

## Title 14

# NOTICE OF PROPOSED RULEMAKING

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## *AMENDMENTS AND ADDITIONS TO THE STATE CEQA GUIDELINES*

### CALIFORNIA NATURAL RESOURCES AGENCY

January 26, 2018

**NOTICE IS HEREBY GIVEN** pursuant to Government Code, section 11346.6 that the California Natural Resources Agency (“Natural Resources Agency” or “Agency”) proposes to add, amend, and adopt regulations implementing Title 14, Division 6, Chapter 3 of the California Code of Regulations, the Guidelines for implementation of the California Environmental Quality Act (CEQA Guidelines), to reflect recent legislative changes to CEQA, clarify certain portions of the existing CEQA Guidelines, and update the CEQA Guidelines consistent with recent court decisions. This action consists of the adoption of new sections of the CEQA Guidelines and amendments to other sections, as described below.

The text of the proposed changes, the initial statement of reasons and related rulemaking documents are available on the Natural Resources Agency’s website: <http://resources.ca.gov/ceqa/>.

#### **STATUTORY AUTHORITY**

Public Resources Code section 21083 requires regular updates to the CEQA Guidelines to explain and implement CEQA. Additionally, from time to time, the Legislature requires specific changes to the CEQA Guidelines. In addition to the regular updates that section 21083 requires, this package also makes changes in the CEQA Guidelines required by sections 21083.01 (add wildfire considerations to the environmental checklist), 21083.05 (update the CEQA Guidelines section related to greenhouse gas emissions), 21083.09 (separate the consideration of paleontological resources from tribal cultural resources in the environmental checklist), and 21099 (update the CEQA Guidelines to include criteria for determining the significance of projects’ transportation impacts).

## **PROPOSED ACTION**

The proposed action clarifies and updates the CEQA Guidelines to reflect: 1) recent legislative changes to CEQA and 2) holdings in recent case law.

**Add** sections: 15064.3 and 15234.

**Amend** sections 15004, 15051, 15061, 15062, 15063, 15064, 15064.4, 15064.7, 15072, 15075, 15082, 15086, 15087, 15088, 15094, 15107, 15124, 15125, 15126.2, 15126.4, 15152, 15155, 15168, 15182, 15222, 15269, 15301, 15357, 15370, Appendix C, Appendix D, Appendix E, Appendix G, and Appendix M.

## **PUBLIC HEARINGS**

Public hearings will be held in Sacramento and Los Angeles in accordance with the requirements set forth in Government Code section 11346.8. At the hearings, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Resources Agency requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. The hearing details are as follows:

### **Sacramento**

Date: March 15, 2018  
Time: 1:30-4:30pm  
Location: California Energy Commission  
Rosenfeld Hearing Room  
1516 9th Street, Sacramento, CA 95814

### **Los Angeles**

Date: March 14, 2018  
Time: 1:30-4:30pm  
Location: California Science Center  
Annenberg Building  
Muses Room  
700 Exposition Park Dr, Los Angeles, CA 90037

## **WRITTEN COMMENT PERIOD**

Any interested person may submit written comments relevant to the changes in this action to the Resources Agency. Written comments must be received by the Natural Resources Agency no later than

5:00 p.m. on **March 15, 2018** in order to be considered. Electronic submission of comments is preferred; however, written comments may also be delivered or mailed. Written comments should be addressed as follows:

Christopher Calfee, Deputy Secretary and General Counsel  
California Natural Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814  
Fax: 916-653-8102

Email: [CEQA.Guidelines@resources.ca.gov](mailto:CEQA.Guidelines@resources.ca.gov).

Please note that under the California Public Records Act (Gov. Code, § 6250, *et seq.*), written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

Pursuant to Government Code section 11346.9, subd. (a)(3), the Resources Agency shall respond to comments submitted during the comment period containing objections and/or recommendations specifically directed at the Resources Agency's proposed action or to the procedures followed by the Resources Agency in proposing or adopting the proposed action in a final statement of reasons.

#### **AUTHORITY AND REFERENCE**

These regulations are submitted pursuant to the Resources Agency's authority under Public Resources Code sections 21083, 21083.01, 21083.05, 21083.09 and 21099.

The additions and amendments are to implement, interpret, and/or make specific changes based on Public Resources Code, sections 21092.3, 21005, 21091, 21092.3, 21100, 21105, 21108, 21152, 21155.4, 21157, 21158, and 21168.9 and Government Code sections 65456 and 65457. References to case law that are being implemented, interpreted, or made specific are included below within each specific CEQA Guidelines section being amended or added.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The California Environmental Quality Act (Pub. Resources Code, § 21000, *et seq.*) (CEQA) requires public agencies to identify potential adverse environmental effects of activities that they propose to carry out, fund, or approve, and to consider feasible alternatives and mitigation measures that would substantially reduce any significant adverse environmental effects that are identified. If an agency chooses to approve a project's significant impacts that cannot be feasibly mitigated, the agency must also adopt a

statement of overriding considerations, which explains on the record why, in the agency's view, the benefits of the project outweigh its environmental impacts. CEQA compliance usually involves preparation by a public agency of either a negative declaration, mitigated negative declaration, or an environmental impact report. The public must have an opportunity to review those documents and to provide comments on the project and the agency's environmental review process.

To assist public agencies' compliance with CEQA's requirements, CEQA requires the Secretary for the Natural Resources Agency, in consultation with the Governor's Office of Planning and Research (OPR), to periodically adopt, amend and repeal the CEQA Guidelines. As noted above, in addition to this regular update requirement, from time to time, the Legislature directs specific changes to the CEQA Guidelines.

In addition to the regular updates that section 21083 requires, this package also makes changes in the Guidelines required by sections 21083.01 (add wildfire considerations to the environmental checklist), 21083.05 (update the CEQA Guidelines section related to greenhouse gas emissions), 21083.09 (separate the consideration of paleontological resources from tribal cultural resources in the environmental checklist), and 21099 (update the CEQA Guidelines to include criteria for determining the significance of projects' transportation impacts).

Beyond simply complying with the Public Resources Code, the Natural Resources Agency identified several policy objectives in assembling this package of CEQA Guidelines updates. First, because the CEQA Guidelines are intended to assist agencies' compliance with CEQA, in 2013, the Agency invited practitioners and other stakeholders to identify changes that would be most useful to them. Many of the changes that are now proposed were suggested by those stakeholders. In inviting stakeholder input, the Agency and the Office of Planning and Research, which develops changes to the CEQA Guidelines, specifically solicited changes that would (1) make the CEQA process more efficient, (2) result in better environmental outcomes, consistent with other adopted state policies, and (3) that are consistent with the Public Resources Code and the cases interpreting it.

### **Anticipated Benefits of the Proposed Regulations**

Approximately thirty (30) sections have been identified for adoption or amendment during this rulemaking process. Several of those changes are intended to, both directly and indirectly, reduce greenhouse gas emissions and better enable communities to respond to the effects of climate change. Additionally, several changes should help agencies accommodate more homes and jobs within California's existing urban areas. Doing so should help people find homes and get to where they need to go more quickly and affordably while also preserving California's natural resources. Finally, many of the changes are intended to make the CEQA process easier to navigate by, among other things, improving

exemptions, making existing environmental documents easier to rely on for later projects, and clarifying rules governing the CEQA process.

The proposed action does not duplicate or conflict with any federal statutes or regulations. CEQA is similar in some respects to the National Environmental Policy Act (NEPA), 42 U.S.C. sections 4321-4343, but NEPA requires environmental review of federal actions by federal agencies while CEQA requires environmental review of state and local projects by state and local agencies in California. Moreover, although both NEPA and CEQA require an analysis of environmental impacts, the substantive and procedural requirements of the two statutes are different. Most significantly, CEQA requires feasible mitigation of environmental impacts while NEPA does not require mitigation. A state or local agency must complete a CEQA review even on those projects for which NEPA review is also applicable, although CEQA Guidelines sections 15220-15229 allow state, local and federal agencies to coordinate a review when projects are subject to both CEQA and NEPA. Because a state or local agency cannot avoid CEQA review, and because CEQA and NEPA are not identical, the CEQA Guidelines are necessary and do not duplicate the Code of Federal Regulations.

#### **Evaluation of Consistency/Compatibility with Existing State Regulations**

The Agency has evaluated the proposed regulations and has found that these are the only regulations concerning the California Environmental Quality Act. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations. Moreover, many of the proposed changes are intended to ensure consistency between CEQA and other state policies regarding climate change, land use and transportation.

The following summaries describe existing laws and regulations related to the proposed action and explain the effect of the proposed revisions. Also included, where appropriate, are the specific objectives of the revisions and additions. Finally, as stated above, where particular code sections or other provisions of law are being implemented, interpreted or made specific references are included below.

#### **15004. TIME OF PREPARATION**

CEQA Guidelines section 15004 codifies the requirement that EIRs and Negative Declarations be prepared before an agency makes a decision on the project and early enough to help influence the project's plans or design. This requirement is also addressed in the California Supreme Court decision *Save Tara v. City of West Hollywood* (2008) 45 Cal.4<sup>th</sup> 116. However, sometimes lead agencies must undertake a number of activities related to a project (such as feasibility studied, grant applications, etc.)

before it can ultimately decide whether to move forward with the project. The proposed changes would clarify what types of pre-approval activities may proceed before the agency completes its CEQA review.

The authority for the proposed amendments is Public Resources Code, section 21083. The reference for the proposed amendment is *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116.

#### **15051. CRITERIA FOR IDENTIFYING THE LEAD AGENCY**

The purpose of this CEQA Guidelines section is to provide the criteria for identifying which of several competing agencies shall be the Lead Agency under CEQA for a project. Normally, the lead agency is the agency that acts first on the project, or that has more general authority over the project. The proposed change in this section is intended to make clear that when more than one agency could potentially be the lead, the lead agency may be designated by agreement.

The authority for the proposed amendment is Public Resources Code, section 21083.

#### **15061. REVIEW FOR EXEMPTION**

CEQA Guidelines section 15061 describes when a project or activity is exempt from CEQA. One of those circumstances is when there is no possibility that the activity may cause environmental harm. The proposed change in this section is to match the description of this circumstance by the California Supreme Court in *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372 as the “common sense exemption” to CEQA.

The authority for the proposed amendments is Public Resources Code, section 21083. The reference for the proposed amendment is *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal. 4th 372.

#### **15062. NOTICE OF EXEMPTION**

If a lead agency concludes that a project is not subject to CEQA, CEQA allows the agency or the project applicant to document that conclusion in a Notice of Exemption. The effect of filing the notice is to trigger a 35-day period within which the lead agency’s conclusion may be challenged in court. The purpose of the Notice of Exemption is to alert those that may be interested in the project of its approval and the need to act quickly if challenging the approval. Section 15062 prescribes the use and content of the Notice of Exemption.

AB 320 (Hill, 2011) required that notices of exemption identify project applicants. The changes proposed in section 15062 will conform to that new requirement.

The authority for the proposed amendment is Public Resources Code, section 21083.

#### **15063. INITIAL STUDY**

Agencies often prepare a short document, known as an initial study, to help determine whether a project may have a significant environmental impact. Based on the initial study, a lead agency would either prepare a negative declaration, if the project would cause no significant impacts, a mitigated negative declaration, if the project might cause impacts but those impacts can be mitigated, or an environmental impact report if the project might cause significant impacts. Section 15063 describes the process, contents, and use of the Initial Study. The proposed change in this section would clarify that lead agencies may contract with consultants to prepare the initial study. This change would be consistent with provisions that allow agencies to use consultants to prepare environmental impact reports.

The authority for the proposed amendment is Public Resources Code, section 21083.

#### **15064. DETERMINING THE SIGNIFICANCE OF THE ENVIRONMENTAL EFFECTS CAUSED BY A PROJECT**

A key step in the CEQA process is determining whether the project may cause a significant effect on the environment. This determination informs what type of environmental document (negative declaration or environmental impact report) may be needed for a project. A determination that an impact is significant also triggers an agency's obligation to lessen that impact if feasible. Section 15064 provides general criteria to guide agencies in determining the significance of environmental effects of a proposed project.

The Resources Agency proposes two sets of changes to this section to make the CEQA process more efficient and to be consistent with cases interpreting CEQA. First, the changes would clarify that agencies may use "thresholds of significance" to help determine whether an impact is significant or not as was found by the court in *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099. "Thresholds" are a level (of noise, pollutant emissions, or habitat loss, for example) at which an impact would normally be significant. An agency that uses thresholds should be able to more quickly determine whether impacts are significant. Using adopted or published thresholds should also make the CEQA process more predictable for project applicants and the public.

The other set of changes proposed in this section is to clarify that agencies may use environmental standards adopted by other agencies as thresholds of significance.

The authority for the proposed amendments is Public Resources Code, section 21083. The reference for this proposed amendment is *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099 and *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690.

### **15064.3. DETERMINING THE SIGNIFICANCE OF TRANSPORTATION IMPACTS**

#### **[New Section]**

The Resources Agency proposes to add a new section 15064.3 to the CEQA Guidelines to provide criteria for determining the significance of projects' transportation impacts. This change was directed by Senate Bill 743 (Steinberg, 2013). Currently, most agencies measure traffic congestion to determine transportation impacts. The metric to measure congestion is commonly known as Level of Service (LOS). SB 743 required the Resources Agency to develop a different way to measure transportation impacts that would lead to fewer greenhouse gas emissions and more transportation alternatives and that would facilitate infill development. In addition to those statutory objectives, the Resources Agency also intends the new method of transportation analysis to be simpler and less costly to perform.

In addition to the statutory directive in SB 743, several recent cases have focused on the amount of driving as an environmental impact. For example, the Third District Court of Appeal found, in *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, that it is necessary to assess and consider mitigation for transportation energy impacts resulting from the amount and distance a project would require people to drive. The court in *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256 reached the same conclusion. In *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 17 Cal.App.5th 413, the court found that an environmental impact report failed to comply with CEQA for not analyzing an alternative to a regional transportation plan that would reduce vehicle miles traveled. Together, these cases demonstrate the CEQA requires analysis of the amount and distance that projects will cause people to drive.

The proposed new CEQA Guideline section says that instead of measuring congestion, agencies should, in most cases, evaluate a project's vehicle miles traveled, a measure of how far a project would make people drive. The new CEQA Guideline section also states that projects that reduce the amount of driving, such as homes near transit or transit projects themselves, generally should not be found to have a significant transportation impact. Agencies will be able to begin using the new methods as soon as the CEQA Guidelines are adopted, but the CEQA Guidelines provides a two-year grace period for those agencies that need time to update their own procedures.

The authority for the proposed new section is Public Resources Code, sections 21083 and 21099. The references for the proposed amendments are Public Resources Code, sections 21099, 21100; *California*



*Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4<sup>th</sup> 173; *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4<sup>th</sup> 256; *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 17 Cal.App.5<sup>th</sup> 413.

#### **15064.4. DETERMINING THE SIGNIFICANCE OF IMPACTS FROM GREENHOUSE GAS EMISSIONS**

The Resources Agency proposes to amend several portions of existing section 15064.4. That section assists lead agencies in determining the significance of a project's greenhouse gas emissions on the environment. The proposed changes would reflect recent cases involving climate change analyses in CEQA. (*California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4<sup>th</sup> 369; *Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 62 Cal.4<sup>th</sup> 204; and *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 3 Cal.5<sup>th</sup> 497.) First, the changes would clarify that the analysis of greenhouse gas emissions is a requirement, not a recommendation. Second, the changes would clarify that while the analysis should measure the amount of greenhouse gas emissions, the focus of the analysis should be the project's incremental contribution to climate change. Further, the changes clarify that lead agencies should consider a timeframe for the analysis that is appropriate for the project so that projects expected to continue long into the future consider long-term effects. Another change would clarify that lead agencies should use current information in analyzing a project's climate change impacts. The changes would also add a cross-reference to the section addressing climate plans and make other technical updates. In addition to updating this section to be consistent with recent cases, the Resources Agency intends these changes to result in analyses that help decisionmakers and the public to meaningfully understand a project's potential contribution to climate change.

The authority for the proposed new section is Public Resources Code, section 21083 and 21083.05. The references for the proposed amendments are *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5<sup>th</sup> 497; *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5<sup>th</sup> 160; *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4<sup>th</sup> 204; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4<sup>th</sup> 70.

#### **15064.7. THRESHOLDS OF SIGNIFICANCE**

Section 15064.7 addresses the use of thresholds of significance which as courts have found in *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4<sup>th</sup> 98 and *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4<sup>th</sup> 1099, may assist lead agencies in determining the significance of a project's impacts. Adopted environmental standards may serve as thresholds of significance. Because environmental standards, if used correctly,

may promote efficiency in the environmental review process, the Resources Agency proposes to update Section 15064.7 to assist lead agencies in deciding whether a particular environmental standard might be appropriate to use as a threshold of significance.

The authority for the proposed amendments is Public Resources Code, section 21083. The references for the proposed amendments are *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98 and *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099.

#### **15072. NOTICE OF INTENT TO ADOPT A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION**

CEQA Guidelines section 15072 describes a lead agency's obligations to provide notice of its intent to adopt a negative declaration or a mitigated negative declaration. That section describes both the content and manner of the required notice. The Resources Agency proposes several changes to this section to improve the usefulness and efficiency of the notice.

First, the Resources Agency proposes to clarify that, in addition to the agencies with which lead agencies must consult, lead agencies should also consult public transit agencies with facilities within one-half mile of the proposed project.

Second, the Resources Agency proposes to clarify that lead agencies must make publicly available all documents that are incorporated by reference, but not every source document that is merely cited, in the initial study.

The authority for the proposed amendments is Public Resources Code, section 21083.

#### **15075. NOTICE OF DETERMINATION ON A PROJECT FOR WHICH A PROPOSED NEGATIVE OR MITIGATED NEGATIVE DECLARATION HAS BEEN APPROVED**

The purpose of this section is to describe the use and contents of the Notice of Determination. The Notice of Determination notifies the public that a lead agency has acted on a project and the agency's conclusions regarding environmental impacts. Because the Notice of Determination starts a statute of limitations period, the notice must contain enough information so that people can see whether the notice applies to the project with which they are concerned.

AB 320 (Hill, 2011) requires the Notice of Determination to include the identity of the person undertaking an activity, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit,

license, certificate, or other entitlement for use. The Resources Agency proposes to update section 15075 to reflect that change.

The authority for the proposed amendment is Public Resources Code, section 21083. The references for the proposed amendments are Pub. Resources Code sections 21108 and 21152.

#### **15082. NOTICE OF PREPARATION AND DETERMINATION OF SCOPE OF EIR**

CEQA Guidelines section 15082 describes the consultation process (commonly referred to as “scoping”), including the use of a notice of preparation of a draft EIR.

That section currently requires lead agencies to send a notice of preparation stating that an environmental impact report will be prepared to the Office of Planning and Research and each responsible and trustee agency involved in the project. The Resources Agency proposes to amend that section to state that the notice must also be filed with the county clerk of each county within which the project is located. This addition is necessary to accurately reflect the procedural requirement stated in the Public Resources Code.

The authority for the proposed amendment is Public Resources Code, section 21083. The reference for the proposed amendment is Pub. Resources Code section 21092.3.

#### **15086. CONSULTATION CONCERNING DRAFT EIR**

This section implements the statutory requirements for consultation with other public agencies and the authority to consult with people who have special expertise concerning the environmental effects of the project.

Among other things, this section lists the agencies and entities in which a lead agency shall or may consult prior to completing an environmental impact report. The Resources Agency proposes to clarify that lead agencies should also consult public transit agencies facilities within one-half mile of the proposed project.

The authority for the proposed amendment is Public Resources Code, section 21083.

#### **15087. PUBLIC REVIEW OF DRAFT EIR**

CEQA Guidelines section 15087 sets forth procedures for public notice and public review of draft EIRs. The Resources Agency proposes two changes to that section to improve the efficiency and efficacy by which an agency solicits public review of its environmental documents.

First, the Resources Agency proposes to clarify that the lead agency may specify the manner in which it will receive written comments. This clarification is necessary to avoid confusion about whether comments made in internet chat-rooms or via social media will receive responses and be included in the record for the project.

Second, the Resources Agency proposes to clarify that lead agencies must make publicly available all documents that are incorporated by reference, but not every source document that is merely cited, in the environmental impact report.

The authority for the proposed amendment is Public Resources Code, sections 21083.

#### **15088. EVALUATION OF AND RESPONSE TO COMMENTS**

This section discusses a lead agency's responsibility to evaluate and respond to public comments and explains the different ways in which the responses to comments can be prepared based on recent court decisions in *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4<sup>th</sup> 859; *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4<sup>th</sup> 515, and *Consolidated Irrigation District v. Superior Court* (2012) 205 Cal. App.4<sup>th</sup> 697. The Resources Agency proposes several changes to this section to increase the efficiency of the process and to help both agencies and the public to focus on the most important environmental issues that may be affected by a project.

First, the Resources Agency proposes to clarify that responses to general comments may be general. Second, the Resources Agency proposes to clarify that general responses may be appropriate when a comment does not explain the relevance of information submitted with the comment, and when a comment refers to information that is not included or is not readily available to the agency.

Finally, the Resources Agency proposes to clarify that a lead agency may provide proposed responses to public agency comments in electronic form as allowed under Section 21091 of the Public Resources Code.

The authority for the proposed amendment is Public Resources Code, section 21083. The references for these amendments are Public Resources Code, section 21091; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4<sup>th</sup> 859; *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4<sup>th</sup> 515 and *Consolidated Irrigation District v. Superior Court* (2012) 205 Cal. App.4<sup>th</sup> 697

#### **15094. NOTICE OF DETERMINATION**

The purpose of this section is to describe the use and contents of the Notice of Determination. The Notice of Determination notifies the public that a lead agency has acted on a project and the agency's conclusions regarding environmental impacts. Because the Notice of Determination starts a statute of limitations period, the notice must contain enough information so that people can see whether the notice applies to the project with which they are concerned.

AB 320 (Hill, 2011) added a requirement to the Notice of Determination to include the identity of the person undertaking an activity, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use. Thus, the Resources Agency proposes to update this section to reflect that change.

The authority for the proposed amendment is Public Resources Code, section 21083.

#### **15107. COMPLETION OF NEGATIVE DECLARATION FOR CERTAIN PRIVATE PROJECTS**

This section reflects the statutory requirement that a negative declaration be completed and adopted within 180 days from the day a private project is accepted as complete for processing.

The Resources Agency proposes to clarify that a lead agency may extend the 180-day time limit once for a period of no more than 90 days upon the consent of both the lead agency and the applicant. This addition allows the lead agency the same flexibility to extend the deadline for the completion of a negative declaration as is allotted for the completion of an environmental impact report.

The authority for the proposed amendment is Public Resources Code, section 21083.

#### **15124. PROJECT DESCRIPTION**

This section requires an environmental impact report to describe the proposed project in a way that will be meaningful to the public, to the other reviewing agencies, and to the decision-makers.

Currently, that section states that a project description must include a statement of objectives sought by the project. The Resources Agency proposes to clarify that the general description may also discuss the proposed project's benefits to ensure the project description allows decision makers to balance, if needed, a project's benefit against its environmental cost.

The authority for the proposed amendment is Public Resources Code, section 21083.

#### **15125. ENVIRONMENTAL SETTING**

This section requires an environmental impact report to describe the environmental setting of the project. The purpose of that requirement is to establish the baseline against which potential impacts of the project would be measured. The California Supreme Court has addressed this requirement in several recent opinions. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439; *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310; *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.) The Resources Agency proposes to update this section to be consistent with those cases and to ensure that environmental analyses provide meaningful information to the public and to decisionmakers.

First, the Resources Agency proposes to clarify that the purpose of defining the environmental setting is to give decision-makers and the public an accurate picture of the project's likely impacts, both near-term and long-term.

Next, the Resources Agency proposes changes to that section that describe when deviations from the general rule might be appropriate. Specifically, it might be appropriate to look to historic conditions if existing conditions are not usual. It might also be appropriate to measure impacts against future conditions if those conditions are expected to change over the course of the project's implementation. When using a baseline other than existing conditions, the lead agency should explain why using existing conditions would be misleading or uninformative. A lead agency must also have evidence confirming past or future conditions used as the baseline for environmental analysis. Finally, the proposed changes would clarify that a lead agency cannot use a hypothetical scenario as a baseline.

The authority for the proposed amendment is Public Resources Code, sections 21083. The references for these amendments are *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439; *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310; *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.

## **15126.2. CONSIDERATION AND DISCUSSION OF SIGNIFICANT ENVIRONMENTAL IMPACTS**

This section describes the required content for discussion of significant environmental effects which may result from a project in an environmental impact report. The Resources Agency proposes two sets of changes to this section. The first set of changes respond to a recent decision from the California Supreme Court regarding the scope of analysis required for impacts to future project users from the surrounding environment. (*California Building Industry Association v. Bay Area Air Quality Management District* 62 Cal.4<sup>th</sup> 369.) The second set would clarify the requirement to analyze energy impacts

associated with a project. (*Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256; *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912.)

Regarding the first set of changes, the existing CEQA Guidelines require an environmental impact report to analyze the effects of moving people to a hazard and provide a fault zone as an example. The Supreme Court found that requirement was not consistent with the requirements of the statute, which generally only require analysis of the effects of a proposed project on its surrounding environment, but not the other way around. The Court held that general rule does not apply where a project might make existing hazards (such as building in a floodplain or high fire hazard zone) even worse. In response, the Resources Agency proposes changes to this section that both clarify the general rule and explain the exception.

Regarding the analysis of energy impacts, the Resources Agency proposes to add a new subdivision clarifying that lead agencies must evaluate the environmental impacts of a project's energy use over the life of the project pursuant to the court's decision in *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256. It would also identify factors that might be relevant in the analysis, including whether the project incorporates renewable energy components or exceeds building code requirements.

The authority for the proposed amendments is Public Resources Code, section 21083. The references for these amendments are *California Building Industry Association v. Bay Area Air Quality Management District* 62 Cal.4th 369; and *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256; *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912.

#### **15126.4. CONSIDERATION AND DISCUSSION OF MITIGATION MEASURES PROPOSED TO MINIMIZE SIGNIFICANT EFFECTS**

When a lead agency finds that a project may cause a significant environmental impact, it must generally adopt changes to the proposed project that would mitigate or lessen those impacts. An environmental impact report must include a description of those proposed mitigation measures. This section describes the requirements for and selection of feasible mitigation measures. The Resources Agency proposes several changes to this section to reflect recent cases and to accommodate practical considerations regarding the level of detail that may be available at the time of project approval.

First, the proposed amendments would clarify that the lead agency "shall" not defer identification of mitigation measures. (*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260; *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899; *City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.App.4th 362.)

Second, the proposed amendments would describe situations when deferral of the specific details of mitigation measures may be allowable under CEQA, including what commitments the agency should make in the environmental document. (*City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.App.4th 362.) Specifically, the proposed amendments would explain that deferral may be permissible when it is impractical or infeasible to fully formulate the details of a mitigation measure at the time of project approval and the agency commits to mitigation. (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884.)

Further, the Resources Agency proposes to clarify that when deferring the specifics of mitigation, the lead agency should either provide a list of possible mitigation measures, or adopt specific performance standards. (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261.)

Finally, the proposed amendments would explain that such deferral may be appropriate where another regulatory agency will issue a permit for the project and is expected to impose mitigation requirements independent of the CEQA process. (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200.)

The authority for the proposed amendments is Public Resources Code, sections 21083 and 21083.05. The references for these amendments are *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260; *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899; *City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.App.4th 362; *City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.App.4th 362; *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261; and *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200.

#### **15152. TIERING**

Many projects go through a series of separate public agency decisions, going from approval of a general plan, to approval of an intermediate plan or zoning, and finally to approval of a specific development proposal. CEQA allows agencies to focus environmental review on the environmental issues which are relevant to the approval being considered provided that the agency analyzes reasonably foreseeable significant effects and does not defer such analysis to a later document. The Public Resources Code encourages agencies to tier environmental review (from general to more specific) and includes a specific procedure for doing so. Section 15152 of the CEQA Guidelines implements those provisions.

The Resources Agency proposes to amend this section to clarify that tiering describes one mechanism for streamlining the environmental review process, but where other methods have more specific provisions, those provisions shall apply.



The authority for the proposed amendments is Public Resources Code, section 21083. The references for the changes in this section are Public Resources Code sections 21083.3, 21157 and 21158.

#### **15155. CITY OR COUNTY CONSULTATION WITH WATER AGENCIES**

This CEQA Guidelines section describes the process city or county lead agencies must follow with respect to the development of a water supply assessment for certain types of projects and requires the inclusion of the water supply assessment and other information in any environmental document prepared for the project.

Because water is such a critical resource in California, and because California courts have required specific content in environmental documents regarding water supply, the Resources Agency proposes to revise section 15155 to incorporate the holding of the California Supreme Court's decision in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412. Specifically, the changes would clarify that agencies must evaluate a proposed project's water supply and the environmental impacts of supplying that water to the project. Where water supplies are not certain, agencies may identify alternative sources and the impacts of relying on those alternative sources.

The authority for the proposed addition is Public Resources Code, section 21083. The reference for the amendment to this section is *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412.

#### **15168. PROGRAM EIR**

The "program EIR" is a device originally developed by federal agencies under NEPA to address macro scale and cumulative impacts of activities that might progress in stages or have several levels of approvals, such programs and plans. California courts approved of this approach in CEQA as well. A program EIR can be used to focus later site-specific environmental reviews. Where the impacts of a later activity are found to be within the scope of a program EIR, no additional environmental review is required. Rules on the use of program EIRs are found in section 15168 of the CEQA Guidelines.

The Resources Agency proposes to amend this section to further assist lead agencies in determining whether later activities are within the scope of a prior program EIR. The reason for these proposed changes is to encourage efficiency by making greater use of analysis that has already been performed. The additions clarify that lead agencies have discretion to determine whether a later project is within the scope of a program EIR based on the facts surrounding the later activity and the specific details in the existing program EIR. (*Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal. App. 4th 598.) The additions also describe certain factors

that a lead agency may consider in making that determination. The changes also include minor wording changes. (*Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency, supra*, 134 Cal. App. 4th at p. 616 and *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal. App. 4th 689.)

The authority for the proposed additions and amendments is Public Resources Code, section 21083. The references for the amendments to this section are *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal. App. 4th 598; *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal. App. 4th 689.

#### **15182. RESIDENTIAL PROJECTS PURSUANT TO A SPECIFIC PLAN**

This section discusses special provisions regarding projects included in specific plans. The existing section describes an exemption found in the Government Code for residential projects that are consistent with specific plans. (*Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301.)

The Resources Agency proposes to amend that section to reflect Public Resources Code section 21155.4 which provides a similar exemption not only for residential projects, but also commercial and mixed-use projects that are located near transit. Projects that meet the criteria listed in those code sections are exempt from CEQA. The Resources Agency proposes to codify these provisions in one place within the CEQA Guidelines both to encourage their use and to ensure that agencies, the public and project applicants understand the requirements for their use.

The authority for the proposed amendments is Public Resources Code, section 21083. The references for this section are Public Resources Code, section 21155.4 and *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4<sup>th</sup> 1301.

#### **15222. PREPARATION OF JOINT DOCUMENTS**

This section of the CEQA Guidelines strongly encourages state and local agencies to try to work with the federal agency involved with the same projects to conduct joint environmental review under CEQA and NEPA.

The Resources Agency proposes to amend this section to add a sentence encouraging a lead agency to enter into a Memorandum of Understanding with appropriate Federal agencies. This addition will encourage increased cooperation between the state and Federal agencies to coordinate project requirements, timelines, and reduce duplication under CEQA and NEPA provisions.

The authority for the proposed amendment is Public Resources Code, section 21083.

## **15234. REMEDIES AND REMAND**

### **[NEW SECTION]**

The Resources Agency proposes to add a new section to the CEQA Guidelines to explain to the public and to public agencies how CEQA litigation may affect project implementation.

Specifically, the added section clarifies that in certain circumstances, set forth in statute and explained in this section, portions of the project approvals or the project itself may proceed while the agency conducts further review to correct errors identified by the court. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439; *POET, LLC v. State Air Resources Board* (2013) 218 Cal. App. 4th 681; *Preserve Wild Santee v. City of Santee* (2012) 210 Cal. App. 4th 260; *Golden Gate Land Holdings, LLC v. East Bay Regional Park Dist.* (2013) 215 Cal. App. 4th 353; *Silverado Modjeska Recreation and Parks Dist. v. County of Orange* (2011) 197 Cal. App. 4th 282.)

The proposed new section also addresses how an agency should proceed with additional environmental review if required by a court. It clarifies that where a court upholds portions of a lead agency's environmental document, additional review of topics covered in the upheld portions is only required if the project or circumstances surrounding the project have changed in a way resulting in new or worse environmental impacts.

The authority for the proposed addition is Public Resources Code, section 21083. The references for adding this section are Public Resources Code Sections 21005, 21168.9; *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439; *Preserve Wild Santee v. City of Santee* (2012) 210 Cal. App. 4th 260; *Golden Gate Land Holdings, LLC v. East Bay Regional Park Dist.* (2013) 215 Cal. App. 4th 353; *POET, LLC v. State Air Resources Board* (2013) 218 Cal. App. 4th 681; *Silverado Modjeska Recreation and Parks Dist. v. County of Orange* (2011) 197 Cal. App. 4th 282

## **15269. EMERGENCY PROJECTS.**

This section describes exemptions from CEQA relating to emergencies. Currently, one exemption is for emergency repairs to service facilities. Another is for actions to prevent or mitigate emergencies. The Resources Agency proposes to clarify that emergency repairs may fall within the exemption even if they require some planning. (*CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal. App. 4th 529.) Similarly, the Resources Agency proposes to clarify that work to prevent even expected emergencies may fall within the exemption if the threat is imminent.

The authority for the proposed amendment is Public Resources Code, section 21083. The reference for the amendment to this section is *CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal. App. 4th 529.

### **15301. EXISTING FACILITIES**

Section 15301 of the CEQA Guidelines exempts operations and minor alterations of existing facilities from CEQA. The key in determining whether the exemption applies is whether the project involves an expansion to an existing use. Projects that involve no or only a negligible expansion may be exempt. This exemption plays an important role in implementing the state's goal of prioritizing infill development.

The Resources Agency proposes to make two changes to Section 15301.

The first change would clarify that a project that would make use of a vacant building should not be considered an expansion of use and so may be exempt under this exemption. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310.)

The second change would clarify that improvements within a public right of way that enable use by multiple modes (i.e., bicycles, pedestrians, transit, etc.) would normally not cause significant environmental impacts.

The authority for the proposed amendment is Public Resources Code, section 21083. The reference for this amendment is *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310.

### **15357. DISCRETIONARY PROJECT**

Section 15357 defines the phrase "discretionary project." That definition is important because CEQA only applies to discretionary activities, where the agency has discretion in whether and how to approve projects. CEQA does not apply to ministerial activities, where the agency has no discretion in whether or how to approve the project. The Resources Agency proposes to amend Section 15357 to clarify that a discretionary project is one in which a public agency can shape the project in any way to respond to concerns raised in an environmental impact report. This addition reflects the decisions of various court cases distinguishing the term "discretionary" and the term "ministerial." (*Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal. App. 3d 259; *Mountain Lion Foundation v. Fish & Game Comm.* (1997) 16 Cal. 4th 105; *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal. App. 4th 286; *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal. App. 4th 924.)

The authority for the proposed amendment is Public Resources Code, section 21083. The references for the amendments to this section are *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal. App. 3d 259; *Mountain Lion Foundation v. Fish & Game Comm.* (1997) 16 Cal. 4th 105; *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal. App. 4th 286; *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal. App. 4th 924.

#### **15370. MITIGATION**

Section 15370 defines the term “mitigation.” The Resources Agency proposes to revise Section 15370 of the CEQA Guidelines to clarify that permanent protection of off-site resources through conservation easements constitutes mitigation. This change is consistent with the recent court decision *Masonite Corporation v. County of Mendocino* (2013) 218 Cal.App.4th 230.

The authority for the proposed amendment is Public Resources Code, section 21083. The reference for the amendment to this section is *Masonite Corporation v. County of Mendocino* (2013) 218 Cal.App.4th 230.

#### **APPENDIX C. NOTICE OF COMPLETION AND ENVIRONMENTAL DOCUMENT TRANSMITTAL**

Appendix C contains the Notice of Completion and Environmental Document Transmittal form that is filed with the Governor’s Office of Planning and Research, State Clearinghouse. Notice of Completion “means a brief notice filed with the Office of Planning and Research by a Lead Agency as soon as it has completed a draft EIR and is prepared to send out copies for review. . . .” (CEQA Guidelines, § 15372.) The Resources Agency proposes to make several non-substantive changes to the form to be consistent with other changes described in this package as well as changes in statute.

The authority for the proposed amendment is Public Resources Code, section 21083.

#### **APPENDIX D. NOTICE OF DETERMINATION**

Appendix D contains the Notice of Determination form. This form is “a brief notice to be filed by a public agency after it approves or determines to carry out a project which is subject to the requirements of CEQA.” (CEQA Guidelines, § 15372.)

The Resources Agency proposes to add a new entry on the form to identify the Project Applicant. This change reflects recent changes to Public Resources Code, sections 21108 and 21152, which contain the statutory requirements for notices.

The authority for the proposed amendments is Public Resources Code, section 21083.

## **APPENDIX E. NOTICE OF EXEMPTION**

Appendix E contains the Notice of Exemption form. This form is “a brief notice which may be filed by a public agency after it has decided to carry out or approve a project and has determined that the project is exempt from CEQA as being ministerial, categorically exempt, an emergency, or subject to another exemption from CEQA. Such a notice may also be filed by an applicant where such a determination has been made by a public agency which must approve the project.” (CEQA Guidelines, § 15374.)

The Resources Agency proposes to add a new entry on the form to identify the Project Applicant. This change reflects recent changes to Public Resources Code, sections 21108 and 21152, which contain the statutory requirements for notices.

The authority for the proposed amendments is Public Resources Code, section 21083.

## **APPENDIX G. ENVIRONMENTAL CHECKLIST FORM**

Appendix G in the CEQA Guidelines contains a sample initial study format. The purpose of an initial study is to assist lead agencies in determining whether a project may cause a significant impact on the environment. (CEQA Guidelines, § 15063.) To help guide that determination, Appendix G asks a series of questions regarding a range of environmental resources and potential impacts. The Resources Agency proposes to revise the sample environmental checklist in several ways. First, it proposes to consolidate certain categories of questions to eliminate redundancy and ease data collection. Second, it proposes to reframe or delete certain questions that should be addressed in the planning process to focus attention on those environmental issues that must be addressed in the CEQA process. Third, it proposes to add questions that, although required by current law, tend to be overlooked in the environmental review process. Finally, it proposes to revise the questions related to cultural resources, transportation impacts and wildfire risk as required by recent legislation. The authority for these proposed amendments and additions to Appendix G is Public Resources Code, section 21083.

## **APPENDIX M. PERFORMANCE STANDARDS FOR INFILL PROJECTS ELIGIBLE FOR STREAMLINED REVIEW**

Appendix M contains performance standards for infill projects to qualify for streamlined review. The Resources Agency proposes non-substantive changes to Appendix M to correct typographical errors.

The authority for these proposed amendments to Appendix M is Public Resources Code, sections 21083 and 21094.5.5.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Resources Agency has made the following initial determinations concerning the proposed changes to the CEQA Guidelines:

### **MANDATES ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Resources Agency has initially determined that the proposed changes to the CEQA Guidelines will not impose a mandate on local agencies or school districts requiring reimbursement pursuant to Government Code Section 17500 *et seq.* as the Resources Agency is implementing legislation and making clarifications based on current case law. Local agencies incur costs in their compliance with CEQA. The costs imposed by the CEQA Guidelines are not the result of a new program or higher level of service within the meaning of Article XIII.B, Section 6 of the California Constitution.

### **COSTS OR SAVINGS TO LOCAL AGENCIES AND SCHOOL DISTRICTS, STATE AGENCIES, OR FEDERAL FUNDING TO THE STATE OF CALIFORNIA**

As a result of reduced transportation analysis costs, state agencies, local agencies, and school districts are expected to save approximately \$2.5 million. No reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

### **HOUSING COSTS**

The proposed amendments will not quantifiably affect housing costs because the revisions will interpret and make specific certain existing CEQA requirements affecting the way public agencies administer the CEQA process. The proposed amendments will enable agencies to reduce analysis costs by making use of exemptions and other streamlined review. Project applicants that design projects to qualify for streamlined review may also see reduced analysis and mitigation costs. Because the extent of cost savings will depend on the individual decisions of agencies and project applicants, it is not possible to quantify the effects of these proposed changes to the CEQA Guidelines. Additional information is contained in the Standardized Regulatory Impact Assessment.

### **SIGNIFICANT ADVERSE ECONOMIC IMPACTS ON BUSINESS**

The Resources Agency has initially determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California

businesses to compete with businesses in other states. The factual basis for this conclusion is that the revisions will interpret and make specific existing analysis and mitigation requirements imposed by statute and judicial decisions interpreting the CEQA statute. The proposed amendments will enable agencies to reduce analysis costs by making use of exemptions and other streamlined review. Project applicants that design projects to qualify for streamlined review may also see reduced analysis and mitigation costs. Because the extent of cost savings will depend on the individual decisions of agencies and project applicants, it is not possible to quantify the effects of these proposed changes to the CEQA Guidelines. Additional information is contained in the Standardized Regulatory Impact Assessment.

#### **STATEMENT OF THE RESULTS OF THE STANDARDIZED REGULATORY IMPACT ANALYSIS**

The Natural Resources Agency expects the proposed package to reduce costs associated with CEQA compliance. Quantification of the economic impact of many changes to the CEQA Guidelines is not possible for several reasons. First, though CEQA requires agency decisions to be informed, it leaves lead agencies wide discretion regarding how to study and mitigate impacts. Second, many variables will affect what studies are required, and to what depth, for any particular project. Such factors include, among others, the scope and type of project, the project's location, the presence of specific resources and sensitive receptors, the degree of community engagement, the number and type of other agencies that also have a secondary role in the project, etc. Third, many of the proposed changes merely clarify existing law, consistent with case law interpreting CEQA as well as statutory changes. Because CEQA practice varies so broadly, some changes may not actually alter agency behavior but will provide certainty that their practices are consistent with CEQA.

The proposed changes regarding the analysis of transportation impacts, however, will in most cases replace one methodology, which measures traffic congestion, with another, which measures the amount and distance that a project will cause people to drive. Costs and savings associated with that change in methodology are foreseeable and reasonably quantifiable. Therefore, those change are analyzed in depth in the Standardized Regulatory Impact Assessment.

#### *Statement of the results of the SRIA*

The primary quantifiable change that will result from the proposed regulation is a reduction in the cost of preparing transportation studies. A typical transportation study under the proposed regulations is expected to cost approximately one-fifth of studies under the status quo. Based on the number of environmental studies prepared every year, private developers, which often fund the cost of environmental studies for private projects, could potentially save approximately \$24 million. Local governments could potentially save approximately \$3 million.



Despite these savings, the overall impact on the California economy is expected to be negligible. More specific results of the Standardized Regulatory Impact Assessment are described below.

#### *Creation or elimination of jobs within California*

Overall, statewide employment impacts are positive but negligible. Cost reductions in document production lead to a small increase in the rate of growth, as indicated by small positive impacts to total California employment - a net 281 jobs. Depending on the industry, the REMI model predicts negligible increases or decreases in employment. The slight increase in employment growth can be attributed to the decrease in production cost for state and local governments and developers. Increases in the rate of employment growth attributed to lower production costs outweigh any negative impact to employment growth in the private consulting industries because of lower demand for consulting services.

#### *Creation of new businesses or elimination of existing businesses within California*

The estimated sector impacts to gross value added are overall positive across all industries, but are slightly negative (i.e., less than 0.01 percent) in the Professional, Scientific, and Technical Services industry across all years of the assessment. The small decrease in demand for services in the Professional, Scientific, and Technical Services industry explains the negative change in that industry.

#### *The competitive advantages or disadvantages for businesses currently doing business within California*

By providing slight increases in gross state product, investment, and employment, the proposed regulation would marginally increase California's competitive advantage. The State's competitive advantage may also increase with new VMT research efforts, tools, and techniques that may occur within the State to develop VMT reduction and to verify those reductions. The proposed regulatory change to add VMT analysis is not anticipated to create a competitive disadvantage because lead agencies already require VMT to analyze other impact areas under CEQA (i.e., air and GHG emissions, noise, energy impacts).

#### *The increase or decrease of investment in California*

Private investment, for purposes of the REMI model, consists of purchases of residential and nonresidential capital and software by private businesses. The proposed regulation would minimally increase the overall growth of gross private domestic investment, ranging from +0.00 percent to less than 0.01 percent annually across all years of the assessment. For example, once the regulations are in full effect, private investment may reach \$34 million.

#### *The incentives for innovation in products, materials, or processes*

While lead agencies currently use VMT analysis in the CEQA process to ascertain emissions, noise, energy, and other impacts, the regulatory change to VMT for transportation impact analysis may lead to improved measurement techniques. Such improvements would lead to more accurate assessments of those other impacts as well. And for projects resulting in significant VMT impacts for which enforceable mitigation would be required, if feasible, the proposed regulation may lead to developing new mitigation approaches for reducing vehicle travel. Additionally, the co-benefit of new VMT mitigation includes spurring new research efforts, tools, and techniques to develop VMT reduction and to verify those reductions.

*The benefits of the regulation, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency.*

There are numerous potential direct and indirect benefits of reducing VMT. Realization of those benefits will depend on the degree to which, pursuant to this CEQA Guidelines proposal, lead agencies use the streamlined approaches for analysis of low-VMT projects, mitigate high-VMT projects, or choose lower VMT project alternatives. Some of the benefits that may result from reducing VMT are described qualitatively below:

- *Better health and avoided health care costs.* Higher VMT is associated with more auto collisions, more air pollution, more GHG emissions, less active transportation, and less transit use. If California achieves its goals of doubling walking and tripling biking (Caltrans Strategic Management Plan), 2,095 annual deaths will be avoided. Increasing active transit modes would help reduce air pollution and greenhouse gas emissions. Estimates of the annual monetized value of prevented deaths and disabilities in California resulting from achieving those targets ranges from \$1 billion to \$15.5 billion.
- *Reduction in transportation, building energy, and water costs.* Less vehicle travel reduces vehicle fuel (or electricity), maintenance, parking, and in some cases vehicle ownership costs. Transportation costs are typically the second greatest category of household expenditure after housing itself (Bureau of Labor Statistics, Consumer Expenditures). Compact, low VMT development tends to consume less building energy and irrigation water, leading to savings to residents and businesses. Busch et al., 2015 estimated that if 85 percent of new housing and jobs added in the state until 2030 were located within existing urban boundaries, it would reduce per capita VMT by about 12 percent below 2014 levels.<sup>7</sup> That combination of reduced VMT and more compact development would, in turn, result in an estimated \$250 billion in household cost savings cumulative to 2030 (with an average annual savings per household in 2030 of \$2,000). Household costs analyzed in the Busch, et al. study included auto fuel, ownership and maintenance costs, as well as residential energy and water costs.

- *Reduction in travel times to destinations.* Reducing VMT reduces congestion regionally, decreasing travel times, and may also encourage more investment in multi-modal infrastructure. It may add congestion locally, due to increased density of development; however, even in those areas, travel times decrease because of better proximity (Mondschein, 2015).
- *Cleaner water.* Motor vehicle travel can cause deposition of pollutants onto roadways, which can then be carried by stormwater runoff into waterways. Fuel, oil, and other liquids used in motor vehicles can leak from vehicles onto the ground (Delucchi, 2000). Brake dust and tire wear can further cause particles to be deposited onto the ground (Thorpe and Harrison, 2008). Brake pads and tire compounds are made out of compounds that include metal. Further, motor vehicles require roadways for travel. Paved roadways are impervious surfaces which prevent infiltration of storm water in the ground. Impervious surfaces can increase the rate, volume, and speed, and temperature of stormwater runoff (US Environmental Protection Agency, 2003). Wearing down of roadways can further cause particles to be deposited onto the ground (Thorpe and Harrison, 2008). The Victoria Transportation Policy Institute (2015) estimates that in total that motor vehicle contributions to water pollution cost approximately 42 billion dollars per year or 1.4 cents per mile.

#### *Summary of Department of Finance's comments on the SRIA*

The Department of Finance provided its comments on the SRIA in a letter dated January 3, 2018. In brief, Finance noted that it generally concurs with the methodology used to estimate economic and fiscal impacts of proposed regulations. Finance further noted that it is beyond the scope of the data available to estimate the dynamics of what projects will be proposed or approved, but that the public may be able to offer examples of impacts.

#### *Responses to Comments from the Department of Finance*

The Natural Resources Agency appreciates the Department of Finance's review of the standardized regulatory impact assessment, and concurs with its comments. No changes to the assessment are needed at this time.

### **EFFECT ON CALIFORNIA BUSINESS ENTERPRISES AND INDIVIDUALS**

The Natural Resources Agency has assessed the potential for the proposed action to adversely affect California business enterprises and individuals, including whether it will affect the creation, elimination or expansion of businesses, as required by subdivision (b) of Government Code Section 11346.3. As explained above, the proposed action is expected to have a negligible effect on the creation or elimination of jobs or businesses within California. The Natural Resources Agency has also concluded

that the proposed amendments will not significantly affect the expansion of businesses currently doing business within the state.

The proposed amendments will enable agencies to reduce analysis costs by making use of exemptions and other streamlined review. Project applicants that design projects to qualify for streamlined review may also see reduced analysis and mitigation costs. Because the extent of cost savings will depend on the individual decisions of agencies and project applicants, it is not possible to quantify the effects of these proposed changes to the CEQA Guidelines. Additional information is contained in the Standardized Regulatory Impact Assessment.

The Resources Agency's complete Economic and Fiscal Impact Statement (Form Std 399) for the proposed action is part of the rulemaking file, and is available from the agency contact person named in this notice.

#### **COSTS IMPACTS ON A REPRESENTATIVE PERSON OR BUSINESS**

The Natural Resources Agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed amendments will enable agencies to reduce analysis costs by making use of exemptions and other streamlined review. Project applicants that design projects to qualify for streamlined review may also see reduced analysis and mitigation costs. Because the extent of cost savings will depend on the individual decisions of agencies and project applicants, it is not possible to quantify the effects of these proposed changes to the CEQA Guidelines. Additional information is contained in the Standardized Regulatory Impact Assessment.

#### **EFFECT ON SMALL BUSINESS**

The proposed amendments will not affect small business because the revisions will interpret and make specific certain existing CEQA requirements affecting the way public agencies administer the CEQA process. The proposed amendments will enable agencies to reduce analysis costs by making use of exemptions and other streamlined review. Project applicants that design projects to qualify for streamlined review may also see reduced analysis and mitigation costs. Because the extent of cost savings will depend on the individual decisions of agencies and project applicants, it is not possible to quantify the effects of these proposed changes to the CEQA Guidelines. Additional information is contained in the Standardized Regulatory Impact Assessment.

## CONSIDERATION OF ALTERNATIVES

In accordance with subsection (a)(13) of section 11346.5 of the Government Code, the Natural Resources Agency must determine that no reasonable alternative considered by the Agency or that has otherwise been identified and brought to the Agency's attention would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law

The Natural Resources Agency considered reasonable alternatives to the proposed action and determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed action. This conclusion is based on the Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with recent legislative enactments and case law that have modified CEQA. The Agency rejected the no action alternative because it would not achieve the objectives of the proposed revisions. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to the imposition of the statutory requirements.

Regarding the proposed change to CEQA Guidelines section 15064.3 addressing transportation analyses, the Resources Agency considered and rejected two alternatives to the proposed action. Under Alternative 1, the change from level of service (LOS) to vehicle miles traveled would apply only to proposed projects within "transit priority areas." This is the minimum scope of what Senate Bill 743 requires. Proposed projects outside of transit priority areas would continue to prepare traffic analyses using LOS.

Alternative 1 was rejected for several reasons. First, this alternative would forgo substantial cost and time savings that are expected to result from studying VMT instead of LOS. Second, this alternative would be more likely to cause confusion and increase litigation risk. Greater uncertainty would result because this alternative would require two different types of analyses to be conducted, depending on location. Third, research indicates that a transportation analysis focused on VMT may result in numerous indirect benefits to individuals including improved health; savings on outlay for fuel, energy, and water; reduction of time spent in transport to destinations. Finally, this alternative would be less likely to achieve the purposes of SB 743. That legislation requires the updated CEQA Guidelines "promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses." As explained in the Office of Planning and Research's

[Preliminary Evaluation of Alternative Methods of Transportation Analysis](#), as a metric, VMT promotes those statutory purposes better than LOS.

Under Alternative 2, the analysis of VMT would apply to land use projects only and not to transportation projects. In other words, under this alternative, LOS analysis would continue to apply to roadway, transit, bicycle and pedestrian projects reviewed under CEQA.

Alternative 2 was rejected because it would forgo the cost and time benefits described above for transit, bicycle and pedestrian projects. Those types of projects in particular are more likely to provide healthier, lower cost, more equitable transportation options. They are also a key strategy to reducing greenhouse gas emissions. As a result, this alternative would be less likely to achieve the purposes of Senate Bill 743, requiring the CEQA Guidelines update to “promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses.”

Finally, regarding the remainder of the package, the Office of Planning and Research initially proposed a preliminary draft of the proposed changes. It subsequently changed that draft in response to extensive public comment. The Natural Resources Agency incorporates those prior drafts into this rulemaking file, and finds that the prior drafts would not be more effective or less burdensome than this proposal. Therefore, the Resources Agency has initially determined that no reasonable alternative considered by the Resources Agency or otherwise identified and brought to the Resources Agency’s attention would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

#### **AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

The Natural Resources Agency will make the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date of this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and supporting information, including prior drafts of the proposed regulatory text. Copies may be obtained by contacting Christopher Calfee or Heather Baugh at the addresses and/or phone numbers listed above.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

Following the hearings and consideration of all timely and relevant comments received, the Natural Resources Agency may adopt the proposed regulations substantially as described in this notice. If the Agency makes modifications which are sufficiently related to the originally proposed text, it will make

the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Agency adopts the regulations as revised. Any requests for copies of any modified regulations should be directed to the attention of Christopher Calfee or Heather Baugh at the addresses indicated above following publication of the modified text. If the Agency modifies the originally proposed text, the Agency will accept written comments on the modified regulations for 15 days after the date on which the modifications are made available.

#### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the final Statement of Reasons may be obtained by contacting Christopher Calfee or Heather Baugh at the above addresses and telephone numbers.

#### **PLAIN ENGLISH DETERMINATION AND AVAILABILITY OF TEXT**

The proposed final CEQA Guidelines were prepared pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirements of Government Code sections 11342.580 and 11346.2, subdivision (a)(1). The proposed changes to the CEQA Guidelines are considered non-technical and were written to be easily understood by the parties that will use them. The purpose of the proposed changes to the CEQA Guidelines is to interpret the requirements of CEQA and to provide a comprehensive point of reference for those who are affected by CEQA's mandates both in government and the private sector. Specifically, the proposed changes will make clear what lead agencies and project applicants must do to comply with CEQA.

The text of the proposed changes to the CEQA Guidelines has been drafted, and is available in plain English. The text is available through the contact address and telephone number listed herein or on the CEQA web site at <http://resources.ca.gov/ceqa/>.

#### **CONTACT PERSONS**

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