

## Attachment A

Newly enacted Public Resources Code section 21094.5 directs local planning agencies to consider previous planning level environmental impact reports (EIRs) when considering the impacts of proposed infill projects. For qualifying infill, the statute provides that “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 be more significant than described in the prior environmental impact report.” (See Pub. Resources Code, § 21094.5(a).) It further provides that such impacts need only be further reviewed for purposes of compliance with the California Environmental Quality Act if they cannot be “substantially mitigated” by uniformly applicable development policies and standards. This deviates from traditional requirements that a lead agency mitigate impacts to a less than significant level where feasible. The legislature intended this to incentivize infill as it permits already adopted policies and standards to be applied to impacts likely to occur as a result of infill, thereby reducing the regulatory burden of having to identify and enforce further mitigation measures. The hope is that deburdening compliance in this fashion will make projects less expensive and more efficient, thereby incentivizing infill development, which is in and of itself a more economically sound .

Section 15183.3 furthers the legislative intent to deburden qualifying infill by clarifying that only new specific effects or effects that are more significant need to be considered. It directs the use a limited infill EIR for this purpose, focused only on “those effects,” thereby reducing the regulatory burden of compliance in a manner consistent with the statute. Moreover, section 15183.3 clarifies a statement of overriding consideration is only required where such new effects or more significant effects cannot be substantially mitigated by such policies. Finally, proposed Appendix M provides performance standards for eligibility purposes that allow a wide range of infill projects to qualify for this process, using metrics like vehicle miles traveled to meet legislative goals of health, safety, and greenhouse gas reduction, while simultaneously ensuring multiple pathways to qualification remain viable.



## **Attachment B**

The California Natural Resources Agency (Resources Agency) considered reasonable alternatives to the present regulatory proposal. For example, some participants in OPR's initial process suggested that detailed checklists, incorporating standards from LEED-ND for example, should be used to determine eligibility. (See, e.g., Comments of the U.S. Green Building Council, February 24, 2012.) This approach was ultimately rejected because OPR and the Resources Agency are attempting to incentivize infill development by making it easier to get through CEQA's review and more deferential towards lead agency choosing to undertake a streamlined approach. OPR and the Resources Agency, therefore, determined that extensive eligibility criteria in the form of a checklist would merely repeat past mistakes by re-codifying approaches taken in similar CEQA exemptions for infill that failed to promote this policy effectively.

Additionally, the original draft proposal circulated by OPR for comment on January 25, 2012 contained performance standards that allowed a project to be eligible even in areas characterized by high vehicle miles traveled if the project incorporated green-building design elements. However, various stakeholders objected to that formulation based on cost and other considerations. In response, the performance standards were refined to allow streamlining in higher VMT areas only if the project is located near transit, or, in the case of commercial projects, a substantial customer base.

In fact, OPR substantially altered its January 1, 2012 draft proposal in response to a voluntary comment process. The revisions and a summary of the changes can be seen in Exhibit C to the initial statement of reasons.

Finally, Resources Agency also considered a "no action" alternative. However, the proposed Guidelines are intended to assist lead agencies in complying with CEQA's existing requirements and are a precursor to the use of the streamlining provisions adopted in SB 226. Thus, the Resources Agency rejected the no action alternative because it would not be responsive to the Legislature's directive in SB226 to develop performance standards for purposes of determining eligibility for the proposed streamlining.



## **Attachment C**

No technology or other practice is required for an applicant to obtain the requisite permits and approvals for infill. However, if an applicant and a lead agency wish to streamline CEQA review for a proposed infill project, thereby avoiding a traditional and perhaps protected CEQA analysis and regulatory compliance, they must comply with proposed section 15183.3 and the performance standards and evidentiary burdens accompanying it in proposed Appendices M and N. Traditional CEQA review remains available for those projects that do not wish to meet the standards in proposed Section 15183.3.

The proposed performance standards include using best practices relative to exposing populations to high-volume roadways and stationary source emissions, as well as require the use of renewable energy sources in commercial development. Finally, planners are directed to certain models to assess vehicle miles traveled as these models are currently the only ones available. Importantly, merely meeting existing standards at the time of infill will not suffice. Thus, it is possible an applicant may be required to upgrade facilities or include additional design features that were not anticipated if that applicant wishes to avail him or herself of the streamlining being offered. However, since an applicant can continue with a traditional review if it cannot or does not desire to meet these standards, there is no requirement that these technologies and methodologies be used, but rather they are options to avoid existing regulatory burden.



## **Attachment D**

Importantly, SB 226 does not supplant or replace the existing CEQA process for considering infill development. Infill streamlining is and will, upon the adoption of these regulations, remain discretionary. This package simply permits local entities to use a streamlined and limited process for environmental review if they consider qualifying infill projects and plan for them. In short, infill is not being mandated, but encouraged. Importantly, if a lead agency and a developer determine they would rather pursue other projects unrelated to qualifying infill, or would rather use the more laborious CEQA approach to analyzing infill that does not meet the proposed performance standards, the lead agency is permitted to do that. However, local lead agencies that choose to avail themselves of this streamlining mechanism will be able to redirect staff from the more labor intensive approaches that already exist, and ultimately will experience less of a workload burden under this modified approach.

Moreover, while this proposal intends to incentivize infill, it does so with the assumption this incentivized infill will replace potential sprawl that would otherwise continue to be developed to meet California's projected population growth (See Section V). Thus, it is not anticipated that this rulemaking package will add additional unforeseen growth or project proposals to regions for which additional administration and implementation would be necessary, but rather will reshape and redirect that anticipated growth into urban cores where existing plans, policies, and infrastructure help to further reduce the regulatory and development burdens on local agencies designated to permit such projects.

Finally, as is always the case in CEQA, local entities can pass on any costs experienced as a result of administering the CEQA process to applicants and project proponents—infill streamlining provides no exception. Thus, to the extent development was going to happen, and is being proposed, there is no new or unanticipated regulatory compliance cost that will be associated with that process that was not already in existence and for which there was not already an existing legal schema

