STATE OF CALIFORNIA
GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH

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Narrative Explanation of the Proposed Addition to the CEQA Guidelines Implementing SB 226

I. Introduction

The Governor's Office of Planning and Research is pleased to solicit your input on proposed additions to the Guidelines for Implementation of the California Environmental Quality Act ("CEQA Guidelines"). This proposal reflects the Legislature's direction in SB 226 (Simitian, 2011) to prepare additions to the CEQA Guidelines setting forth a streamlined CEQA review process for infill projects. This proposal also contains the performance standards that determine an infill project's eligibility for that streamlined review.

Governor Jerry Brown signed SB 226 on October 4, 2011. In the three months since then, the Office of Planning and Research has sought advice from technical and legal experts, affected stakeholders in local government, environmental organizations, builders and planners, and other interested parties. This first draft of proposed additions to the CEQA Guidelines reflects intensive research and outreach and is one approach to fulfill the direction in SB 226.

Much work remains, however. SB 226 raises difficult issues requiring a high degree of public input and participation. In order for this process to achieve its goal of creating an expeditious path for infill development, all affected parties must be involved in working toward that outcome.

SB 226 does not require the Office of Planning and Research to transmit its draft of the CEQA Guidelines update to the Natural Resources Agency until July 1, 2012. We are releasing this preliminary discussion draft now to engage the public in an open and iterative development process.

As you review this preliminary discussion draft, bear in mind the following:

(1) SB 226 calls for a change in how the CEQA review process is done for infill projects, and change is difficult. Some may understandably have concerns about an unfamiliar process, and possible costs associated with demonstrating compliance with that process. We need your help identifying ways to manage the uncertainty in the process (for the public, for agencies, and for applicants) and to further reduce compliance costs.

(2) This package is a first draft that will be improved with your input. Input backed by facts, research and authority will be helpful. Input that provides solutions to any perceived problems in this draft will also be helpful.

(3) The CEQA Guidelines are administrative regulations. They must, therefore, be consistent with the text and scope of authority granted in SB 226. The Guidelines cannot add

requirements that do not exist in the statute, nor can they remove any requirements that the statute imposes. Given the scheme set forth in SB 226, we seek your input on how to improve this draft to achieve better environmental outcomes, make the text of the Guidelines simpler, and reduce the time and cost of compliance.

(4) This package implements the direction of the legislature in SB 226. The Office of Planning and Research welcomes suggestions for improvements to the existing CEQA Guidelines that are unrelated to SB 226; however, it will consider such suggestions for possible inclusion in a separate package of updates to the CEQA Guidelines, following completion of the SB 226 update.

This document sets forth the research and rationale underlying the proposed additions to the CEQA Guidelines. Specifically, Section II discusses the reasons to promote infill development in the CEQA process. Section III provides background on SB 226, including a comparison of its streamlining process to other streamlining tools already in CEQA. It also describes the policy trade-offs and practical considerations for developing the CEQA Guidelines Update. Section IV summarizes the proposed addition of a new Section 15183.3 to the CEQA Guidelines. Section V summarizes the rationale supporting the proposed performance standards, including a set of questions and answers. Section VI contains several hypothetical illustrations of how the new process would work under various circumstances. Finally, Section VII contains a bibliography of resources.

To allow sufficient time for an iterative development process, we request your written comments no later than February 24, 2012. We encourage electronic submission of your comments, which may be e-mailed to CEQA.Guidelines@ceres.ca.gov. Comments may also be mailed or hand delivered to:

CEQA Guidelines Update
c/o Christopher Calfee
1400 Tenth Street
Sacramento, CA 95814

Public workshops will be held in February 2012. Notice will be posted to the Office of Planning and Research's website at http://www.opr.ca.gov. If you would like to receive electronic notice of upcoming workshops and other activities in the CEQA Guidelines Update process, please sign up for our listserv at http://ceres.ca.gov/ceqa/guidelines-sb226/ .

II. Why Promote Infill in CEQA?

While California's population continues to expand, its fiscal and natural resources are constrained. California will grow, but given its constraints, it must grow efficiently. Infill development (i.e., reusing previously developed land or using vacant parcels that are surrounded by other urban uses) is a key strategy for efficient growth. California's projected development demand, existing development patterns, adopted state policies prioritizing infill, and the various benefits of infill development, are described briefly below.

A. California at 50 Million: Where to Grow?

Within 20 years, California's population is expected to exceed 50 million people. According to data compiled by the Brookings Institution, California will need to add nearly 7 million housing units between 2000 and 2030 to house its growing population. By 2030, over 22 million workers will occupy over 10 billion square feet of new or replaced commercial and institutional space. (Arthur Nelson, "Toward a New Metropolis: the Opportunity to Rebuild America," Brookings Institution (2004).)

A key question for California is: where should that growth occur? Nationally, the footprint of many urban areas grew by 50 percent in just 30 years, far outpacing population growth. (U.S. Environmental Protection Agency, "Our Built and Natural Environments: A Technical Review of the Interactions between Land Use, Transportation, and Environmental Quality" (Jan. 2001), at p. 5.) Outward growth is also occurring in California. For example, the urban footprint in the Sacramento Region nearly doubled between 1980 and 2010, with that growth occurring largely in converted agricultural land. ("Sprawl's spread speeds up," Sacramento Bee, November 5, 2011.) Nationally, most newly developed land was converted from forestland, pasture and range lands, and cropland. (Our Built and Natural Environments, at p. 4.) By 1994, one study concluded that urban development had already consumed nearly one-third of the nation's highly productive agricultural land. (*Ibid.*)

Not only has the total developed footprint of our urban areas increased dramatically, but the manner of California's growth has also changed. Large lots and dispersed uses have increased reliance on automobiles. (Our Built and Natural Environments, at p. 4.) As a result, the amount and distances people must drive have increased substantially. The amount of driving, measured as "vehicle miles traveled" or VMT, has increased approximately three percent per year in California, exceeding the state's rate of population growth. (Bartholomy, et al., "The Role of Land Use in Meeting California's Energy and Climate Change Goals," California Energy Commission (June 2007), at p. 9.) This development pattern causes many adverse environmental consequences, including, but not limited to, consumption of open space, destruction and fragmentation of wildlife habitat, decreased water quality, increased air pollution and greenhouse gas emissions. (*Id.* at pp. 80-82.)

In addition to environmental costs, our growth patterns are affecting our economic health. The average American household spends approximately 20 percent of its total income on transportation costs. (Marilee Utter, "The Match Game: Bringing Together Affordable Housing and Transit Villages," Multifamily Trends (Winter 2005).) Poorer households pay even more. "Today, the average car costs more than $6,000 per year to own and operate, but even the least expensive car can cost $3,000 per year in insurance, fuel, repairs, and other miscellaneous expenses." (*Ibid.*) "One analysis of some of the causes behind the U.S. financial crisis suggests that vehicle ownership and a lack of access to public transportation may be just as predictive of mortgage foreclosure rates as low credit scores and high debt-to-income ratios." ("Location Efficiency and Housing Type: Boiling it Down to BTUs," Jonathan Rose Companies (May 2011), at p. 5.)

B. Environmental, Social and Health Benefits Associated with Infill

In contrast to continued outward growth, infill development provides multiple benefits on community, regional and statewide scales. In adopting a policy to promote infill development, the American Planning Association explained:

> Existing neighborhoods and communities are an important asset in efforts to address climate change. Public and private sector investments have created infrastructure and amenities to serve homes and businesses in these areas. Reinvestment in these sites allows a community (or a region) to accommodate new residents and businesses within its existing fabric. Such reinvestment maximizes the use of existing infrastructure, encourages the preservation and continued use of historic buildings and supports existing businesses and services. It reduces the need for new roads and infrastructure, and can encourage walking, biking and use of transit. It preserves open space and Greenfields, thus reducing sprawl and retaining areas that serve as carbon sinks.

(American Planning Association, Policy Guide on Planning & Climate Change (Updated April 2011).) Evidence indicates that these general observations hold true in California.

For example, a 2005 study of California's infill potential found that, compared to current development trends, the demand for undeveloped land could be reduced by nearly 350,000 acres if new development focused in infill locations. (Landis et al., "The Future of Infill Housing in California: Opportunities, Potential, Feasibility and Demand" (September 2005), Volume II, at p. 93.)

Directing growth to existing urbanized areas is also a promising strategy to reduce greenhouse gas emissions. According to the Brookings Institution, the per capita carbon footprint of metropolitan areas was lower than non-metropolitan areas, largely due to reduced building energy and automobile use. (Brown et al., "Shrinking the Carbon Footprint of Metropolitan America," Brookings (May 2008).) Similarly, emissions increased at a slower pace in metropolitan areas. (*Ibid.*)

Infill development is also one strategy to serve California's changing demographics. Younger adults entering the workforce and older adults entering retirement are both gravitating toward established cities. (Urban Land Institute and Price Waterhouse Coopers, "Emerging Trends in Real Estate 2012" (October 2011), at pp. 27-29.) Notably, evidence indicates that the top real estate markets also tend to be highly walkable (i.e., densely developed with a diversity of uses). (*Ibid.*)

Infill strategies are also consistent with near-term development trends. One recent report concluded that demand for housing within transit station areas is much higher than available supply, whereas the supply of large lot homes exceeds demand. (Arthur Nelson, "The New California Dream: How Demographic and Economic Trends May Shape the Housing Market: A Land Use Scenario for 2020 and 2035," Urban Land Institute (2011).) Similarly, a study by the U.S. Environmental Protection Agency found a "dramatic increase in the share of new

construction built in central cities and older suburbs." (U.S. Environmental Protection Agency, "Residential Construction Trends in America's Metropolitan Regions" (January 2010), at p. 1.) In fact, according to a report prepared by the Urban Land Institute and Price Waterhouse Coopers, "[i]nfill and in-town projects have much better prospects than greenfield subdivisions." (Emerging Trends in Real Estate 2012, at p. 57.) For example, the highest rated investment and development prospects for 2012 are apartments. (*Id.* at pp. 43-44.) The Urban Land Institute and Price Waterhouse Coopers further report that "[c]onvenience trends and rising auto-related costs orient lifestyles to 24-hour infill locations, especially toward apartments near mass transit stops[.]" (*Id.* at p. 46.) Similarly, urban mixed-use properties rate near the top for both investment and development prospects, while master-planned communities rate near the bottom. (*Id.* at p. 45.) Focusing on infill is also consistent with trends in retail development. Again, according to the Emerging Trends in Real Estate report, "The United States simply does not need additional shopping center square footage, especially in old formats." Infill "necessity retail" near healthy neighborhoods is expected to perform and "plenty of opportunity exists for redevelopment and redesign." (*Id.* at pp. 54-55.) Buildings that incorporate green building strategies are also increasing in demand and popularity. (*Id.* at pp. 44-45.)

Infill development is also linked to health benefits. According to the American Lung Association,

> Sustainable, mixed-use communities designed around mass transit, walking and cycling have been shown to reduce greenhouse gas emissions, air pollution, and a range of adverse health outcomes including traffic injuries, cancers, lung and heart disease, obesity, diabetes, and other chronic health conditions. In addition to the benefits to lung health, individuals who live in mixed-use and walkable communities have a 35 percent lower risk of obesity.

(American Lung Association in California, "Land Use, Climate Change & Public Health Issue Brief: Improving public health and combating climate change through sustainable land use and transportation planning" (Spring 2010).) Beyond the benefits from reductions in obesity, diabetes, heart and lung disease, cancers and other chronic illnesses associated with increased physical activity, smart growth development patterns "could help California cut over 132,000 tons of air pollution and avoid up to 140 premature deaths, 105,000 asthma attacks and other respiratory symptoms, 16,550 work days lost and $1.66 billion in health costs in 2035." (American Lung Association in California, Fact Sheet, "Smart Growth will help California avoid air pollution-related illnesses, deaths and costs.")[1] Studies have linked positive health outcomes to policies that increase walking, bicycling and other physical activity. (Woodcock J, et al. "Public health benefits of strategies to reduce greenhouse-gas emissions: urban land transport," The Lancet (2009), pp. 1930-1943.)

C. Alignment With State Policy

Recognizing the environmental and other costs of sprawl, and the benefits of infill, state policy has long prioritized infill development. For example, the 1978 Urban Strategy states:

[1] Based on the results of an evaluation by TIAX LLC, and sponsored by the American Lung Association in California, of data in the Vision California planning scenarios.

> California's Urban Strategy envisions as its goal a society in which people live in harmony with the land: where urban areas are exciting, safe places to live; where the air and water are clean; where work places are close to homes; where crops and animals thrive on the state's best agricultural lands; where areas of great scenic or fragile nature are set aside for permanent protection. To accomplish this California must commit itself to more compact urban areas, to the revitalization of its existing cities and suburbs, to the continued production of its best agricultural lands.

(Office of Planning & Research, An Urban Strategy for California (1978) at pp. 8-9.) Among the broad goals described in the Urban Strategy are:

- Curbing wasteful urban sprawl and directing new development to existing cities and suburbs
- Revitalizing central cities and neighborhoods, and eliminating urban blight
- Encouraging land use patterns in a manner to stimulate necessary development while protecting environmental quality.

(*Id*. at p. 9.) To accomplish these and other goals, the Urban Strategy laid out a specific set of priorities for new development. The first priority is to renew and maintain existing urban areas, in both cities and suburbs. Developing vacant and underutilized areas within urban and suburban areas is second priority. According to the Urban Strategy, development on undeveloped lands would have last priority, and even then, only when undeveloped lands are adjacent to existing developed areas. (*Id*. at p. 10.)[2] In 2002, AB 857 (Wiggins) codified these planning priorities in Section 65041.1 of the Government Code.

While infill is an express policy priority, it is also a key strategy in realizing other state policies. For example, SB 375 (Steinberg, 2008) calls for a reduction in greenhouse gas emissions by aligning land use and transportation planning. Specifically, the California Transportation Commission's Regional Transportation Plan Guidelines recognize "urban and suburban infill, clustered development, mixed land uses, New Urbanist design, transit-oriented development, and other 'smart-growth' strategies" as land use tools to reduce greenhouse gas emissions. (California Transportation Commission, Regional Transportation Plan Guidelines (2010), at pp. 230-231.) Similarly, the Air Resources Board's Scoping Plan describes local policies that may assist the state in achieving its greenhouse gas reduction targets pursuant to AB 32. It noted, for example, that "[l]ocal governments have the ability to directly influence both the siting and design of new residential and commercial developments in a way that reduces GHG associated with energy, water, waste, and vehicle travel, which may include zoning for more compact and mixed-use residential and commercial development and adopting policies to promote infill and affordable housing." (California Air Resources Board, Scoping Plan (2011), Appendix C, at p. C-53.)

[2] Notably, the second action item listed in the Strategy was to seek amendments to CEQA to provide for streamlining for certain projects that are consistent with local plans. (Urban Strategy, at p. 14.)

Despite the benefits of infill development, impediments exist. The California Business, Transportation and Housing Agency commissioned a study in 2005 to examine infill potential in California. That study noted several factors affecting the feasibility of infill housing, including small parcel sizes, local opposition to higher density development, and high costs for land acquisition, entitlement and construction.. (Landis, The Future of Infill Housing in California: Opportunities, Potential, Feasibility and Demand, at pp. 106-115.) Another frequently cited impediment is the uncertainty associated with the regulatory process. (See, e.g., Elkind, E. "Removing the Roadblocks: How to Make Sustainable Development Happen Now" (August 2009).)

III. Background on SB 226

Integration of environmental review with comprehensive planning is one way to reduce uncertainty and delay that can be associated with the development process. (American Planning Association, GROWING SMART LEGISLATIVE GUIDEBOOK: MODEL STATUTES FOR PLANNING AND THE MANAGEMENT OF CHANGE, (Stuart Meck, FAICP, Gen. Ed. 2002), Chapter 12.)

SB 226 (Simitian 2011) addresses uncertainty and delay by creating a new streamlining mechanism in CEQA for infill projects that promote a specific set of environmental policy objectives. Stated broadly, SB 226 promotes infill development in two ways. First, it provides flexibility in project design by basing eligibility on environmental performance rather than prescribing specific project characteristics. Second, it will allow infill projects to avoid repeating analysis of environmental effects that have already been analyzed at a programmatic level.

A. Comparison of SB 226 to Other Exemptions and Streamlining Procedures

To understand the streamlining process under SB 226, it is useful to compare it to CEQA's other streamlining tools, some of which can be difficult to apply in an infill context. For example, Table 1, below, illustrates several ways in which the SB 226 process will apply to a broader set of projects than the existing statutory exemption for infill projects in Public Resources Code Section 21159.24.

Table 1
Comparison of Section 21159.24 to SB 226

	Statutory Exemption	**Streamlining Under SB 226**
Project Type	Only Residential and Mixed-Use	Residential Commercial/Retail Public Office Buildings Transit Stations Schools
Project Size	Under 4 acres Under 100 units	No limitation
Infill Project Location	Large Urban Areas (population > 100,000)	Incorporated cities of any size and dense unincorporated islands

Time Period for Planning Level Review	Within 5 Years of Project	No limitation, provided that new effects of the project would need to be analyzed
Plan Consistency	Requires consistency with General Plan and Zoning	Project may include general plan amendments or zoning variances, provided that new effects would need to be analyzed
Public Review	None	Streamlined review, unless all effects were previously analyzed or substantially mitigated by uniformly applicable development policies

SB 226 builds on existing streamlining tools in CEQA, such as tiering (Pub. Resources Code, § 21094), Master EIRs (Pub. Resources Code, § 21157 et seq.) and Section 21083.3, and makes those concepts more useful in the context of infill development. Table 2 below summarizes some of the differences between existing tools and SB 226.

Table 2
Comparing Existing Streamlining Mechanisms with SB 226

	Tiering	**Master EIRs**	**Section 21083.3**	**Streamlining Under SB 226**
Time Limit on Prior EIR	None	5 Years	None	None
Plan Consistency	Requires consistency with General Plan and Zoning	Silent	Requires consistency with General Plan and Zoning	Project may include general plan amendments or zoning variances, provided that new effects would need to be analyzed
Project-Level Description	Not required in first-tier EIR	Projects relying on the Master EIR must have been specifically identified	Not required in general plan or zoning EIR	Not required in EIR for a planning level decision
Project Contribution to Significant Effects	Additional EIR required for projects that contribute to the significant effect identified in the first-tier EIR	Analysis does not need not be repeated at the project level	Analysis does not need not be repeated at the project level	Analysis does not need not be repeated at the project level
Document	An EIR prepared	A Master EIR for	An EIR for a	An EIR for a

Containing Programmatic Analysis	for a program, plan, policy or ordinance	specified projects	comprehensive general plan amendment or zoning code	planning level decision, as well as any supplements or addenda thereto
Effect of Development Standards	Can be used as thresholds of significance in an analysis, but not conclusively	Can be used as thresholds of significance in an analysis, but not conclusively	Can be used to address peculiar effects of the project, only if adopted by a city or county with a finding that the standard will substantially mitigate the effects of future projects	Can be used to address either new specific effects or effects that are more significant than previously analyzed, provided the finding is made at project approval

In sum, SB 226 addresses some of the idiosyncrasies in CEQA's other streamlining mechanisms that make them difficult to apply in an infill context.

B. Policy Objectives and Trade-Offs

SB 226 streamlines and expedites the CEQA review process for environmentally beneficial infill projects. (Pub. Resources Code, § 21094.5.) Further, SB 226 focuses on a particular set of environmental objectives that such projects should promote, including:

- Increasing efficiencies in transportation, water use and energy use;
- Reducing greenhouse gas emissions;
- Supporting transit; and
- Benefiting public health.

(Pub. Resources Code, § 21094.5.5(b).) Developing these guidelines and performance standards necessarily involves balancing various policy objectives and practical considerations. Those trade-offs and considerations include:

1. Simplicity vs. Precision

One consistent theme emerging from OPR's initial outreach efforts was that the guidelines and performance standards should be simple, easy-to-use and verifiable. On the other hand, different project types and project locations behave differently. Thus, the performance standards employ the fewest standards necessary to promote as many environmental objectives as possible. Additionally, the performance standards and guidelines attempt to fit within the context of other statutes and processes, such as SB 375 and the CALGreen building code.

2. Prescriptive vs. Permissive

Another consideration is how high to set the bar for the environmental performance of projects eligible for streamlining. According to the statute, the performance standards must both encourage infill development and promote high performing projects. Standards that permit only the very highest quality projects may not create enough of an incentive to draw development inward from undeveloped fringe locations. Thus, the performance standards include a graduated set of requirements in order to make the process as simple as possible for higher performing projects while requiring more from lower performing projects.

3. Consistency vs. Regional Variation

The CEQA Guidelines apply statewide. Given the tremendous variation in California's landscape, however, project types and designs that are appropriate in one community may be inappropriate in another community. A single statewide standard might be too difficult to achieve in one setting, and yet too permissive in another setting. The guidelines and performance standards in this proposal acknowledge this variation by metrics that are measured at a regional level.

The initial draft of the guidelines and performances standards attempt to balance these policy objectives.

IV. Explanation of the Streamlined Process in *Proposed* Section 15183.3

Keeping in mind the requirements of SB 226 and the policy considerations described above, this section explains the proposed new Section 15183.3 in the CEQA Guidelines, which prescribes the streamlined process for infill projects.

Subdivision (a): Purpose

Subdivision (a) summarizes the purpose of the streamlining mechanism (i.e., to make the review process for infill projects more efficient).

Subdivision (b): Eligibility

Subdivision (b) sets forth the eligibility requirements for projects to use the streamlined process. Those requirements, including requirements set forth in the statute's definitions, are summarized in Table 3, below.

Table 3
Eligibility Requirements

Project Location	Incorporated cities, or unincorporated "islands" that are completely surrounded by incorporated cities (Proposed CEQA Guidelines § 15183.3(b)(1); see also Pub. Resources Code, § 21094.5(e)(1)(B), (e)(5) (defining "urban area"))

Project Site	Previously developed, or vacant and surrounded on 3 sides by other urban uses (Proposed CEQA Guidelines § 15183.3(b)(1); see also Pub. Resources Code, § 21094.5(e)(1)(B))
SB 375 Consistency	Must be consistent with the general use designation, density and building intensity designated in a sustainable communities strategy or alternative planning strategy (Proposed CEQA Guidelines § 15183.3(b)(3); see also Pub. Resources Code, § 21094.5(c)(1)(A))[3]
Project Type	Residential Commercial / Retail Public Office Building Transit Station School (Proposed CEQA Guidelines § 15183.3(e)(1); see also Pub. Resources Code, § 21094.5(e)(1)(A))
Project Performance	Satisfy the performance standards in Appendix M (Proposed CEQA Guidelines § 15183.3(b)(2); see also Pub. Resources Code, § 21094.5(c)(2))

Subdivision (c): Procedure

Subdivision (c) prescribes the streamlining process for eligible projects. Specifically, subdivision (c) suggests preparing a written checklist to document project review, because a lead agency's determinations regarding a project's eligibility for the streamlining process must be supported with substantial evidence. (Pub. Resources Code, § 21094.5(a); see also, CEQA Guidelines §§ 15152(f) (initial study used to determine whether effects were "adequately addressed" in a first tier EIR), 15168(c)(4) (use a checklist to determine whether project is within the scope of a program EIR).)

The lead agency would use the checklist to determine whether the effects of the project have previously been analyzed in a prior EIR for a planning level decision. (Proposed CEQA Guidelines § 15183.3(c)(1); Pub. Resources Code, § 21094.5(a)(1) ("If an environmental impact report was certified for a planning level decision of a city or county, the application of this division to the approval of an infill project shall be limited to the effects on the environment that (A) are specific to the project or to the project site and were not addressed as significant effects in the prior environmental impact report or (B) substantial new information shows the effects will

[3] Note, a project that is within a metropolitan planning area that has not yet adopted a sustainable communities strategy or alternative planning strategy, or is located in a non-MPO area is subject to a separate and specific set of eligibility requirements.

be more significant than described in the prior environmental impact report").) Specifically, the lead agency would look to the environmental analysis prepared for a planning level decision, such as a general plan, specific plan, or zoning code. (Proposed CEQA Guidelines § 15183.3(e)(2), (e)(4); Pub. Resources Code, § 21094.5(e)(2) (defining "planning level decision").) If the effects of the project were already analyzed in the prior programmatic review, the agency would document where the analysis was done and where the programmatic document is available for inspection. (Proposed CEQA Guidelines § 15183.3(c)(1)(B); Pub. Resources Code, § 21094.5(a).)

If an effect of the infill project was not previously analyzed, or if an effect would be more significant than previously analyzed, the agency may look to locally adopted uniformly applicable development policies, such as a construction noise ordinance, to determine whether such policies would substantially mitigate that effect. If so, the lead agency would explain how the policy substantially mitigates the effect in a finding. (Proposed CEQA Guidelines § 15183.3(c)(1)(E); Pub. Resources Code, § 21094.5(a)(2) ("An effect of a project upon the environment shall not be considered a specific effect of the project or a significant effect that was not considered significant in a prior environmental impact report, or an effect that is more significant than was described in the prior environmental impact report if uniformly applicable development policies or standards adopted by the city, county, or the lead agency, would apply to the project and the lead agency makes a finding, based upon substantial evidence, that the development policies or standards will substantially mitigate that effect").)

Since SB 226 states that previously analyzed effects and effects that are addressed by uniformly applicable development policies are not subject to CEQA, the agency could adopt the infill project after making any necessary findings and could file a Notice of Exemption. (Proposed CEQA Guidelines § 15183.3(c)(2)(A); Pub. Resources Code, § 21094.5(a) ("the application of this division to the approval of an infill project shall be limited…").)

Where an infill project may cause a new effect, the streamlined CEQA analysis will focus on that effect. If the lead agency finds that the new impact is less than significant, or can be mitigated to a less than significant level, the agency could complete the Infill Checklist (proposed Appendix N) to document its analysis and any proposed mitigation measures, as well as its conclusion that other impacts have already been analyzed. It would then circulate a negative declaration, mitigated negative declaration, or sustainable communities environmental assessment for public review. (Proposed CEQA Guidelines § 15183.3(c)(2)(B).) If substantial evidence shows that the new impacts may be significant, the lead agency would prepare a limited scope EIR to analyze that issue. (Proposed CEQA Guidelines § 15183.3(c)(2)(C); Pub. Resources Code, § 21094.5(b).)

Subdivision (d): Infill EIR Contents

A limited scope EIR would include the Infill Checklist, the analysis of the new impact and proposed mitigation measures, and alternatives addressing the impact, such as alternative site design (but not alternative locations, densities or building intensities). No analysis of growth inducing impacts would be required.

Subdivision (e): Terminology

Subdivision (e) contains definitions for the terms used in Section 15183.3.

V. Explanation of the Standards in *Proposed* Appendix M and the Infill Checklist in *Proposed* Appendix N

In addition to establishing a streamlined process for infill projects, SB 226 directs the Office of Planning and Research to develop performance standards for infill projects seeking to use the streamlined process. The performance standards should not be viewed as a method to avoid adverse environmental impacts. Rather, the performance standards are designed to benefit projects that advance the environmental policies listed in SB 226. As noted above, those policies include:

- Reducing vehicle miles traveled (VMT);
- Prioritizing infill development;
- Reducing greenhouse gas emissions;
- Reducing per capita water use;
- Promoting transit supportive communities;
- Improving energy efficiency, including transportation energy; and
- Protecting public health.

(Pub. Resources Code, § 21094.5.5(b).) In order to maximize these environmental benefits, the range of streamlined projects should not be so narrow that only a small number of projects are eligible, as doing so would limit the effect of the streamlining process. Conversely, the process should not be open to projects that do not promote those environmental objectives.

A. Summary of the Performance Standards Approach

Appendix M contains the performance standards that determine eligibility for streamlining.

Section II of Appendix M sets forth standards that apply to all project types. Those standards include providing renewable energy and active transportation components, requiring consistency with applicable transit station area plans, and implementing recommendations in any clean-up plans.

Section III of Appendix M specifies performance standards that apply to specific project types, as described below.

Residential Buildings

Factors influencing household VMT include regional location, transportation features of the project surroundings, project design, and Transportation Demand Management (TDM). Of these factors, regional location has the greatest effect. Regional locations that are easily accessible and transportation efficient will tend to have lower VMT. (U.S. Environmental

Protection Agency, “Measuring the Air Quality and Transportation Impacts of Infill Development” (Nov. 2007), at p. 1.)

Regional travel demand models are the best tool for estimating VMT due to regional location. Thus, if the project is proposed in a location with sufficiently low VMT (initially, the performance standards refer to low VMT as being 75 percent of average regional per capita VMT), the project should qualify for streamlining under the VMT metric. Since a travel demand model can be used to map estimates of VMT throughout the region, a map of VMT estimates can be produced by the Metropolitan Planning Organization (“MPO”) and updated occasionally to identify zones that qualify for streamlining under the VMT metric. This would allow project proponents to determine eligibility for streamlining by referencing the map. Note that the data used to develop sustainable communities strategies pursuant to SB 375 would also support the development of such maps.

For those projects proposed outside of low VMT areas, they may nevertheless demonstrate that they will generate sufficiently low VMT to perform similar to low VMT areas. This can be done by applying sketch models (such as URBEMIS and CalEEMod) to estimate VMT reductions due to project surroundings (e.g. proximity to transit, or street network connectivity), project design, and transportation demand management.

Reducing VMT will not be feasible in all locations, and in order to promote better project design in all locations, the performance standards also provide a path to streamlining for projects with higher levels of VMT. Projects associated with moderate levels of VMT (initially defined to mean 75 to 100 percent of average regional per capita VMT) could qualify for streamlining if they also implement the enhanced efficiency measures in the CALGreen Tier 1 building code. Projects associated with high VMT (initially defined to mean above average regional per capita VMT) could qualify for streamlining if they also implement the CALGreen Tier 2 measures.

Commercial and Retail Buildings

The performance standards provide several paths to streamlining for commercial and retail projects.

The first path relates to regional location. Transportation-efficient locations for residences are likely to also be transportation-efficient for commercial and retail uses. Therefore, commercial projects can qualify for streamlining by locating in low VMT areas. Similar to residential uses, commercial projects that locate in higher VMT areas can qualify for streamlining if they also implement enhanced measures in CALGreen Tier 1 and 2.

The second path is to locate the commercial project near residential uses. Locating commercial development close to residences reduces vehicle travel (Cervero, 2006, pp. 483). Therefore, such development is eligible for streamlining. (R. Cervero and M Duncan, “Which Reduces Travel More: Jobs-Housing Balance or Housing-Retail Mixing?” Journal of the American Planning Association, Vol. 72, No. 4, 2006, pp. 475-490.)

The third path is to locate the commercial project close to transit. Orienting commercial development to transit stations can increase transit mode share, and provide transportation choices to customers. Therefore, such development is eligible for streamlining.

The performance standards treat regional serving retail, which are most commonly very large-sized stores, differently. By definition, regional serving retail draws longer trips than neighborhood- or community-serving retail. Therefore such retail often increases VMT. For this reason, projects involving single stores greater than 75,000 square feet in size could qualify for streamlining if a transportation study demonstrates that the project will reduce VMT by capturing trips from retail yet further afield. Any commercial/retail development, including those that contain single stores greater than 75,000 square feet in size, may complete a VMT study to show that it leads to an absolute reduction in VMT. If so, the project qualifies for streamlining under the VMT metric.

Office Buildings

Since the work commute trip occurs at a time of peak roadway congestion, transit is needed to get people to work in urban areas. Further, when choosing whether to drive or take transit, commuters are more sensitive to the distance to transit on the work end of the trip than on the home end. (Lund, H., Cervero, R., "Travel Characteristics of Transit-Oriented Development in California" (Jan. 2004), at p. V.) In other words, the gradient of attractiveness of a transit station is steeper at the work end. Therefore, placing jobs especially nearby transit stations is important.

However, placing jobs nearby outlying transit stations may not offer an efficient commute to many other locations in the region. While adding more housing to jobs-rich urban centers reduces VMT, adding more jobs near outlying housing does not. (Cervero, 1997, p. 507.) Therefore, office buildings receive streamlining near only those transit stations close to central cities. For the purpose of these performance standards, low residential VMT serves as a proxy for proximity to an urban center.

Transit Stations

Increasing the density of transit stations along a transit line typically will make transit more accessible to a larger number of people, as well as increase accessibility to the travel-efficient central city. For this reason, all transit stations qualify for streamlining.

Schools

Placing schools and students in close proximity allows for school trips to be made by active transportation, e.g. walking and cycling. However, as a prerequisite to walking and biking, safe routes to schools and safe bicycle storage must be provided. Therefore, schools projects qualify for streamlining if they are sited close to their projected student populations, if they include a plan for active mode transportation to the school, and if they include safe and effective parking for active mode vehicles.

B. Appendix N: Infill Environmental Checklist Form

Appendix N is similar to the sample environmental checklist in existing Appendix G. It has been altered, however, to provide a tool to easily document project eligibility, consistency with the performance standards in Appendix M, and compliance with the streamlined process in *proposed* Section 15183.3.

C. Questions and Answers About the Performance Standards

This section answers some potential questions about the performance standards in Appendix M.

How Do the Performance Standards Promote the Environmental Objectives Listed in SB 226?

The performance standards, as a whole, must promote the policy objectives stated in SB 226. The word "promote" has been defined to mean "to further; to encourage; to advance." (BLACK'S LAW DICTIONARY (6th ed. 1990).) Thus, the standards need not necessarily achieve the objectives by themselves; rather, the standards must lead to projects tending to be more efficient and healthy. Since neighborhoods are complex synergistic systems, and because the statute requires that the standards as a whole promote the list of statewide objectives, each policy objective need not apply to each type of project that might be eligible for streamlining. Rather, the standards may promote any combination of policy objectives with respect to any of the infill project types.

As noted above, VMT is a metric that advances nearly all of the environmental objectives listed in SB 226. An excerpt of the statutory requirements for the performance standards is provided below (in *italics*), along with an explanation of how VMT relates to those policy objectives.

(b) The guidelines prepared pursuant to this section shall include statewide standards for infill projects that may be amended from time to time and promote all of the following:

(1) The implementation of the land use and transportation policies in the Sustainable Communities and Climate Protection Act of 2008 (Chapter 728 of the Statutes of 2008).

A primary focus of SB 375 is to reduce greenhouse gas emissions from passenger vehicles by integrating land use and transportation planning. The legislative findings in SB 375 state that even taking AB32's emissions reductions into account, "it will be necessary to achieve significant additional greenhouse gas reductions from changed land use patterns and improved transportation." (SB 375 (2008), § 1(c).) SB 375 also states that CEQA should encourage "developers to submit applications and local governments to make land use decisions that will help the state achieve its climate goals under AB 32, assist in the achievement of state and federal air quality standards, and increase petroleum conservation." (*Id.* at § 1(f).) SB 375 required the California Transportation Commission to develop guidelines for the travel demand models that are used in creating sustainable communities strategies. Those guidelines were to

account for, among other factors, the effects of density and vehicle miles traveled. (*Id.* at § 2 (adding § 14522.1 to the Government Code, which requires the development of modeling guidelines to support SB 375 implementation).) These and other provisions indicate the legislature's intent that greenhouse gas emissions be reduced through reduction in vehicle miles traveled.

The travel behavior of existing households provides a reasonable estimate of the travel behavior of residents of new households in the same location. This is because location-based factors external to the project, such as regional accessibility, density, mixing of uses, and proximity to transit, are the major determinants of travel behavior. Thus, projects located in such areas will also likely be associated with lower VMT due to those same characteristics. (CAPCOA, *Quantifying Greenhouse Gas Mitigation Measures* (2010), pp. 155-331.) Therefore, directing new development to lower VMT areas promotes the policies underlying SB 375.

(2) The state planning priorities specified in Section 65041.1 of the Government Code and in the most recently adopted Environmental Goals and Policy Report issued by the Office of Planning and Research supporting infill development.

Section 65041.1 indicates that the state's first planning priority, which is intended to "promote equity, strengthen the economy, protect the environment, and promote public health and safety in the state," is to promote "infill development and appropriate reuse and redevelopment of previously developed, underutilized land[.]" The most recently adopted Environmental Goals and Policy Report is the 1978 Urban Strategy which similarly provides that the first priority is to "[r]enew and maintain existing urban areas, both cities and suburbs." The second priority is to "[d]evelop vacant and under-utilized land within existing urban and suburban areas…." (An Urban Strategy for California (1978), at p. 10.) These priorities indicate that the performance standards should generally drive development to developed and vacant sites within existing urban environments.

Lower VMT areas tend to be concentrated in the urbanized core. Thus, directing new growth to lower VMT areas is also likely to promote growth in vacant and underutilized lands within existing urban areas. Since the Urban Strategy seeks to reduce development in undeveloped areas, and to protect open spaces and agricultural lands, the proposed performance standards also promote growth within existing suburbs, even in higher VMT locations. The performance standards do so by facilitating growth in higher VMT areas that provide additional benefits through enhanced green building techniques. Thus, the performance standards, as a whole, promote the priorities in the 1978 Urban Strategy.

(3) The reduction of greenhouse gas emissions under the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).

The Global Warming Solutions Act, more commonly known as AB 32, calls for statewide reductions in greenhouse gas emissions to 1990 levels by 2020. Those reductions will be achieved through the regulation of specified sectors of California's economy. AB 32 regulations will not directly govern the development of infill projects; however, the Air Resources Board's Scoping Plan calls on local governments to reduce emissions within their control by a

percentage that is comparable to that of the state as whole (i.e., approximately 15 percent). (Air Resources Board, Scoping Plan, at p. 27.) Tools available to local governments include reducing greenhouse gas emissions through land use and transportation planning, as well as requiring green building techniques.

Reducing VMT is essential if California is to achieve its emissions reduction targets. (Bartholomy et al., "The Role of Land Use in Meeting California's Energy and Climate Change Goals," California Energy Commission, 2007, at p. 4.) VMT is projected to continue growing, even faster than population growth. If VMT growth is not reduced, VMT-associated emissions will outstrip emissions-reductions resulting from technological advances in fuel efficiency and cleaner burning fuels. (Ewing, et al., Growing Cooler: the Evidence on Urban Development and Climate Change (2007), at pp. 3-4.)

As noted above, reducing VMT reduces greenhouse gas emissions by limiting fossil fuel combustion associated with automobile use. Even in higher VMT areas, however, implementing additional green building features beyond the required elements of CALGreen will reduce greenhouse gas emissions associated with energy and water use, and waste disposal. The performance standards also provide that all projects incorporate renewable energy components into project design if feasible. Thus, the performance standards as a whole promote the underlying objective of reducing greenhouse gas emissions.

(4) The reduction in per capita water use pursuant to Section 10608.16 of the Water Code.

Section 10608.16 of the Water Code sets forth statewide per capita water use reductions of 20 percent by 2020, with an interim reduction target of 10 percent by 2016. The mandatory elements of California's new building code, known as CALGreen, are designed to achieve similar levels of water use reductions for both residential and non-residential buildings. (See, e.g., CALGreen, § 4.303.1 (providing guidelines on how to achieve a 20% reduction in indoor water use in residential structures).)

Additionally, evidence indicates that the characteristics of low VMT areas, such as compact, mixed-use neighborhoods, also tend to be associated with reduced water consumption. (U.S. Environmental Protection Agency, "Growing Toward More Efficient Water Use: Linking Development, Infrastructure, and Drinking Water Policies" (January 2006) at pp. 3-4 (noting that large lot sizes associated with lower density neighborhoods consume substantially more water than smaller lot developments).) Projects located in higher VMT areas would need to implement Tier 1 or Tier 2 of CALGreen, both of which require a higher degree of water use efficiency. Thus, the performance standards as a whole promote reductions in per capita water use.

(5) The creation of a transit village development district consistent with Section 65460.1 of the Government Code.

Section 65460.1 of the Government Code falls within Article 8.5, which provides for the creation of transit village plans. According to that Article, transit villages contain a mix of land uses, including residential, commercial, and civic uses, oriented toward transit stations. The

Legislature determined that such transit villages can, among other benefits, reduce traffic congestion and improve environmental conditions. This calls for standards that promote the creation of such districts.

To promote the creation of such districts, the performance standards would require that any project be consistent with any adopted transit village plans or general plan policies addressing transit stations. Additionally, projects would need to include elements to improve access to and use of the transit station. These standards therefore promote the creation of transit villages.

(6) Substantial energy efficiency improvements, including improvements to projects related to transportation energy.

The performance standards promote energy efficiency improvements in several ways. First, the performance standards encourage transportation efficient projects by prioritizing projects in low VMT areas. Second, compact development that is typical in low VMT areas also reduces building energy use through smaller average unit size and a greater share of attached units. (Ewing, R., Rong, F. *The Impact of Urban Form on U.S. Residential Energy Use.* March 2010.) Third, the performance standards call for implementation of the enhanced energy efficiency requirements in CALGreen Tiers 1 and 2 for those projects located in higher VMT areas. Thus, as a whole, the performance standards promote substantial energy efficiency improvements.

(7) Protection of public health, including the health of vulnerable populations from air or water pollution, or soil contamination.

The performance standards promote public health in several ways. First, the performance standards facilitate active transportation (i.e., walking and bicycling) by prioritizing new growth in lower VMT areas. Increasing physical activity has been demonstrated to have remarkably positive health outcomes. (Woodcock J, et al. "Public health benefits of strategies to reduce greenhouse-gas emissions: urban land transport," The Lancet (2009), pp. 1930-1943; American Lung Association in California, "Land Use, Climate Change & Public Health Issue Brief: Improving public health and combating climate change through sustainable land use and transportation planning," Spring 2010.)

Second, with regard to protecting the public health of vulnerable populations from air pollution or water pollution, or soil contamination, an extensive regulatory regime already exists to address clean-up and reuse of contaminated properties. It is impossible to prescribe more specific performance standards, as the measures needed to protect public health will necessarily depend on site-specific circumstances. Such measures would be included in recommendations in a relevant Phase 1 Environmental Assessment or Preliminary Endangerment Assessment. Thus, the performance standards provide for implementation of applicable feasible recommendations.

With regard to air pollution, attention has focused in recent years on the health effects of developing sensitive uses near sources of toxic air contaminants, such as high-volume roadways. Evidence indicates that risk increases near high volume roadways, generally within 500 feet, though precise distances and risk factors vary considerably based on local

topography, meteorology and other site-specific factors. (See, e.g., CARB 2005 Handbook; BAAQMD CEQA Thresholds (May 2011), § 5.2.5.) Many transit corridors are located near high volume roadways. Prohibiting any new development within the transit corridors would counteract the policies described above that direct new growth toward transit-served locations. Notably, it would also undermine the health benefits from active transportation associated with transit-oriented development. Some design strategies have been identified that may ameliorate the adverse effects of high volume roadways, such as high efficiency air filters, locating air intakes away from roadways, etc. The effectiveness of such strategies, however, is also highly dependent on site-specific circumstances. (California Air Pollution Control Officers Association, "Health Risk Assessments for Proposed Land Use Projects," April 2009.) Therefore, similar to the soil and water contamination standards described above, the performance standards would call on projects to implement whatever design requirements are identified in local plans or ordinances that address such effects. If such plans have not been adopted, the performance standards require projects to implement whatever measures are identified in a health risk assessment or environmental document prepared for the project.

Why is VMT a Primary Metric?

Research shows that VMT correlates with many of the policy objectives described in SB 226. VMT is a measure of the total distance of automobile trips. Longer distances, and higher VMT, are associated with higher fossil fuel use and greater greenhouse gas emissions. (See, e.g., Center for Transit Oriented Development, "Performance-Based Transit-Oriented Development Typology Guidebook," December 2010.)

Research suggests several proxies for project performance related to VMT. For example, density and compact development are frequently cited for their relationship to VMT reduction; however, dense projects will behave differently based on where they are located in a region. (Niemeier et al., "The impact of residential growth patterns on vehicle travel and pollutant emissions," JOURNAL OF TRANSPORTATION AND LAND USE (Fall 2011), at pp. 75-79.) Further, a mix of uses does not influence car ownership, but VMT does. (CTOD 2010 at p. 17 (comparing low VMT transit areas and higher VMT transit areas).)

Proximity to transit is an important factor in reducing automobile trips. (Lee and Cervero, "The Effect of Housing Near Transit Stations on Vehicle Trip Rates and Transit Trip Generation: A summary review of available evidence," prepared for the California Department of Housing and Community Development and the California Department of Transportation (September 2007).) Regional location determines the effect density is likely to have in reducing VMT. ("Driving and the Built Environment: The Effects of Compact Development on Motorized Travel, Energy Use, and CO_2 Emissions," TRANSPORTATION RESEARCH BOARD SPECIAL REPORT 298, at p. 3.) Another key factor in transportation behavior is regional location. The U.S. Environmental Protection Agency reports research demonstrating that "regionally accessible, centrally located sites require shorter average trip distances than do sites along the regional periphery." (Our Built and Natural Environments, at p. 47.)

Green building techniques, which seek to reduce energy use through building design, are important, but they alone do not have nearly the same greenhouse gas reducing potential as

does reducing VMT. (Wilson and Navaro, "Driving to Green Buildings: the Transportation Energy Intensity of Buildings," Environmental Building News.) According to one recent report, "While energy efficiency measures in homes and vehicles can make a notable improvement in consumption, the impact is considerably less dramatic than the gains possible offered by housing type and location efficiency." ("Location Efficiency and Housing Type: Boiling it Down to BTUs," Jonathan Rose Companies, May 2011, at p. 14.)

How Will Applicants and Agencies Know Whether the Project is in a Low or High VMT Area?

Two key tools are used to determine whether the project meets the residential VMT thresholds that qualify for streamlining. The first is determining the VMT of surrounding residential areas by using the regional travel demand model. The second is using a sketch model to account for features of the locale and project, and transportation demand management measures the project commits to implement, that reduce VMT.

If the first step is completed and the regional travel demand model estimates the average per capita VMT is below the streamlining threshold, the project is deemed qualified for streamlining with respect to the VMT metric and a sketch model need not be applied. If the travel demand model estimates per capita VMT is above this threshold, the project applicant may apply a sketch model to determine whether features of the project locale, project design, or TDM measures committed to reduce VMT sufficiently to qualify for streamlining.

Metropolitan Planning Organizations (MPOs) can use their travel demand model to estimate average household or home-based VMT at the traffic analysis zone geographic level. If an MPO has not produced such estimates, however, then estimates from the California Interregional Travel Demand Model (CITDM) can be used. In the absence of any travel model zonal VMT estimates, a sketch model can be used to estimate project VMT for comparison to the regional average VMT.

Why Streamline Development in Higher VMT Locations that Implements CALGreen Tiers 1 and 2?

While locating new development in the lowest VMT areas is the simplest and most effective way to achieve the objectives set forth in SB 226, development pressure on the urban fringe is expected to continue. Therefore, to encourage growth within corporate limits, as opposed to undeveloped areas, projects located in higher VMT areas can still use the streamlining mechanism, provided that the projects implement enhanced green building techniques. Tiers 1 and 2 of the CALGreen building code were designed to provide a consistent and statewide method of enhancing green building practices beyond the minimum requirements in the building code. (See California Housing and Community Development, "A Guide to the California Green Building Standards Code (Low Rise Residential," June 2010.)

Will Requiring Enhanced Green Building Outweigh the Benefit of a Quicker and More Certain CEQA Process, Especially for Affordable Housing?

Evidence indicates that building green need not cost significantly more than conventional design, even for affordable housing projects, and that initial upfront costs can result in significant long-term cost savings. (See, e.g., Dana Bourland, INCREMENTAL COST, MEASURABLE SAVINGS: ENTERPRISE GREEN COMMUNITIES CRITERIA, Enterprise Community Partners, Inc., 2010; Tony Proscio, SUSTAINABLE, AFFORDABLE, *DO*ABLE: DEMYSTIFYING THE PROCESS OF GREEN AFFORDABLE HOUSING, Enterprise Community Partners, Inc., 2008.)

VI. Hypothetical Illustrations

The following hypothetical examples illustrate how the application of performance standards and the streamlined CEQA process works under SB 226.

A. Hypothetical Project 1: Hotel in Urban Core

Project Description. The project is a 30-story, 450-room hotel to be developed on a vacant lot surrounded by office buildings in the urban core of a large city. The project use is consistent with the designations and policies set forth in the recently adopted sustainable communities strategy. Several years ago the city certified an EIR in connection with an update to its Downtown Community Plan. The EIR evaluated the potential environmental impacts of redeveloping the entire downtown area with a mix of commercial, office and entertainment uses that could result from the update of the Community Plan and the adoption of a Revitalization Plan for the Downtown Revitalization Project.

Project Analysis Under SB 226. Using Appendix N, the city would determine if the infill project is eligible for SB 226 treatment. Here, the proposed hotel qualifies because: 1) it is in an incorporated city, 2) the project site is a previously developed site, 3) the project is consistent with the general use designation, density and building intensity designated in the adopted sustainable communities strategy, 4) the project is commercial use, 5) and the project satisfies the performance standards in Appendix M related to renewable energy, active transportation, transit station area plans, and soil and water remediation. Additionally, assume the hotel would be located in a low VMT area, so additional performance standards in Appendix M would not be required.

Since the project meets the eligibility requirements for streamlining under SB 226, the city would then use the Appendix N checklist to document its evaluation of the project and the project site to determine whether the environmental effects of the project were covered in the prior EIR. While preparing the infill checklist in Appendix N, the city found the proposed hotel could contribute to some significant effects related to aesthetics and traffic. However, the city found that those effects were analyzed in the prior EIR. The city would then cite the EIR's analysis in the Appendix N checklist and incorporate any applicable mitigation measures from the prior EIR. If, as a result of preparing the written checklist, the city determines that the project would not cause new specific effects and the effects of the project are not more significant than previously analyzed, the city could adopt the project after making necessary findings, and file a Notice of Exemption.

Variation 1: Proposed Hotel in Urban Core with Lighting and Glare Impacts

Assume the same facts as described above, except that the written checklist found new, significant lighting and glare impacts from the proposed hotel project. Those effects were not analyzed in the prior EIR (or alternatively are more significant than previously analyzed). The city, however, recently adopted local design guidelines requiring exterior lights to be shielded and windows that use certain glare-reducing panes. The city could make a finding that the requirements in the design guidelines will substantially mitigate the light and glare effects of the hotel. The city could explain the basis for that finding in the Appendix N checklist. Assuming that the project would cause no other new or more significant effects, the city could adopt the project after making necessary findings, and file a Notice of Exemption.

Variation 2: Proposed Hotel in Urban Core with Impacts on Historic Resources

Assume the same facts described above, except that in preparing the written checklist, the city found that the project could cause significant impacts on historic resources that were not analyzed in the prior EIR. The city does not have any locally adopted uniformly applicable development policies that would substantially mitigate that effect. Therefore, the city would need to conduct additional focused review to address that issue.

If the effect on historic resources could be mitigated to a less than significant level (i.e., by redesigning the project to avoid the historic resource), the city could document its analysis of the impacts and proposed mitigation measures in the Appendix N checklist, and circulate a proposed Mitigated Negative Declaration. If the effect could not be mitigated to a less than significant level, the city would need to circulate a limited scope EIR. That limited scope EIR would include the analysis of impacts to historic resources and any mitigation measures, a limited analysis of alternatives such as alternative site design, and the Appendix N checklist. The EIR would not have to analyze growth inducing impacts, and would not have to consider alternative locations or densities. The limited scope EIR would be circulated for public review and considered prior to project approval. If no feasible mitigation measures or alternatives would reduce the effect on historic resources to a less than significant level, the city would need to adopt a statement of overriding considerations for that effect.

B. Hypothetical Project 2: A Small Mixed Use Project

Project Description. A few years ago, a suburban city amended its general plan to contain growth within its existing corporate boundary. The amendment included adoption of an urban growth boundary as well as designation of several corridors within which it would encourage increased density and a mix of uses. An EIR was prepared for the general plan amendment. The metropolitan planning organization accounted for those growth corridors in its sustainable communities strategy. Shortly after adopting the general plan amendments, the city prepared a specific plan to guide growth within one of the corridors designed in the general plan amendment. The specific plan addressed, among other things, aesthetics, circulation, and health effects. The city adopted a mitigated negative declaration in connection with the specific plan. Today, an applicant proposes to replace an existing parking lot within the specific plan area with a three story project containing twenty condominiums and retail on the first floor.

Project Analysis Under SB 226. Using the Appendix N checklist, the city concludes that the project is eligible for SB 226's streamlined procedures because: (1) the city is incorporated, (2) the project site was previously developed with a parking lot, (3) the proposed land uses are consistent with the sustainable communities strategy, (4) the project proposes a commercial and residential project, and (5) the project satisfies the performance standards in Appendix M. The city concluded that the project satisfied the performance standards because the project:

- Is located in a moderate VMT area as illustrated on a map produced by the regional metropolitan planning organization (or alternatively, by the city based on the MPO's travel demand model), and as a condition of project approval, the project will implement all CALGreen Tier 1 measures for both the residential and commercial components.
- Includes solar panels, a pedestrian and bicycle path connecting adjacent residential and commercial areas, a bus shelter along the roadway, and implements the recommendations for soil and water remediation in the Phase 1 environmental site assessment.
- Consistent with the policies in the specific plan for addressing air quality near the adjacent high-volume roadway. Specifically, the residential units are built with high-efficiency air filters, the upper floors of the project are stepped back so that the residential units and air intakes are located as far as possible from the roadway.

Since the project meets the eligibility requirements for streamlining under SB 226, the city would then use the Appendix N checklist to document its evaluation of the project and the project site to determine whether the environmental effects of the project were covered in the EIR for the general plan amendment and the mitigated negative declaration for the specific plan. The EIR for the general plan amendment projected that increasing allowable densities and permitting mixed-uses within the growth corridors could add 500 dwelling units and 500,000 square feet of commercial space based on the land use designations included in the amendment. That EIR then analyzed the water supply, police services, traffic and other related impacts of that additional growth. Using the Appendix N checklist, the city explained that the project falls within the assumptions included in the EIR's analysis and cited to the specific portions of the EIR that include those assumptions and analysis. The city also found that the potential aesthetic and health impacts of the project were analyzed in the mitigated negative declaration prepared for the specific plan, and that the project incorporated the mitigation measures adopted in connection with that project. Having prepared the written checklist, the city determined that the project would not cause new specific effects and the effects of the project are not more significant than previously analyzed. Therefore, the city adopts the project after making necessary findings, and files a Notice of Exemption.

Variation 1: Low Density Proposal

Assume the same facts described above, except the applicant alters the project to remove the commercial component and to develop five single family homes. The sustainable communities strategy assumed, based on the city's general plan amendment, that the project area would be mixed use with a residential density of at least fifteen dwelling units to the acre. Since the revised project would not be consistent with the sustainable communities strategy, it would not

be eligible for the streamlined process under SB 226. In order to proceed with the revised project application, the city would need to conduct CEQA review of the project using the normal process.

Variation 2: Increased Intensity Proposal

Assume the facts described above, except that the applicant revises the project to include fifty units of residential on five floors above retail. While the revised project would fall within the range of densities assumed in the sustainable communities strategy, it would exceed the density designated in the city's general plan. In evaluating the project using the Appendix N checklist, the city would need to evaluate whether the increased density would cause any of the previously analyzed impacts to be more significant. Any impacts that are not substantially mitigated by uniformly applicable development policies would be subject to further CEQA review. If those new impacts can be mitigated to a less than significant level, the city could circulate a mitigated negative declaration. If not, it would need to prepare a limited scope EIR.

C. Hypothetical Project 3: Concert Venue

Project Description. The city's general plan and zoning code designate certain areas for commercial use. The EIR prepared for the general plan and zoning code analyzed various impacts of commercial development at the plan level, assuming that the various parcels within that designation would support 250,000 square feet of commercial and retail uses. The metropolitan planning organization's sustainable communities strategy assumes a similar level of commercial development as indicated in the city's general plan. The city's zoning code allows entertainment venues to be built in the commercial zone with a conditional use permit. An applicant proposes to construct a concert hall on a vacant parcel designated for commercial use. The parcel is completely surrounded by a mix of commercial and residential development.

Project Analysis Under SB 226. Using the Appendix N checklist, the city concludes that the project is eligible for SB 226's streamlined procedures because: (1) the city is incorporated, (2) the project site is surrounded by other urban uses, (3) the proposed land use is generally consistent with the sustainable communities strategy, (4) the project is a commercial project, and (5) the project satisfies the performance standards in Appendix M. The city concluded that the project satisfied the performance standards because the project:

- Is located in a low VMT area, is under 75,000 square feet, and is not within ½ mile of a transit station.
- Includes solar panels, a bus shelter along the adjacent roadway and bicycle parking.

Since the project meets the eligibility requirements for streamlining under SB 226, the city would then use the Appendix N checklist to document its evaluation of the project and the project site to determine whether the environmental effects of the project were covered in the EIR for the general plan and zoning code. Preparing the Appendix N checklist revealed several impacts of the project that were not addressed in the general plan EIR. For example, that EIR did not analyze land use conflicts between a concert venue and adjacent homes, the possible late night noise, and concentrated traffic impacts associated with large events. The city's noise ordinance

does not address indoor amplified sound. Since none of those impacts were addressed in the general plan EIR, and are not subject to any uniformly applicable development policy, they each need to undergo CEQA review.

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