



ASSOCIATION OF  
ENVIRONMENTAL  
PROFESSIONALS

June 1, 2012

**CEQA Guidelines Update**

Attention: Mr. Christopher Calfee  
Governor's Office of Planning and Research  
1400 Tenth Street  
Sacramento, California  
95814

Comments on  
**Revised Proposed Amendments to the CEQA Guidelines  
Pursuant to Public Resources Code Section 21094.5.5.**

Dear Chris,

As you know, members of The Association of Environmental Professionals (AEP) are involved in every stage of the evaluation, analysis, assessment, and litigation of projects subject to the California Environmental Quality Act (CEQA) and other important environmental planning laws. 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.

The revised proposed amendments to the CEQA guidelines are clear, concise and well-organized. Technical and clarifying changes to Proposed Section 15183.3 and Appendix M of the Revised Proposed amendments are suggested in the attachment to this letter (shown in "track-changes").

We are appreciative of the fact that the current proposal is subject to change during subsequent review by the Secretary for Resources and look forward to addressing additional changes to the guidelines at the appropriate time.

Please don't hesitate to call us if you have any questions about these comments.

Sincerely,

Eugene Talmadge,  
President

Cc. Mr. Allan Lind, AEP Lobbyist

## Attachment

### Technical and Clarifying Changes to the Revised Proposed CEQA Guidelines Pursuant to PRC Section 21094.5.5

#### **Revised Proposed State CEQA Guideline Section 15183.3. Streamlining for Infill Projects**

(a) Purpose. The purpose of this section is to streamline the environmental review process for eligible infill projects by limiting the topics subject to review at the project level where the effects of infill development have been addressed in a planning level decision or by uniformly applicable development policies.

(b) Eligibility. To be eligible for the streamlining procedures prescribed in this section, an infill project must:

(1) Be located in an urban area on a site that either has been previously developed or that adjoins existing qualified urban uses on at least seventy-five percent of the site's perimeter. For the purpose of this subdivision "adjoin" means the infill project is immediately adjacent to qualified urban uses, or is only separated from such uses by an improved public right-of-way;

(2) Satisfy the statewide performance standards provided in Appendix M; and

(3) Be 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, except as provided in subdivisions (b)(3)(A) or (b)(3)(B) below.

(A) Where an infill project is proposed within the boundaries of a metropolitan planning organization for which a sustainable communities strategy or an alternative planning strategy will be, but is not yet in effect, a residential infill project must have a density of at least 20 units per acre, and a retail or commercial infill project must have a floor area ratio of at least 0.75.

(B) Where an infill project is proposed outside of the boundaries of a metropolitan planning organization, the infill project must meet the definition of a small walkable community ~~walkable~~ project in subdivision ~~(ef)(67)~~, below.

(c) Streamlined Review. CEQA does not apply to the effects of an eligible infill project under two circumstances. First, if an effect was addressed as a significant effect in a prior EIR for a planning level decision, then, with some exceptions, that effect need not be analyzed again for an individual infill project. Second, an effect need not be analyzed, even if it was not analyzed in a prior EIR or is more significant than previously analyzed, if uniformly applicable development policies or standards, adopted by the lead agency or a city or county, apply to the infill project and would substantially mitigate that effect. Depending on the effects addressed in the prior EIR and the availability of uniformly applicable development policies or standards that apply to the eligible infill project, streamlining under this section will range from a complete exemption, to an obligation to prepare a narrowed, project-specific environmental document. A prior EIR will be most helpful in dealing with later infill projects if it deals with the effects of infill development as specifically and comprehensively as possible. With a good and detailed analysis of such development, the effects of many infill projects could be found to have been addressed in the prior EIR, and no further environmental documents would be required.

(d) Procedure. Following preliminary review of an infill project pursuant to Section 15060, the lead agency must examine an eligible infill project in light of any prior EIR to determine whether the infill project will cause any effects that require additional review under CEQA. Determinations regarding this section's applicability to an infill project are questions of fact to be resolved by the lead agency. Such determinations must be supported with enough relevant

information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. (See Section 15384.)

(1) Evaluation of the Infill Project. A lead agency should prepare a written checklist or similar device to document the infill project's eligibility for streamlining and to assist in making the determinations required by this section. The sample written checklist provided in Appendix N may be used for this purpose. A written checklist prepared pursuant to this section should do all of the following:

(A) Document whether the infill project satisfies the applicable performance standards in Appendix M.

(B) Explain whether the effects of the infill project were analyzed in a prior EIR. The written checklist should cite the specific portions of the prior EIR, including page and section references, containing the analysis of the infill project's significant effects. The written checklist should also indicate whether the infill project incorporates all applicable mitigation measures from the prior EIR.

(C) Explain whether the infill project will cause new specific effects. For the purposes of this section, a new specific effect is an effect that is both specific to the infill project or the infill project site and that was not addressed in the prior EIR. A new specific effect may result if, for example, the prior EIR acknowledged that sufficient site-specific information was not available to analyze that effect. Substantial changes in circumstances following certification of a prior EIR may also result in a new specific effect.

(D) Explain whether substantial new information shows that the **adverse environmental** effects of the infill project are more significant than described in the prior EIR. For the purpose of this section, "more significant" means an effect will be substantially more severe than described in the prior EIR. More significant effects include those that result from changes in circumstances or changes in the development assumptions underlying the prior EIR's analysis. An effect is also more significant if substantial new information shows that: (1) mitigation measures that were previously rejected as infeasible are in fact feasible, and such measures are not included in the project; (2) feasible mitigation measures considerably different than those analyzed in a prior EIR could substantially reduce the significant effects described in the prior EIR, but such measures are not included in the project; or (3) an applicable mitigation measure was adopted in connection with a planning level decision, but the lead agency determines that it is not feasible for the infill project to implement that measure.

(E) If the infill project will cause new specific effects or more significant effects, the written checklist should indicate whether uniformly applicable development policies will substantially mitigate those effects. For the purpose of this section, "substantially mitigate" means that the policy or policies will substantially lessen the effect, but not necessarily below the level of significance. The written checklist should specifically identify the uniformly applicable development policy or standard and explain how it will substantially mitigate the effects of the infill project. The explanation in the written checklist may be used to support the finding required in subdivision (ed)(2)(D) below.

(2) Environmental Document. After examining the effects of the infill project in light of the analysis in any prior EIR and uniformly applicable development policies or standards, the lead agency shall determine what type of environmental document shall be prepared for the infill project.

(A) No Further Review. No additional environmental review is required if the infill project would not cause any new specific effects or more significant effects, or if uniformly applicable development policies would substantially mitigate such effects. Where the lead agency determines that no additional environmental review of the effects of the infill project is required, the lead agency shall file a Notice of Determination as provided in Section 15094. Where the

lead agency finds that uniformly applicable development policies substantially mitigate a significant effect of an infill project, the lead agency shall make the finding described in subdivision (ed)(2)(D).

(B) Negative Declaration, Mitigated Negative Declaration or Sustainable Communities Environmental Assessment. If the infill project would result in new specific effects or more significant effects, and uniformly applicable development policies would not substantially mitigate such effects, those effects shall be subject to CEQA. If a new specific effect is less than significant, the lead agency may prepare a negative declaration. If new specific effects or more significant effects can be mitigated to a less than significant level through project changes agreed to prior to circulation of the written checklist, the lead agency may prepare a mitigated negative declaration. In these circumstances, the lead agency shall follow the procedure set forth in Sections 15072 to 15075. Alternatively, if the infill project is a transit priority project, the lead agency may follow the procedures in Section 21155.2 of the Public Resources Code. In either instance, the written checklist shall clearly state which effects are new or more significant, and are subject to CEQA, and which effects have been previously analyzed and are not subject to further environmental review. Where the lead agency finds that uniformly applicable development policies substantially mitigate a significant effect of an infill project, the lead agency shall make the finding described in subdivision (ed)(2)(D).

(C) Infill EIR. If the infill project would result in new specific effects or more significant effects, and uniformly applied development policies would not substantially mitigate such effects, those effects are subject to CEQA. With respect to those effects that are subject to CEQA, the lead agency shall prepare an infill EIR if the written checklist shows that the effects of the infill project would be significant. In this circumstance, the lead agency shall prepare an infill EIR as provided in subdivision (d) and, except as otherwise provided in this section, shall follow the procedures in Article 7. Where the lead agency finds that uniformly applicable development policies substantially mitigate a significant effect of an infill project, the lead agency shall make the finding described in subdivision (ed)(2)(D).

**Comment [D1]:** The term "Infill EIR" is invented here and does not appear anywhere else in CEQA or existing Guidelines. It would be appropriate, therefore to add a definition under Terminology below. For consistency purposes we capitalize "Infill" whenever used in conjunction with EIR.

(D) Findings. Any findings or statement of overriding considerations required by Sections 15091 or 15093 shall be limited to those effects analyzed in an infill EIR. Findings for such effects should incorporate by reference any findings made in connection with a planning level decision. Where uniformly applicable development policies substantially mitigate the significant effects of an infill project, the lead agency shall also make a written finding, supported with substantial evidence and accompanied by a brief explanation of the rationale for the finding.

(e) Infill EIR Contents. An infill EIR shall analyze only those significant effects that uniformly applicable development policies do not substantially mitigate, and that are either new specific effects or are more significant than a prior EIR analyzed. All other effects of the infill project should be described in the written checklist as provided in subdivision (b)(1), and that written checklist should be circulated for public review along with the infill EIR. The written checklist should clearly set forth those effects that are new specific effects, and are subject to CEQA, and those effects which have been previously analyzed and are not subject to further environmental review. The analysis of alternatives in an infill EIR need not address alternative locations, densities, or building intensities. An infill EIR need not analyze growth inducing impacts. Except as provided in this subdivision, an infill EIR shall contain all elements described in Article 9.

(ef) Terminology. The following definitions apply to this section:

(1) "Infill EIR" means an EIR for an infill project that analyzes only those significant effects that uniformly applicable development policies do not substantially mitigate and that are either new specific effects or are more significant than a prior EIR analyzed.

(2) "Infill project" includes the whole of an action consisting of residential, commercial, retail, transit station, school, or public office building uses, or any combination of such uses that meet the eligibility requirements set forth in subdivision (b). No more than one half of the project area

of projects consisting of commercial and retail uses may be used for parking. For the purposes of this section, "transit station" means a rail or light-rail station, ferry terminal, bus hub, or bus transfer station, and includes all streetscape improvements constructed in the public right-of-way within one-quarter mile of such facility to improve multi-modal access to the facility, such as pedestrian and bicycle safety improvements and traffic-calming design changes that support pedestrian and bicycle access.

(23) "Planning level decision" means the enactment or amendment of a general plan or any general plan element, community plan, specific plan, or zoning code.

(34) "Previously developed" means that a substantial portion of the site has been mechanically altered for purposes authorized in a local zoning code. Developed open space and parcels that are, or have been, in agricultural production shall not be considered to be previously developed for the purposes of this section.

(45) "Prior EIR" means the environmental impact report certified for a planning level decision, as supplemented by any subsequent or supplemental environmental impact reports, negative declarations, or addenda to those documents.

(56) "Qualified urban use" is defined in Public Resources Code Section 21072.

(67) "Small walkable community walkable-project" means a project that is all of the following:

(A) In an incorporated city that is not within the boundary of a metropolitan planning organization;

(B) Within an area of approximately one-quarter mile diameter of contiguous land that includes a residential area adjacent to a retail downtown area and that is designated by the city for infill development consisting of residential and commercial uses. A city may designate such an area within its general plan, zoning code, or by any legislative act creating such a designation, and may make such designation concurrently with project approval; and

(C) Either a residential project that has a density of at least eight units to the acre or a commercial project with a floor area ratio of at least 0.5, or both.

(7) The terms "sustainable communities strategy" and "alternative planning strategy" refer to a strategy for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

(8) "Uniformly applicable development policies or standards" are policies or standards adopted or enacted by a city or county, or by a lead agency, which reduce one or more adverse environmental effects. Examples of uniformly applicable development policies or standards include, but are not limited to:

(A) Regulations governing construction activities, including noise regulations, dust control, provisions for discovery of archeological and paleontological resources, stormwater runoff treatment and containment, protection against the release of hazardous materials, recycling of construction and demolition waste, temporary street closure and traffic rerouting, and similar regulations.

(B) Requirements in locally adopted building, grading and stormwater codes.

(C) Design guidelines.

(D) Requirements for protecting residents from sources of air pollution including high volume roadways and stationary sources.

(E) Impact fee programs to provide public improvements, police, fire, parks and other open space, libraries and other public services and infrastructure, including transit, bicycle and pedestrian infrastructure and traffic calming devices.

(F) Traffic impact fees.

(G) Requirements for reducing greenhouse gas emissions, as set forth in adopted land use plans, policies, or regulations.

(H) Ordinances addressing protection of urban trees and historic resources.

(9) "Urban area" is defined in Public Resources Code Section 21094.5(e)(5).

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**Revised Proposed Appendix M: Performance Standards for Infill Projects Eligible for Streamlined Review**

**I. Introduction**

Section 15183.3 provides a streamlined review process for infill projects that satisfy performance standards that promote a set of statewide policy objectives set forth in Section 21094.5.5 of the Public Resources Code. This appendix contains those performance standards. The lead agency's determination that the project satisfies the performance standards shall be supported with substantial evidence, which may be documented on the Infill Checklist in Appendix N. Section II defines terms used in this Appendix. Performance standards that apply to all project types are set forth in Section III. Section IV contains performance standards that apply to particular project types (i.e., residential, commercial/retail, office building, transit stations, and schools).

**Comment [D2]:** We suggest subsequent iterations of this Appendix M include a summary of the 7 statewide policy objectives with a brief explanation of how each is accounted for in Appendix M.

**II. Definitions**

The following definitions apply to the terms used in this Appendix.

"High-quality transit corridor" means an existing corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

Unless more specifically defined at the local level, "high-volume roadway" means freeways, highways, urban roads with 100,000 vehicles per day, or rural roads with 50,000 vehicles per day.

"Low vehicle travel area" means a traffic analysis zone that exhibits a below average existing level of vehicle travel as determined using a regional travel demand model. For residential projects, travel refers to either home-based or household vehicle miles traveled. For commercial and retail projects, travel refers to average non-work attraction trip length; ~~however, where such data are not available, commercial projects may reference residential travel.~~ For office projects, travel refers to commute attraction vehicle miles traveled per employee; ~~however, where such relevant data are not available for commercial and retail projects, such projects may reference residential travel and where data are not available for office projects such projects~~ may reference household or home-based VMT.

"Major Transit Stop" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes

with frequencies of service intervals of 15 minutes or less during the morning and afternoon peak commute periods.

“Office building” generally refers to centers for governmental or professional services; however, the lead agency shall have discretion in determining whether a project is “commercial” or “office building” for the purposes of this Appendix based on local zoning codes.

A “Traffic Analysis Zone” (TAZ) is an analytical unit used by a travel demand model. A regional travel demand model develops an origin-destination table for all origins and destinations within the region, and these origins and destinations are aggregated into TAZs. The travel demand model, which is the best tool to depict the effect of regional location on VMT, can provide estimates of vehicle travel as fine-grained as the TAZ

### III. Performance Standards Applying to All Project Types

To be eligible for streamlining pursuant to Section 15183.3, a project must implement all of the following:

**Renewable Energy.** All non-residential projects shall include on-site renewable power generation, such as solar photovoltaic, solar thermal and wind power generation, and clean back-up power supplies, where feasible. Residential projects are also encouraged to include such on-site renewable power generation.

**Soil and Water Remediation.** If the project site is included on any list compiled pursuant to Section 65962.5 of the Government Code, the project shall document how ~~it the project site has been remediated the site~~, if remediation is completed. ~~Alternatively, if remediation is incomplete~~ the project shall implement the recommendations provided in a preliminary endangerment assessment or comparable document that identifies remediation appropriate for the site.

**Residential Units Near High-Volume Roadways and Stationary Sources.** If a project includes residential units located within 500 feet, or other distance determined to be appropriate by the local agency or local air district based on local conditions, of a high-volume roadway or other readily identifiable stationary source of air pollutants, the project shall comply with any policies and standards identified in the local general plan, specific plan, zoning code, ordinance or community risk reduction plan for the ~~projection-protection~~ of public health. If the local government has not adopted such plans or policies, the project shall include measures, such as enhanced air filtration and project design, that the lead agency determines, based on substantial evidence, will promote the protection of public health. Those measures may include, among others, the recommendations of the California Air Resources Board and local air districts.

### IV. Performance Standards by Project Type

In addition to the project features described above in Section III, specific eligibility requirements are provided below by project type.

Several of the performance standards below refer to “low vehicle travel areas”. Such areas can be illustrated on maps based on data developed by the regional Metropolitan Planning Organization (MPO) using its regional travel demand model.

Several of the performance standards below refer to distance to transit. Distance should be calculated so that at least 75 percent of the surface area of the project site is within the specified distance.

#### A. Residential

**Comment [D3]:** “Clean back-up power” sounds oxymoronic. Suggest deleting this clause. Any on-site renewable generation technology in an urban setting is going to have back-up from the grid or from on-site back-up diesel generators (BUGs). Clean back-up is most economically acquired from the grid; BUGs are intended to provide emergency power when power from the grid is disrupted. BUGs are invariably dirtier than the grid.

To be eligible for streamlining, a residential project must satisfy one of the following:

**Projects achieving below average regional per capita vehicle miles traveled (VMT).** A residential project is eligible if it is located in low vehicle travel area within the region. If maps or data from a regional travel demand model are not available, a project may instead use publicly accessible sketch tools to demonstrate that project-generated per capita VMT is less than regional per capita VMT.

**Projects located within ½ mile of an Existing Major Transit Stop or High-Quality Transit Corridor.** A residential project is eligible if it is located within ½ mile of an existing major transit stop or an existing stop along a high-quality transit corridor.

#### B. Commercial/Retail

To be eligible for streamlining, a commercial/retail project must satisfy one of the following:

**Regional Location.** A commercial project with no single-building floor-plate greater than 50,000 square feet is eligible if it locates in a low vehicle travel area within the region.

**Proximity to Households.** A project with no single-building floor-plate greater than 50,000 square feet located within one-half mile of 1800 households is eligible.

Any commercial and retail project, including one with a single-building floor-plate exceeding 50,000 square feet, is eligible if a transportation study prepared for the project demonstrates that the project would reduce total existing VMT.

#### C. Office Building

To be eligible for streamlining, an office [building](#) project must satisfy one of the following:

**Regional Location.** Office buildings, both commercial and public, are eligible if they locate in a low vehicle travel area within the region.

**Proximity to a Major Transit Stop.** Office buildings within ¼ mile of an existing major transit stop are eligible.

#### D. Transit

Transit stations, as defined in Section 15183.3(e)(1), are eligible.

#### E. Schools

Elementary schools within one mile of fifty percent of the projected student population are eligible. Middle schools and high schools within two miles of fifty percent of the projected student population are eligible. Alternatively, any school within ½ mile of an existing major transit stop or an existing stop along a high quality transit corridor is eligible.

Additionally, in order to be eligible, all schools shall provide parking and storage for bicycles and scooters and shall comply with Sections 17213, 17213.1 and 17213.2 of the California Education Code.

#### F. Small Walkable Community Projects



| Small walkable community projects, as defined in Section 15183.3, subdivision (f)(7E), that implement the project features described in Section III above are eligible.

#### G. Mixed-Use Projects

Where a project includes some combination of residential, commercial and retail, public office building, transit station, and/or schools, the performance standards in this Section that apply to the predominant use shall govern the entire project.

**Comment [D4]:** Shouldn't there be guidance on determining "predominant use?" i.e., is it determined on basis of trip generation, footprint, floor area, or simply at the discretion of lead agency?