

Notice of Public Availability of Modifications to Text of Proposed Regulation and Addendum to the Initial Statement of Reasons and Informative Digest
July 2, 2018
OAL Notice File No. Z-2018-0116-12

NOTICE IS HEREBY GIVEN THAT: On January 26, 2018, the California Natural Resources Agency (“Agency”) published a Notice of Proposed Rulemaking to update the Guidelines Implementing the California Environmental Quality Act (“CEQA Guidelines”). The Agency conducted public hearings on the proposal on March 14 and March 15, 2018.

Pursuant to Government Code section 11346.8, 11347.1, and California Code of Regulations, title 1, section 44, the Agency provides notice of modification to Proposed Sections 15004, 15062, 15064, 15064.3, 15064.4, 15064.7, 15075, 15094, 15125, 15126.2, 15126.4, 15152, 15168, 15182, 15234, 15269, 15301, 15357, 15155, Appendix G, and Appendix N of Title 14 of the California Code of Regulations, set forth below, and attached to this notice with strikeout and underline. The Agency has also decided not to proceed with changes to Appendices C, D, or E.

The modifications to the originally-proposed changes to the Guidelines (“15-day language”) are identified in **Attachment A** to this notice. The 15-day language modifications identified in Attachment A to this Notice show the originally-proposed changes to the Guidelines marked in underline/strikeout format, and the additions and deletions pursuant to this notice in double underline/double strikeout format.

Additionally, pursuant to Government Code section 11347.1, the Agency has decided to supplement the Initial Statement of Reasons with an addendum, which is included as **Attachment B** to this notice. In some cases, additional background and explanatory text is included for further clarification of the Initial Statement of Reasons.

Copies of the proposed changes can be found at www.resources.ca.gov/CEQA. The proposed changes are being made in response to public comments received during the initial public comment period, and notice was mailed or provided by email list serve to all parties who provided written or oral comments and asked to receive notice. The changes are summarized as follows:

Section 15004

Section 15004 provides guidance on when a lead agency should conduct environmental review on a proposed activity. The Agency proposes to amend that section to address when a lead agency may enter into agreements prior to completing environmental review. In response to comments, the Agency proposes to clarify that the factors described in the proposed addition are not exclusive. The Agency also proposes to add that, among the listed characteristics, an agreement should not prevent an agency from deciding not to pursue or to reject the project.

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Section 15063

Section 15063 describes the contents of an initial study. The Agency proposes to amend that section to clarify that lead agencies may contract with consultants to prepare the initial study, similar to other provisions allowing lead agencies to have other environmental documents prepared by contract. In response to comments, the Agency proposes to further clarify that documents prepared by consultants must reflect the lead agency's independent judgment.

Section 15064

Section 15064 provides guidance on determining the significance of potential environmental impacts. The Agency proposes to add a new subdivision (b)(2) to state that lead agencies may use "thresholds of significance" to assist in that determination. The proposed addition included a provision suggesting that, when relying on a threshold of significance, a lead agency should describe the substantial evidence that supports the conclusion that compliance with the threshold ensures that the impact is less than significant. In response to stakeholder concerns that such description would be too burdensome, the Agency proposes to remove that provision from the proposed additions.

Section 15064.3

The Agency proposes adding, as directed in Senate Bill 743 (Steinberg, 2013), a new section 15064.3 to address the analysis of transportation impacts. The Agency proposes some changes to improve clarity. It also proposes to add "regional transportation plan EIR" as an example of programmatic analysis from which agencies may tier analysis of transportation projects. Finally, the Agency proposes to correct a typo in the proposed effective date, so that all agencies must apply the new provisions in Section 15064.3 by 2020, not 2019.

Section 15064.4

Section 15064.4 addresses the analysis of greenhouse gas emissions. The Agency proposes several updates to reflect recent case law. In response to comments on those changes, the Agency also proposes to clarify that a project's incremental contribution to the impacts of climate change should not be compared to state, national or global emissions to determine whether the project's emissions are cumulatively considerable. The Agency further proposes to clarify that, if relying on consistency with state goals and policies to determine significance, the lead agency should explain how the project's emissions are consistent with those goals.

Section 15125

Section 15125 describes the requirement to identify baseline conditions against which a lead agency measures a project's potential impacts. The Agency proposes to update that section to reflect recent case law describing when a lead agency may identify a baseline that is different from existing conditions. In response to comments received on the proposal, the Agency proposes to clarify that the procedural requirement to justify a baseline other than existing conditions does not apply to reliance on historic conditions. Rather, that requirement only applies only to use of future conditions as a sole baseline. Other changes are proposed for clarity.

Section 15126.2

Section 15126.2 describes the requirement to address certain significant effects in an environmental impact report. The Agency proposes to add energy impacts analysis to that section, consistent with recent case law and existing Appendix F. In response to comments, the Agency proposes to further clarify that both the unnecessary and wasteful use of energy resources should be analyzed.

Section 15126.4

Section 15126.4 describes requirements for mitigation measures. The Agency proposes to clarify, consistent with case law, when the details of mitigation measures may be identified after project approval. In response to comments, the Agency further clarifies that if details are deferred, a lead agency must identify at least the types of measures that are known to be feasible and that will achieve an adopted performance standard.

Section 15182

Section 15182 describes a CEQA exemption, contained in the Government Code, for certain residential projects that are consistent with a specific plan. The Agency proposes to update that section to include an exemption for residential, commercial or mixed-use projects that are transit oriented. In response to comments, the Agency proposes to add a cross-reference to the statutory definition of “transit priority areas.”

Section 15234

The Agency proposes to add a new Section 15234 to describe how a lead agency must respond following a successful court challenge to a project. In response to comments, the Agency proposes to further clarify two things. First, the Agency proposes to remove a provision suggesting that a court may only leave approvals in place if doing so would benefit the environment because that factor does not exist in statute. Second, the Agency proposes to clarify that, generally, additional review is limited to what a court might require.

Section 15301

Section 15301 describes one class of activities, changes to existing facilities, that normally would not have a significant effect on the environment, and therefore should be exempt from CEQA. The Agency proposes to clarify that the exemption that applies to changes to existing highways and streets also applies to changes for bicycle facilities, pedestrian crossings, street trees and similar changes. In addition to those clarifications, the Agency also proposes to clarify that transit improvements also fall within that class.

Appendix G

Appendix G contains a sample checklist of questions to assist a lead agency in determining whether a project may have a significant impact on the environment. The Agency proposes to update those questions to reflect recent case law and to improve clarity. In response to comments, the Agency proposes further revisions for clarity. Additionally, the Agency proposes to include a question asking

whether the lead agency has developed a plan for tribal consultation. The Agency also proposes to further clarify that certain aesthetic considerations apply differently in urban settings, and may not be a consideration for certain projects within transit priority areas.

Appendix N

Appendix N contains a sample environmental checklist intended to enable streamlined review for qualified infill projects. In response to comments, the Agency proposes to update Appendix N to reflect the changes being proposed for Appendix G.

Sections 15062, 15064.7, 15075, 15094, 15152, 15155, 15168, 15269, 15301, and 15357

In addition to the changes described above, the Agency proposes further non-substantive changes in sections 15062, 15064.7, 15075, 15094, 15152, 15155, 15168, 15269, 15301, and 15357, in response to comments to improve clarity.

Appendix C, Appendix D, and Appendix E

The Agency has decided to not proceed with changes to Appendix C, Appendix D, and Appendix E in this rulemaking because the Office of Planning and Research is currently updating its online document submission process. If needed, changes to the forms in those appendices will be made once the online forms have been developed.

Interested persons may provide written comments about the modifications on or before 5:00 PM (PST), **July 20, 2018**. Electronic submission of comments is preferred; however, written comments may also be delivered or mailed. Written comments should be addressed as follows:

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All written comments received by **July 20, 2018**, which pertain to the indicated changes will be reviewed and responded to by the Agency's staff as part of the compilation of the rulemaking file. Please limit your comments to the modifications of the text.