropriate, formally adopted. Thus, the Agency believes this change is unnecessary.

Comment 2-16.3

§15064.3 Determining Significance of Transportation Impacts
All of our comments on the November 2017 CEQA Guidelines update proposals still apply. In sum, SMAQMD commends the use of vehicle miles traveled (VMT) as a metric for significance in meeting the requirements of SB 743. We maintain, however, that an accurate assessment of VMT, including induced VMT, is necessary to determine reasonably foreseeable project air quality impacts for both land use and transportation projects.

Response 2-16.3

The Agency will not make changes in response to this comment. (See Master Response 5 regarding roadway capacity projects). The comment notes that air quality impacts must be evaluated. Whether a roadway's transportation impacts are measured using vehicle miles traveled or level of service, the lead agency must still analyze greenhouse gas and other pollution associated with the project. (See, Pub. Resources Code § 21099(b)(3) ("This subdivision does not relieve a public agency of the requirement to analyze a project's potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation"); see also proposed Section 15064.3(b)(2) ("For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements") (emphasis added).) To fully assess those impacts, induced travel resulting from roadway capacity expansion must also be analyzed. (See, e.g., California Department of Transportation, Guidance for Preparers of Growth-related, Indirect Impact Analyses (2006).)

Comment 2-16.4

§15064.4 Determining Significance of Impacts from Greenhouse Gas Emissions
Summarizing our comments on the November 2017 CEQA Guidelines update proposals, we commend the use of "determining the significance" in the section on analyzing impacts from GHG emissions. Further, we support the discussions on quantifying GHG emissions, analysis of a project's reasonably foreseeable incremental contribution to climate change, and consideration of the project's consistency with State's climate goals, and believe the Guidelines should include language that frames this information and analysis as essential to the public disclosure required by CEQA.

Response 2-16.4

The Agency is not making changes in response to this comment. Please see Response to Comment 31.4.

Comment 2-16.5

§15301 Existing Facilities

We commend the text addition to §15301(c), which clarifies that sustainable transportation improvements are included in the "Existing Facilities" category. These projects are ordinarily insignificant in their impact on the environment. Based on their potential to reduce polluting emissions from transportation, it is especially appropriate that they are not subject to undue regulatory burden.

Response 2-16.5

The Agency appreciates the support for its recommended changes.

Comment 2-17 - City of Santa Monica

Comment 2-17.1

We have been reviewing the proposed changes to CEQA Guidelines. In particular, consistent with the Court ruling in CBIA, changes to CEQA are proposed to clarify that the focus of a CEQA analysis is the project's effect on the environment (and not vice versa). For example, the proposed changes include striking out the reference to "*a subdivision astride an active fault*". The Statement of Reasons indicate that the focus is whether the project might cause or risk exacerbating environmental effects by bringing development and people into the area affected.

Response 2-17.1

This comment is introductory, and no changes are sought. The Agency appreciates commenter's participation.

Comment 2-17.2

With this understanding, the City of Santa Monica is questioning if Section 21155.1(a)(6)(D) of CEQA (Transit Priority Project exemption) falls within the scope of CEQA. Specifically, this section states the following criteria for the TPP CEQA exemption: the project site is not "subject to seismic risk as a result to being within a delineated earthquake fault zone… or a seismic hazard zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone".

Response 2-17.2

The Agency is not making changes in response to this comment. This comment falls outside the scope of the 15 day revisions. Notably, because the Legislature enacted 21155.1, it is within the scope of CEQA. As the California, Supreme Court explained in the *CBIA* case, that statutory provision is one of several exceptions to the general rule. (*CBIA v. BAAQMD* (2015) 62 Cal.4th 369, 391.) Thus, no further clarification is needed in the Guidelines.

Comment 2-18 – Southern California Leadership Council, *et al.*

Comment 2-18.1

Over the course of several years, the organizations subscribing to this comment letter

have previously commented on the work of both the Governor's Office of Planning and Research ("OPR") and now the Natural Resources Agency's proposals concerning Senate Bill 743 (2013).

Our prior comments were specifically aimed at the proposals to label basic individual mobility as measured by vehicle miles traveled ("VMT") an environmental impact under CEQA. We remain disappointed that our comments about potential CEQA mandates concerning VMT per se have thus far resulted in no meaningful changes to your policy proposal. We write today to once again express our grave concern about the overall policy direction that the Agency's staff have been advancing concerning VMT and CEQA (the "Proposal").

Response 2-18.1

The Agency appreciates Commenter's ongoing participation. The Agency further notes that the development of this rulemaking packages involved extensive stakeholder engagement over the course of several years. The proposal evolved substantially in response to that input. For example, much of the detail that OPR originally proposed to include in the new Guidelines section was moved to a purely advisory guidance document. OPR also refined its recommended thresholds of significance to provide more flexibility. Further, the proposal would enable many housing and infrastructure projects to be presumed, based on evidence in this rulemaking, to have a less than significant transportation impact. The proposal also includes an opt-in period allow those agencies that are ready to make the switch from level of service to vehicle miles traveled to do so, but gives time to other agencies that have indicated that they need more time to become acquainted with the new procedures. Finally, the proposal gives even greater discretion to agencies in how they evaluate roadway capacity projects. (*Compare* Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing Senate Bill 743 (2014), *with* Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA Implementing Senate Bill 743 (2016), and Proposed Updates to the CEQA Guidelines – Comprehensive Package (2017).)

In embarking on this update, the Agency and OPR announced their intention to develop a balanced package. Not every stakeholder will agree with the balance that has been struck. While the Agency acknowledges the comment's disappointment in the policy direction, the Agency disagrees that no meaningful changes have been made. Specific responses to specific comments are provided below.

Comment 2-18.2

Specifically concerning the VMT issue, the July 2018 version of the CEQA Guidelines revisions propose only one small and unobjectionable change in comparison to the prior version of the Proposal. The change would defer the effectiveness of the new VMT mandate from July 1, 2019 until July 1, 2020. Because the proposed change is both modest and in the right direction, we instead utilize this opportunity to restate here briefly our objection to the Proposal's lack of meaningful changes related to VMT and CEQA. Our concerns fall into four categories, each stated here briefly as follows:

1) The Proposal is the overreaching product of a relatively benign delegation of legislative powers by the Legislature. Its delegation to OPR and the Agency was expressly focused on streamlining CEQA approvals in urban transportation priority areas (TPAs). In the hands of OPR and the Agency, however, the legislative delegation has grown into a proposed new, radical, statewide CEQA mandate which if

implemented – will affect the potential developability of virtually every acre of the entire state – based not on environmental considerations, but instead based on mobility concerns alone.

Response 2-18.2

The Agency is not making changes in response to this comment. See Master Responses 1-3 explaining how the new Guideline is consistent with the authority provided and why the evidence supports application of the vehicle miles traveled metric across the state. Please also see Response to Comment 2-18.1, above.

Comment 2-18.3

It will especially harm and stultify all budding and still growing communities and unincorporated townships. As written, the Proposal now has the hallmarks of a violation of the constitutional "non-delegation doctrine," which operates to preclude the Legislature from delegating with too little direction its power to make major policy shifts. Therefore, rather than take its quasi-legislative powers to such an extreme, the Agency should cut back on the Proposal so that it will affect the CEQA processes applicable only to projects within TPAs – consistent with the Legislature's direction.

Response 2-18.3

See Response 2-18.2. The Agency is not making changes in response to this comment. The comment significantly misstates the proposal, the statute authorizing the changes, and the non-delegation doctrine. The legislation that directed these changes was not limited to urban transit priority areas. Please see Master Responses 1-3. The CEQA Guidelines will not stop development in suburban or rural areas. Please see Master Response 8. There is no delegation concern with respect to Public Resources Code 21099. That statute declares a policy, sets a standard, and then provides direction on how and when OPR and the Agency are to go about further achieving it. The Agency is fully within both its delegated authority and its discretion to set forth the proposal that it has.

Comment 2-18.4

It is illogical and inconsistent with the history of CEQA to designate VMT occurring anywhere within the state as an "environmental impact" in and of itself. VMT is merely the unit of measure of vehicular mobility (whether individual, aggregate and/or per capita); and the exercise of mobility is a purely utilities activity in an economic sense. Indeed, mobility – of which VMT is the unit of measurement – is a benefit and a good in its own right, notwithstanding that the various modes of mobility will result in different kinds and degrees of environmental impacts or "externalities" in different surroundings. The Proposal ignores all differences in the externalities associated with different means of individual mobility, especially the major differences being caused by fleet and fuel changes and the accelerating adoption of zero emission vehicles.

Response 2-18.4

The Agency is not making changes in response to this comment. See responses 2-18.2-2-18.3. This comment misstates the proposal. It does not "designate VMT occurring anywhere within the state as an 'environmental impact' in and of itself." The proposal identifies vehicle miles traveled as the primary

measure of transportation impacts, consistent with the legislative directive in SB 743. Please see Master Responses 1-2. This comment is also outside the scope of the 15 day revisions.

Comment 2-18.5

If the Proposal were to go into effect, the financial costs of the Proposal would be crushing; and battles over the anecdotal economic infeasibility of this new mandate would arise in an overwhelming number of situations. The Agency has fallen short in terms of providing any practical information concerning the financial costs and implications of the Proposal's implementation. Our preliminary analysis, however, based on the public presentations that have been made to date, shows that the financial costs are likely astronomical and potentially crushing to the economy statewide.

For example, we analyzed the financial cost of a particular VMT mitigation option which was recommended by Mr. Neil Peacock, a Caltrans Senior Environmental Planner, invited to present at the SB 743 public forum in Los Angeles on June 14, 2018. Specifically, we analyzed Mr. Peacock's suggestion of an option to mitigate VMT by funding public bicycle rentals. In order to understand the financial implications of mitigation options that Mr. Peacock cited, we built upon the details of his example, and applied them to a hypothetical 240 unit apartment complex located in Orange County. (See Attachment 1 – analysis.) The analysis estimates that it would require a financial contribution of $814 per month for each of the 240 apartments unit to mitigate VMT consistent with the Proposal and using the mitigation option presented by Mr. Peacock. Moreover, the analysis shows that pre-funding the same mitigation obligation for the 240-residences project – as CEQA may require – would require an endowment estimated at $46,896,000 using the mitigation option assumptions presented by Mr. Peacock.

Response 2-18.5

The Agency is not making changes in response to this comment. The comment asserts that mitigation of vehicle miles traveled is too expensive. To support its claim, the comment constructs a hypothetical based on assumptions that are unexplained or otherwise supported. The proposal does not mandate any particular threshold. It does not mandate any particular mitigation. It does not alter a lead agency's discretion to determine mitigation measures or alternatives to be infeasible, including on economic grounds. Therefore, the Agency finds that the assertion lacks credibility.

Comment 2-18.6

Other possible mitigation options obviously would have a wide range of possible costs; and undoubtedly many would be substantially more affordable. But we can find no mitigation options for which the costs might be reasonable, especially given the fact that mitigation obligations will increase by degree depending on the locations of land developments. Even if mitigation options can be identified which are an order of magnitude more affordable than what results from the analysis of Mr. Peacock's suggestion, the mitigation costs would still be wildly high in most cases and would worsen California's already extreme lack of affordable housing.

Response 2-18.6

See Response 2-18.5. The Agency will not make changes in response to this comment. Please also see Master Response 8 regarding housing affordability.

Comment 2-18.7

The economic consequences of the Proposal are especially harsh given its mandate that all affected development must attempt to mitigate to 15% below the local average VMT. The burdens of the Proposal would not be as disastrous if the Proposal were to instead deem VMT that is above average for the locality or region to be the significance threshold for CEQA purposes. For example, considering the hypothetical 240-unit apartment project that is analyzed in Attachment 1, the per apartment monthly cost of funding the electric bike sharing mitigation option would fall from $814 per month down to only one-half that amount, or $412 per month per apartment unit. (Instead of requiring a VMT reduction of 7.4 miles per day per apartment unit, the higher threshold – average VMT rather than 15% below average VMT – would be satisfied with a reduction of 3.7 miles per day.) Even if such a favorable adjustment were made in the Proposal, the mitigation costs would still be absurdly high using our example. In our example, the pre-funding such a supposedly relaxed mitigation obligation into perpetuity would require an
estimate $23,448,000 for the entire 240-unit apartment project. This notwithstanding, the presumptive requirement to mitigate down to 15% below local or regional average is a particularly overreaching aspect of the Proposal which should be corrected. At most, the Proposal should indicate that the presumptive threshold of significance should be no lower than the city's or region's average VMT, not 15% below such average.

Response 2-18.7

The Agency is not making changes in response to this comment. See response to comment 2-18.5. The comment refers to a suggested threshold in OPR's non-binding technical advisory. See Master Response 11 regarding OPR's technical advisory.

Comment 2-18.8

The Proposal constitutes a combination of new, immoderate policy choices laid atop the long-established, highly-evolved land use decision-making processes. It runs counter to long-established constitutional principles concerning individual mobility and prerogatives of local governments to shape communities democratically. The Proposal's application will also violate constitutional takings principles insofar as it would impose arbitrarily disproportionate burdens only on those who will need to utilize newly built housing. Especially, the Proposal's requirement that all new housing must strive to achieve 15% less than current local averages (in terms in VMT effects) should weigh heavily when determining whether the Proposal is unduly burdensome, unfair and inequitable.

Response 2-18.8

The Agency is not making changes in response to this comment. See responses 2-18.1-2-18.7. The comment's concerns about individual mobility and local land use authority are both unfounded. The proposal only requires that lead agencies analyze a project's effect related to vehicle miles traveled. Local governments can still plan their communities as they fit. (Pub. Resources Code § 21099(b)(4) (the new guideline "does not preclude the application of local general plan policies, zoning codes, conditions of approval, thresholds, or any other planning requirements pursuant to the police power or any other authority").) Further, to the degree the proposal affects individual mobility, it will increase transportation options by encouraging transit, walking and biking.

The comment that the proposal would "violate constitutional takings principles insofar as it would impose arbitrarily disproportionate burdens only on those who will need to utilize newly built housing" is unclear. Newly built housing near transit would benefit from this proposal due to the presumption that such housing would have a less than significant transportation impact. (See Standardized Regulatory Impact Assessment; see also Master Response 8 regarding housing affordability.)

Comment 2-18.9

Given the nature and weight of our concerns, we remain extremely worried that the Agency might possibly advance the Proposal to completion without substantial change. We, as entities that are keenly interested in the well-being of our state's economy, know that it cannot withstand new, unbearable burdens being added to the development process. We are particularly concerned about impacts on homebuilding. We will never be able to house California's hard pressed working families if our policymakers wield their discretion in ways that only make the housing affordability crisis worse. Thank you for giving meaningful consideration to these comments.

Response 2-18.9

The Agency is not making changes in response to this comment. Commenter reiterated prior comments. See responses 2-18.1-2-18.8, and Master Response to Comment 8 regarding housing affordability. Additionally, the Agency notes that the organizations presenting these comments are sophisticated and well-resourced, and have often participated in updates to the CEQA Guidelines, yet the comments fail to provide any evidence-based analysis. On the other hand, the Agency notes the comments and evidence provided by those jurisdictions that have used vehicle miles traveled as a metric of transportation impacts. That evidence directly contradicts the fear and speculation offered in this comment. In short, the evidence in the record shows that analyzing vehicle miles traveled instead of congestion has resulted in a quicker process and approval of actual housing projects. Weighing this evidence against the speculation in this comment, the Agency finds the former to be more credible than the latter.

Comment 2-19 – State Building and Construction Trades Council of California

Comment 2-19.1

On March 15, 2018, we filed detailed comments on the originally-proposed amendments to the CEQA Guidelines. With the exception of modifications to proposed section 15357, none of the Proposed Revisions resolve the inconsistencies with the CEQA that we described in our prior comments. Therefore, we incorporate our March 15, 2018 comments here by reference.

Response 2-19.1

The Agency is not making changes in response to this comment. Commenter does not explain which comments have gone "unresponded to," but see Responses 80, responding fully to Commenter's initially filed comments.

Comment 2-19.2

In our March Comments, we explained that there is no support in CEQA or case law for allowing agencies to look at historic conditions as the sole baseline upon which to measure impacts as originally proposed in section 15125(a)(2). In the Proposed Revisions, the reference to "historic conditions" was removed. However, in the notice of the Proposed Revisions, the Agency states:
In response to comments received on the proposal, the Agency proposes to clarify that the procedural requirement to justify a baseline other than existing conditions does not apply to reliance on historic conditions. Rather, that requirement only applies only [sic] to use of future conditions as a sole baseline.
This summary suggests the Agency interprets the CEQA Guidelines as allowing "reliance" on historic conditions as the sole baseline, rather than allowing "reference" to historic conditions, as described in section 15125(a)(l). However, nothing in CEQA or in the case law allows for reliance on historic conditions as the sole baseline. As explained in the March Comments, the most recent decision on the issue, Association of Irritated Residents v. Kern County Board of Supervisors dealt with a situation where existing conditions were defined by referencing historic conditions, not where historic conditions were used as the sole baseline: "[T]he baseline for purposes of environmental review is considered to be the physical environmental conditions as of 2013, adjusted where necessary to include refinery operations and related activities in 2007.

If the Agency's interpretation of the proposed amendment is that agencies can rely on historic conditions as the sole baseline, contrary to the plain language of the CEQA Guidelines and controlling case law, then proposed amendment must be revised to clarify that CEQA only authorizes referencing historic conditions, and only under specific and limited circumstances. The Agency should also clarify that its Proposed Revisions mean that the procedural requirement to justify a baseline other than existing conditions does not apply to referencing historic conditions.

Response 2-19.2

The Agency is not making changes in response to this comment. The comment misstates both the proposed guideline and the description of it in the notice. The proposed guideline states: “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, or both, that are supported with substantial evidence.” The Agency removed reference to “historic conditions” from the description of the exception to the general rule in subdivision (a)(2). It did so because comments correctly noted that cases authorizing reliance on something other than “existing conditions” have only applied the heightened requirement for explanation where a future baseline is used as the sole baseline. The Agency’s notice described that change. The comment provides no legal analysis suggesting that the revised proposal is inconsistent with either CEQA or the cases interpreting it. See also Master Comment 14 regarding baselines.

Comment 2-19.3

Proposed amendments to sections 15064 and 15064.7 would allow public agencies to use environmental standards as thresholds of significance. The Agency's Proposed Revisions propose to delete the requirement to describe the substantial evidence supporting a conclusion that compliance with a threshold means a project's impacts are less than significant. The Agency explains that this requirement is "too burdensome…” We urge the Agency to keep the proposed requirement, consistent with CEQA's purpose to promote informed decision-making and enable public participation. Moreover,

since the agency is required to support its decision to rely on a specific threshold of significance with substantial evidence, it is not "too burdensome" to describe (disclose) that evidence.

Response 2-19.3

The Agency is not making changes in response to this comment. The Agency deleted the phrase “and describe the substantial evidence supporting that conclusion” from the new subdivision describing use of thresholds of significance. Comments on the original proposal noted that neither the statute nor cases require that procedural step. Having considered those comments, the Agency has also concluded the phrase is not necessary. The Guidelines already clarify that a lead agency’s conclusions in environmental documents must be supported with substantial evidence. (See, e.g., CEQA Guidelines §§ 15074(b) (negative declarations), 15091(b) (findings following an EIR).) Also, the Guidelines also provide that environmental documents must contain enough detail and analysis to adequately inform decisionmakers and the public. (See CEQA Guidelines § 15151 (standard of adequacy).) The extent to which a lead agency must specifically describe the substantial evidence supporting a conclusion may vary with the project and the thresholds used. However, the existing requirements described above provide sufficient safeguards to ensure that agencies prepare informative documents.

Comment 2-19.4

The proposed amendment to section 15152 gives agencies discretion to determine which streamline method to use without a concomitant requirement to disclose that determination to the public. In practice, not disclosing which streamline method applies results in uncertainty for the agency, the applicants and the public regarding how to provide the agency with the necessary information to meet the legal standards for the chosen streamline method. It also results in inefficiencies in processing and unnecessary litigation over compliance with streamlining provisions that do not apply.

We recommend that the Agency add language requiring agencies to disclose which streamline method the agency is using in order to eliminate these uncertainties, inefficiencies and unnecessary litigation. This disclosure must be done at the earliest possible stage of environmental review in order to better streamline the information exchange and eliminate inefficiencies (and unnecessary responses to comments) during the environmental review process. By adding language, all of the stakeholders will avoid unnecessary work and uncertainty, thereby truly "streamlining'' the environmental review process.

Response 2-19.4

The Agency is not making changes in response to this comment. This comment does not address the 15-Day revisions. Further, the changes in this section merely clarifies that the rules on tiering apply only to tiering, and that other streamlining tools are governed by their own rules. The Agency cannot add a procedural requirement that does not exist in statute.

Comment 2-19.5

As explained in our March Comments, several of the Agency's proposed amendments to the CEQA Guidelines violate the plain language of the statute, are inconsistent with court decisions, would result in increased litigation and would subvert the public process. The Proposed Revisions do not 1·esolve those issues and create new ones. In addition, the Agency has an opportunity to add language to truly

eliminate uncertainties, inefficiencies and unnecessary litigation. Therefore, we urge the Agency not to approve the amendments specifically addressed in our March Comments and in this letter until it meaningfully addresses and resolves the issues mentioned in both comment letters.

Response 2-19.5

Commenter argues the Agency exceeds its authority. It is not clear which prior or revised sections the Commenter feels are inconsistent with the authority granted by the CEQA statutes. However, the Agency has adequately described in its initial statement, and in its supporting documents, the basis for its determinations and has fully replied to Commenter's original comment. See Responses to Comment 102. Accordingly, the Agency is not making changes in response to this comment.

Comment 2-20 – Santa Clara Valley Transportation Authority

Comment 2-20.1

Please confirm the July 1, 2020 statewide adoption date for VMT analysis under new Section 15064.3.

Response 2-20.1

Please see Master Response 7 regarding the effective date of the transportation Guideline.

Comment 2-21 – Santa Clara Valley Transportation Authority (2)

Comment 2-21.1

We saw the reference in the Notice about correcting the statewide adoption date of Section 15064.3 to 2020, and the change to July 1, 2020 in the actual 15-Day Language. Just wanted to confirm that you definitely mean July 1, 2020 and not January 1, 2020, because many agencies including VTA have been working towards the 1/1/2020 date based on past webinars/etc with OPR and other organizations. Would you please confirm?

Response 2-21.1

Please see Master Response 7 regarding the effective date of the transportation Guideline.

Comment 2-22 – City of Hollister

Comment 2-22.1

I received the notice from the California Natural Resources Agency and will be providing comments. For future notices, can you please reference my name below.

Response 2-22.1

Thank you for this comment. The Agency will update the mailing list with this change.

Comment 2-23 – The Two Hundred

Comment 2-23.1

We are pleased to represent The 200, and on behalf of this distinguished group of civil rights leaders hereby submit the following comments on proposed modifications to the CEQA Guidelines:

The 200 submitted comments to you on the full suite of CEQA Guidelines modifications on March 15, 2015. None of these comments were addressed, nor were any of the disparate impacts on minority communities, nor were any comments about the illegality and immorality of expanding CEQA to further worsen our ongoing housing, homelessness and poverty crises. The 200 restates and resubmits in full our earlier ignored comments as Attachment 1 to this letter, including numerous very specific requests for further changes and clarifications of the CEQA Guidelines.

Response 2-23.1

The Agency did not receive timely comments during Round 1 of this rulemaking from the 200. As discussed in response 107, that submittal was both untimely and directed to another agency. The Agency, therefore, was under no obligation to respond to it. See, however, Responses to Comment 107.

Comment 2-23.2

Since the earlier March 15 comment letter deadline, the Office of Planning and Research (OPR) has sponsored two workshops describing mitigation measures for reducing vehicle miles travelled (VMT). The powerpoint decks presented in those VMT workshops are collectively submitted as Attachment 2 to this letter. These powerpoint presentations, along with oral comments made by agency and agency-retained consultants present at these meetings, confirm that transportation mode choices cannot be significantly shifted by individual projects during the CEQA process: whether a resident or employee can feasibly commute or engage in localized trips using public transit, bicycles or walking is dependent on the transit services and character of the community in which the project is located, and not on whether the project includes a bike rack or charges for parking. Instead of offering mitigation for project VMT, these VMT workshops presented more than a dozen proposals by which projects could pay money to workshop presenters who then promise to use this money to reduce VMT for activities unrelated to the project itself. Since VMT is an ongoing activity, these new VMT mitigation charges would either need to be paid annually – or paid up front in an endowment structure representing some number of years (20? 30? More?) of project-based VMT. For reasons detailed by other commenters, imposing VMT mitigation costs can add tens of thousands of dollars annually to housing costs, and add thousands of dollars annually to the cost of hiring a new employee. The purpose of the transportation provision of SB 743 was to relieve infill development projects of the need to mitigate for traffic delay; there is zero evidence that SB 743 authorized OPR or the Natural Resources Agency to impose the equivalent of thousands of dollars of new costs on housing and employment projects. Burdening those most in need of California's shortfall of more than 3 million new housing units with even higher housing costs is unlawful, and then adding even new costs on employers seeking to hire Californians, is unconscionable, discriminatory, and unlawful. These huge new VMT mitigation cost burdens are also further evidence of the legally deficient economic analysis presented with the original and revised rulemaking materials, and flatly contradicts

the most recent report's unsupported assertion that the new CEQA Guidelines simply reflect existing law and thus do not create any new economic impacts.

Reponses 2-23.2

The Agency is not making changes in response to this comment. This comment is not within the scope of either the initial rulemaking, or the changes made during the 15-day modification period. The Agency is not OPR. Please see Master Response 8 regarding housing affordability.

Comment 2-23.3

Even within the Governor's administration, the disparate impact of attempting to cram through the CEQA Guidelines new unilateral, agency-imposed costs that further worsen the state's housing crisis has been recognized and criticized. Expanding CEQA compliance costs, time, and litigation risks directly and disproportionately affects those most harmed by the housing, homelessness, and poverty crises – and the related transportation crisis caused by those forced to drive ever-longer distances to housing they can afford to buy or rent. These CEQA Guidelines expansions are unlawful for the same reasons set forth in our earlier comment letter, as well as under each cause of action in The 200's lawsuit against the four anti-housing measures included in the California Air Resources Board's 2017 Scoping Plan. A copy of The 200's petition in that lawsuit, which is separately submitted as a new comment in this CEQA Guidelines rulemaking proceeding as Attachment 3, is also hereby submitted.

Response 2-23.3

The Agency is not making changes in response to this comment as it is outside the scope of this rulemaking.

Comment 2-23.4

The lawlessness of the Natural Resources Agency and OPR in this proceeding is further confirmed by the refusal of both agencies to timely respond to California Public Records Act requests submitted by The 200 for all responsive documents relating to the challenged anti- housing measures in the CARB Scoping Plan, and for all responsive documents relating to the VMT Workshops.

Response 2-23.4

While the Agency has provided responses to records requests as required by the California Public Records Act, the Agency is not making changes in response to this comment as it is outside the scope of this rulemaking.

Comment 2-23.5

The minor and unresponsive changes made to this most recent version of the CEQA Guidelines are shocking in several respects.

First is the baldface lie that the effectiveness date of the VMT thresholds was intended to be 2020 all along; in fact, OPR's senior attorney assigned to this Guidelines update project explained to a packed meeting room with more than 50 stakeholders in Los Angeles that the proposed 2019 deadline was not being moved because agencies had plenty of advance notice and sufficient time to meet this deadline. To call the originally- proposed 2019 deadline a "typo" falls into the "fake news" category of government conduct that we are shocked to see practiced by two California state agencies (OPR and the Natural Resources Agency).

Response 2-23.5

The Agency is not making changes in response to this comment. As is evidenced by it modified, and final text, the Agency has selected 2020 for full implementation, consistent with the authority granted by SB 743.

Comment 2-23.6

- Second is new disclosure obligation, found nowhere in *Save Tara* or any other case law and having no nexus with CEQA's environmental compliance obligations, requiring more detailed information about parties entering into public agency pre-agreements that are dependent on later CEQA compliance. OPR and the Natural Resources Agency's conspicuous silence on several legislative proposals to require disclosure of the identity of those filing CEQA lawsuits, who are in fact seeking to advance economic rather than environmental objectives, stands in stark contrast to this proposed new addition to the Guidelines that would further facilitate early opportunities to leverage CEQA lawsuit threats for economic gain. This tactic, as reported by the New York Times as being implemented by a labor union law firm in the context of early notice of proposed renewable energy facilities threatened with a CEQA lawsuit unless they entered into a project labor agreement, affirmatively facilitates the abuse of CEQA for economic objectives – and falls far outside the scope of rulemaking conduct authorized under CEQA and the California Administrative Procedures Act.

Response 2-23.6

The Agency is not making changes in response to this comment. The Commenter appears concerned that basic identifying information is sought relative to various notices, including notices of exemption. The authority for all changes in the CEQA Guidelines update is identified in the Initial Statement of Reasons.

Comment 2-23.7

- Finally, this latest version of the CEQA Guidelines proposed modifications is marred by blatant omission of two relevant new legal proceedings that are required to be incorporated into the Guidelines update under CEQA, and are further evidence of policy bias against California minorities and consumers, and the Legislature itself.

The Legislature expressly declined to mandate solar panels on residential rooftops, and after an extensive proceeding which included consideration of statutorily-mandated consumer protection provisions, the California Buildings Standards Board and California Energy Commission adopted prescribed new solar rooftop mandates. Ignoring this proceeding entirely, the new Guidelines repeatedly undermine the legal role that compliance with Title 24 requirements have under existing caselaw for energy impacts for operating buildings. In fact, the new Guidelines' unlawfully-restrictive requirements for what constitutes an "environmental standard" under CEQA would expressly forbid reliance on Title 24 CalGreen standards as CEQA mitigation for energy impacts, since consumer protection is a Legislatively-mandated consideration in adoption of these requirements. This approach flatly contradicts existing CEQA caselaw, and undermines existing and express Legislation regarding building energy standards.

Response 2-23.7

The Agency is not making changes in response to this comment. The Commenter appears concerned in some instances standards used for energy efficiency will no longer be thresholds of significance. This is not the case. The Agency supports the use of existing standards. Using standards as thresholds of significance creates a predictable starting point for environmental and allows agencies to rely on the expertise of the regulatory body, without foreclosing the consideration of possible project-specific effects.

Comment 2-23.8

- Second, the proposed Guidelines completely omit any acknowledgement or recognition of the CEQA appellate court decision, *Association of Irritated Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708, including recent unsuccessful efforts to persuade the California Supreme Court to depublish or reverse this decision. This case held that compliance with the state's comprehensive "Cap and Trade" program for reducing greenhouse gas (GHG) emissions was adequate CEQA mitigation for greenhouse gas emissions from a refinery facility, as well as the indirect GHG emissions from electricity produced offsite but used at the refinery facility. OPR ignores this case entirely, even though it is directly relevant to both CEQA's energy and greenhouse gas analyses and mitigation requirements – and even though the Legislature in its approval of the Cap and Trade program expressly determined that this program was intended to be the comprehensive "wells to wheels" GHG reduction measure for fossil fuel consumption, and even though an expert air agency (the San Joaquin Valley Air Quality Management District) has expressly affirmed in its CEQA guidance that compliance with the Cap and Trade program mitigates GHG emissions from fossil fuel use. The omission of this CEQA GHG (and selective inclusion of only some portions of other CEQA GHG cases), and the omission of any acknowledgment or commentary on the expert agency CEQA guidance, is still more evidence of the policy bias of OPR and your agency in selectively ignoring caselaw that does not require CEQA to be an ever-more onerous "additive" new suite of costs imposed only for those projects subject to CEQA – like our missing millions of housing units, and all of the infrastructure and public service and other projects needed to serve these missing units.

Response 2-23. 8

The Agency is not making changes in response to this comment. This comment is outside the scope of this rulemaking. Please also see Response to Comment 44.37.

Comment 2-23.9

CEQA applies only to new discretionary decisions by public agencies: Californians fortunate enough to own a home, work at a job at an existing facility, and relax at home while enjoying the "character of the community" created from decades of discriminatory housing policies and practices that were made even worse by CEQA's litigious framework for opposing changes to the status quo, are not affected by even the most costly and egregious of new CEQA regulatory expansions. CEQA already discriminates against minorities, millennials, and students – and at the absolute minimum given the Governor's repeated acknowledgement of CEQA abuse and support for CEQA reform – your agency should have adopted changes to the CEQA Guidelines that make CEQA compliance less costly, take less time, and are subject to less litigation delay.

- You have repeatedly attributed your failure to make these constructive improvements to CEQA, either as former chief counsel to OPR and now in your new role, based on the state's overriding climate change mandates.

Response 2-23. 9

The Agency is not making changes in response to this comment. This comment is outside the scope of this rulemaking.

Comment 2-23.10

Because California's climate leaders have chosen to enact GHG reduction metrics that count as GHG "reductions" the act of forcing California residents and jobs to other states and countries, it is true that making CEQA ever more burdensome will likely induce even more Californians to depart to other states rather than continuing to suffer from our housing, homelessness, poverty and transportation crises.

However, this is not a color-blind government policy choice: wealthier, whiter and older Californians benefit, and poorer, minority and younger Californians are harmed, by further exacerbating our housing and related crises.

This is also not a defensible choice for California as a global climate leader. Since California's per capita and per GDP GHG emissions are among the lowest of any state in the nation, forcing Californians and jobs to move to other states and countries results in increased global GHG - and it is global GHG, rather than the less than 1% of global GHG attributable to California's economy that must be addressed by effective climate leaders. Attachment 4 is research brief, "California, Greenhouse Gas Regulation, and Climate Change" (2018), documenting the ineffectiveness and inequity of California's GHG reduction strategies to date, as well as the fact that implementing

the infill-only housing strategy included in the Scoping Plan will achieve less than 1% of California's own GHG reduction goal and require the demolition of "tens if not hundreds of thousands" of single family homes. California's GHG reductions account for only about 5% of the GHG reductions achieved in the United States since AB 32 was enacted in 2007, even though we have the country's largest economy and population.

Response 2-23.10

The Agency is not making changes in response to this comment. This comment is outside the scope of this rulemaking.

Comment 2-23.11

With any honest accounting of global GHG emissions, weaponizing CEQA to further increase housing, energy and transportation costs against projects that meet every single environmental mandate (other than CEQA) approved by the Legislature or any state or local agency, will simply increase global GHG as well as income inequity and the housing, poverty, homelessness, and transportation crises.

Response 2-23. 11

The Agency is not making changes in response to this comment. This comment is outside the scope of this rulemaking.

Comment 2-23.12

In addition to responding to each of the foregoing comments, we formally request that you place a litigation hold on all documentation, including without limitation attorney-client privileged documentation, in whatever format (hard copy, electronic copy, emails, texts, etc.), relating to or associated with the proposed amendments of the CEQA Guidelines beginning in January 1, 2013 (the year that the Legislature ultimately enacted SB 743). We also affirm our intention to sue under civil rights and other laws to block the proposed expansion of CEQA should your agency continue to advance this ill-advised, unlawful, and discriminatory rulemaking.

Response 2-23.12

The Agency is not making changes in response to this comment. This comment is outside the scope of this rulemaking.

Comment 2-24 - United Auburn Indian Tribe of the Auburn Rancheria

Comment 2-24.1

There is an attachment to this letter that contains suggested edits to the proposed 5- Day Revisions. We hope that these edits will be fully considered. The attachment also indicates where we support or disagree with certain 15-Day Revisions; where we disagree, we tried to provide productive edits. We hope that these perspectives are useful to you as you complete the rulemaking process.

Response 2-24.1

This comment is introductory in nature. Specific responses are provided below.

Comment 2-24.2

We appreciate the efforts made to date to consider our comments and concerns, and appreciate that some revisions have been made. However, to the extent they have not been incorporated to date, we carry forward the suggested revisions, comments, rationales, and proposed solutions from our comment letter dated March 15, 2018, on the initial proposed updates to the CEQA Guidelines (November 2017). We also continue to believe that the Guidelines update effort would have benefited from additional efforts by CNRA to communicate and consult with California Tribes to both solicit updates to the Guidelines and to vet the proposed updates.

Response 2-24.2

Please see Responses to Comment Letter 84.

Comment 2-24.3

Finally, we continue to have concerns that some of the proposed updates could impair AB 52 implementation. We will continue to track the rulemaking process, and hope that additions may be made by CNRA in the final Statement of Reasons that clarify the intent of the revisions not to limit the participation of California Native American Tribes in the CEQA process or interfere with protections for tribal cultural resources (TCRs) that may be found in urban or rural environments as well as those TCRs present in already developed or natural areas. We are available for any questions you might have on the attachment and for further consultation.

Response 2-24.3

Thank you for your comment. Please see Responses to Comment Letter 84.

Comment 2-24.4

Section 15004: Support clarification that factors described in the proposed addition are not exclusive and the addition that an agreement should not prevent an agency from deciding not to pursue or to reject a project.

Response 2-24.4

The Agency appreciates the support. No further change is required in response to this comment.

Comment 2-24.5

Section 15062: Support addition of requiring the identity of the persons undertaking the project.

Response 2-24.5

The Agency appreciates the support. No further change is required in response to this comment.

Comment 2-24.6

Section 15063: Support clarification that documents prepared by consultants must reflect the independent judgment of the lead agency

Response 2-24.6

The Agency appreciates the support. No further change is required in response to this comment.

Comment 2-24.7

Section 15064: Disagree with removing the provision suggesting that, when relying on thresholds of significance, a lead agency should describe the substantial evidence that supports the conclusion that compliance with the threshold ensures the impact is less than significant.

Substantial evidence is the cornerstone of CEQA and transparency. Simply stating that that it would be "too burdensome" is an insufficient rationale for its removal and risks sending the wrong message to lead agencies regarding government accountability and the robustness of the administrative record. Consider revising to that a lead agency should summarize the substantial evidence that supports the conclusion that compliance with the threshold ensures the impact is less than significant.

Response 2-24.7

Please note, the CEQA Guidelines already require that all determinations of a lead agency be supported with substantial evidence. No further change is required in response to this comment.

Comment 2-24.8

Section 15064.4: Support the addition that the agency's analysis must reasonably reflect evolving scientific knowledge and state regulatory schemes regarding determining the significance of a project's greenhouse gas emissions.

Response 2-24.8

The Agency appreciates the support. No further change is required in response to this comment.

Comment 2-24.9

Section 15064.7: Generally support the revisions to Thresholds of Significance. Recommend retaining "avoid", so (d) fifth line would read" ... shall explain how the particular requirements of that environmental standard avoid or reduce ... " This is particularly important for cultural resources where avoidance and preservation in place must be analyzed including pursuant to CEQA caselaw. UAIC still recommends that any thresholds for significance related to TCRs should demonstrate they have been developed through consultation with tribes.

Response 2-24.4

The Agency appreciates the support. The word avoid is not necessary in that section. The definition of mitigation includes the concept of avoidance. No further change is required in response to this comment.

Comment 2-24.10

Section 15075: Support addition of requiring the identity of the persons undertaking the project.

Response 2-24.10

The Agency appreciates the support. No further change is required in response to this comment.

Comment 2-24.11

Section 15094: Support addition of requiring the identity of the persons undertaking the project.

Response 2-24.11

The Agency appreciates the support. No further change is required in response to this comment.

Comment 2-24.12

Section 15125: Agree that historic conditions can provide a method for justifying a baseline.

Response 2-24.12

The Agency appreciates the support. No further change is required in response to this comment.

Comment 2-24.13

Section 15126.2: Consider adding reference to faults so that (a) line 19 reads: "... (e.g., floodplains, coastlines, wildfire risk areas, earthquake faults) ... "

Response 2-24.13

Changes in this section were made in response to the Supreme Court's holding in BIA v. BAAQMD. The Court specifically struck reference to fault lines. As explained in the Final Statement of Reasons, other statutory provisions require local governments to consider fault lines in considering development approvals. No further change is required in response to this comment.

Comment 2-24.14

Section 15126.4: Agree that mitigation measures must be identified before project approval and that a measure will achieve an adopted performance standard. However, UAIC still has concerns that there may be abuse by lead agencies and project applicants regarding what is characterized as a "detail" of a measure that gets deferred or when it is truly impractical or infeasible to identify potentially affected resources as part of the CEQA document. In general, UAIC does not support deferring until after project approval surveys to identify tribal cultural resources (TCRs) as this approach results in fewer opportunities for project alternatives and design to avoid TCRs which in turn results in unnecessary adverse impacts and effects to TCRs that are often left unaccounted for in project environmental documents or cumulative effects analyses.

Response 2-24.14

Please see Master Response 15 regarding mitigation details. No further change is required in response to this comment.

Comment 2-24.15

Section 15168: Generally agree with revisions to clarify whether a later activity is within the scope of a program EIR. However, UAIC recommends adding reference to evolving state regulatory schemes (e.g., whether the base document was subject to AB 52) to the list of factors an agency may consider in making that determination.

Response 2-24.15

As discussed in the regulation, if a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration. This may include, depending on the project and the scope of analysis in a program EIR, effects on tribal cultural resources. As made clear in other changes to this section, the determination of whether the later activity falls within the scope of a program EIR is a factual determination to be made based on substantial evidence in the record. Please also note, as a result of SB 18, cities and counties have been required to consult with tribes before adopting updates to general plans and specific plans since 2004. Also, Governor Brown's Executive Order B-10-11 (2011) requires that "[e]very state agency and department shall encourage communication and consultation with California Indian Tribes." Thus, an increasing number of program EIRs are likely to have expressly addressed tribal cultural resources. Thus, the Agency finds that no change is necessary in response to this comment.

Comment 2-24.16

Section 15269: Disagree with the language proposed at (b) and (c) regarding excluding emergency repairs (including those that require a reasonable amount of planning to address an anticipated emergency) and specific actions to prevent or mitigate an emergency if the anticipated period of time to conduct environmental review of such a project would create a risk to public, health, safety, or welfare or if they are in response to an emergency at a similar existing facility. The proposed language lacks definitions or common usages in CEQA (e.g., "reasonable amount" of planning, "anticipated" emergency, "anticipated" period of time, a "risk" to public health, safety or welfare, "similar" existing facility). Recommend tightening the language, including adding the word "significant" before risk. Also, note that agencies would need to be reminded that the jurisdiction of the Native American Heritage Commission regarding burials and grave goods and their respectful and culturally-appropriate treatment is outside of the CEQA statute and would still apply to CEQA-exempt emergency actions.

Response 2-24.16

Please note, the exemption addressed in this comment was created by the Legislature and interpreted by the courts. The Agency proposes the changes in this section to be consistent with those court decisions. Please also note, this regulation has been further clarified to state that the planning must be required "to address an anticipated emergency." Commenter's other suggestion about the Governor's Office of Planning and Research producing additional guidance documents is outside the scope of this regulatory package. Please note, however, that the Native American Heritage Commission has developed guidance addressing this topic. (See, Protecting California Native American Sites During Drought, Wild Land Fire, and Flood Emergencies: A Guide to Relevant Laws and Cultural Resources Management Practices (2015), available online at: http://nahc.ca.gov/wp-content/uploads/2017/03/Protecting-CA-NA-Sites-During-Drought-Wild-Land-Fire-and-Flood-Emergencies.pdf.)

Comment 2-24.17

Appendix G Checklist Form Question: Support adding reference to developing a tribal consultation plan. Revision should help agencies and tribes more effectively plan and execute the consultation process. Suggest adding more examples of what topics could be in plan to better track AB 52 language, such as alternatives, preservation in place, mitigation measures, and conclusion of consultation. UAIC also recommends adding a second question, such as, "If tiering, demonstrate that the base EIR was developed in compliance with AB 52."

Response 2-24.17

The Agency appreciates the support. Please see Master Response 18 regarding Appendix G. No further change is required in response to this comment.

Comment 2-24.18

Appendix G Aesthetic Considerations: Generally support clarification that certain aesthetic considerations may apply differently in urban settings. However, we still have concerns that there may be abuse by lead agencies and project applicants regarding the role of visual and aesthetic impacts to TCR integrity leading to a lack of consideration for these issues during project review and AB 52 consultations. Please explain the rationale behind the reference to "public views"; components of historic properties may include either private or public views. As written, the revision appears inconsistent with the National Historic Preservation Act and the criteria and guidance used for both the California Register of Historical Resources and the National Register of Historic Places.

Response 2-24.18

The Agency appreciates the support. Please see Master Response 18 regarding Appendix G. No further change is required in response to this comment.