

**CITY OF LOS ANGELES**  
INTER-DEPARTMENTAL CORRESPONDENCE

Date: June 5, 2019

To: Honorable City Council  
c/o City Clerk, Room 395, City Hall  
Attention: Honorable Mike Bonin, Chair, Transportation Committee

From: Seleta J. Reynolds,  General Manager  
Department of Transportation

Subject: **CEQA TRANSPORTATION SECTION UPDATE IMPLEMENTING SENATE BILL 743**

**SUMMARY**

This report responds to Council File (CF) 14-1169 and supplements the City Planning Commission (CPC) report CPC-2018-6577 (Attachment 1) approved on February 28, 2019. The CPC report recommends that the City Council adopt new transportation impact thresholds using Vehicle Miles Traveled (VMT) instead of Level of Service (LOS) as mandated by the State of California (State) pursuant to Senate Bill 743. Supplemental recommendations from the Los Angeles Department of Transportation (LADOT), listed below, are to opt out of the Congestion Management Program (CMP) to further align with the switch from LOS to VMT evaluation method for California Environmental Quality Act (CEQA) clearances.

**RECOMMENDATION**

That the City Council:

1. APPROVE the CPC recommendations in report CPC-2018-6577, approved at the Commission's meeting on February 28, 2019;
2. DETERMINE that, based on the whole of the administrative record, the proposed resolution in action 3 is not a project under CEQA pursuant to Public Resources Code Section 21080(b)(1) and CEQA Guidelines Sections 15378, and is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) and Section 15308, and none of the exceptions in Section 15300.2 apply; and
3. ADOPT the proposed Resolution (Attachment 2) to elect to be exempted from the CMP as described in California Government Code Section 65088 to 65089.10, pursuant to the provisions in Section 65089.3.

**BACKGROUND**

The California Environmental Quality Act requires public agencies to disclose potential environmental impacts of their decisions, including transportation impacts to the public. Land use development projects that involve a discretionary action, including zone changes, variances, and site plan reviews, require environmental review pursuant to CEQA. Ministerial actions, such as building permits that otherwise comply with the zoning code are exempt from CEQA review. Additionally, decisions to fund or implement transportation investments require environmental analysis unless the investment falls into

the categories of projects that are exempt from CEQA review (e.g., repair of an existing street). To determine whether projects reviewed under CEQA may have negative transportation related environmental impacts, CEQA traditionally relied on measures of automobile delay or LOS.

On September 27, 2013, Governor Jerry Brown signed Senate Bill (SB) 743 into law and initiated a process to change transportation impact analysis procedures to comply with CEQA. The Governor's Office of Planning and Research (OPR) was tasked with developing new guidelines to evaluate transportation impacts of new development projects under CEQA using methods that no longer rely on LOS. SB 743 revised CEQA guidelines to include a transportation performance metric that promotes greenhouse gas emissions reductions, multimodal transportation networks, and a more sustainable diversity of land uses.

In August 2014, OPR proposed to replace the LOS metric with VMT, an estimate of the amount and distance people drive by vehicle to reach a destination. As the new transportation impact metric for development projects under CEQA, VMT meets the objectives of SB743 and supports the State's goals for greenhouse gas reductions, discourages suburban sprawl, and eliminates a performance metric with a singular focus on vehicular capacity. In 2018, after four years of stakeholder workshops and VMT case studies, the California Natural Resources Agency certified and adopted the CEQA Guidelines update. The Office of Administrative Law approved the revisions, which mandate that all cities in California update their transportation impact analysis metrics to VMT, and filed the update with the Secretary of State. The updated Guidelines became effective on December 28, 2018.

In response to SB743 and direction from City Council in CF 14-1169, LADOT partnered with the Department of City Planning (DCP) over a multi-year effort to modernize the City of Los Angeles' (City) transportation analysis procedures under CEQA. During this time, with assistance from Fehr and Peers Transportation Consultants, staff met with stakeholders, collected local travel data, developed the tools needed to estimate VMT, and established transportation thresholds and analysis guidelines that meet the intent of SB 743 while helping to advance City environmental goals.

On February 28, 2019, the CPC voted unanimously to recommend that the City Council adopt new transportation impact thresholds to comply with the adopted revisions to CEQA. These recommended transportation assessment guidelines will provide a transparent impact disclosure process and new monitoring procedures to ensure that developments are meeting required VMT objectives. The new approach to transportation analysis will prioritize safety and access to the transportation system for all users.

## **DISCUSSION**

To support the City's transition from LOS to VMT, DCP and LADOT collected local data to better understand travel characteristics in Los Angeles and establish new tools to estimate project-level VMT results. These new tools help both developers and LADOT estimate project-level VMT per capita and VMT per employee for new land use development projects. The project team explored variations of VMT impact thresholds and selected criteria that recognizes the unique geographic characteristics of different communities in the City. The project team conducted additional research to identify the transportation measures that can mitigate VMT impacts and to quantify the benefits of these measures. The key elements of the City's work program to adapt to SB 743 are summarized below but described in greater detail in the attached CPC report.

### 1. Collection of Local Transportation Data

The City collected trip and parking generation data from affordable housing, market-rate housing, office, and mixed-use developments across the City. This enables LADOT's transportation impact assessments of proposed land use developments to rely on local trip generation data and replace the previous approach of utilizing national trip generation rates published by the Institute of Transportation Engineers in the *Trip Generation Handbook*. The project team harnessed large data sets from location-based services, vehicle global positioning systems, and archival in-road loop detector data to inform the predictive VMT estimates with a finer degree of precision in order to more accurately predict how people travel throughout the city.

### 2. VMT Estimation Tools

The City updated its travel demand forecasting model to include the most robust data sources available, including data from on-street loop detection, cell phone, and navigation-based location services. The updated model allows LADOT to improve VMT estimation at smaller geographical analysis zones needed for large development proposals. For smaller project-level analysis, the project team established an analysis program, the VMT Calculator, to estimate VMT and vehicle trips for development projects. The VMT Calculator measures whether a development project exceeds VMT significance thresholds and the potential VMT reductions available from a menu of transportation demand management strategies.

### 3. Transportation Impact Thresholds

The State recommended setting the significance impact criteria thresholds for residential and office projects at 15 percent below the existing VMT per capita for the region. The Southern California Association of Governments (SCAG) area represents the region for the City of Los Angeles and has an estimated 17.2 VMT per capita and 21.3 VMT per employee. This compares to City averages of 9.3 VMT per capita and 12.9 VMT per employee – significantly below the regional averages.

Given the size of both the SCAG region and the City of Los Angeles relative to other regions in the state and the distinct attributes of each area, the CPC recommendation is to adopt a threshold customized to specific areas of the City, defined by the seven Area Planning Commissions (APC) boundaries, rather than measuring against a citywide or regional average. The resulting APC-based thresholds are lower than the regional average, which will ensure that the City continues to outperform other cities in the region and support the SCAG region in meeting the VMT reduction targets as required by the California Air Resource Board. The lower threshold also advances City mobility and sustainability objectives as directed by the Mobility Plan 2035 and the Mayor's Green New Deal Plan.

The proposed impact criteria for the City of Los Angeles is 15 percent below the average VMT per capita or per employee within each of the seven Area Planning Commission areas. The APC-based VMT threshold is expected to result in no fewer projects subject to review under CEQA than otherwise would be required applying the OPR's suggested regional average threshold.

### 4. VMT Mitigation Measures

Developers can mitigate project-level VMT impacts through the implementation of Transportation

Demand Management (TDM) measures that further reduce total miles driven. The project team selected a menu of TDM measures to offset VMT impacts in the City based on their ability to lower the VMT of land use developments as demonstrated through peer-reviewed research. The following are the seven categories of TDM measures:

- Commute Trip Reductions
- Shared Mobility
- Bicycle Infrastructure
- Parking Management Measures
- Transit Improvements
- Education and Encouragement
- Neighborhood Enhancements

When coupled with the regulatory framework of the TDM Ordinance, currently being updated pursuant to CF 15-0719-S19, LADOT can require on-going monitoring to verify that developments achieve their established mobility and trip-making objectives. LADOT will explore technologies that provide a robust set of real-time information from development sites. This will create a new transparent layer of accountability in the City's development review process.

#### 5. Local Analysis Requirements (Non-CEQA)

During the State's preparation of the new CEQA guidelines, OPR stressed that lead agencies can apply traditional operational analysis requirements to inform land use and transportation-related decisions provided that such analyses and decisions were outside of the CEQA process. Therefore, staff recommends that LADOT continue to review a project's site access, circulation, and operational plan to determine if any safety and access enhancements, transit amenities, intersection improvements, traffic signal upgrades, neighborhood traffic calming measures, or other improvements are needed.

#### 6. Congestion Management Program Opt-out

The City of Los Angeles falls within the Los Angeles County regional CMP area, for which Metro is the Congestion Management Agency. This role requires Metro to review each of the 88 local jurisdictions' conformance with CMP requirements. In 2015, Metro suspended its review of CMP conformance to assess program effectiveness and evaluate potential alternative measures. While the CMP requirement was a pioneering attempt to conduct performance-based planning, the approach is now out of step with more effective methods to monitor transportation system performance. The CMP framework primarily uses an LOS performance metric, which is inconsistent with the state-designated performance measure (VMT) enacted by SB 743.

On June 28, 2018, the Metro Board initiated the process to opt out of the CMP requirements (see **Attachment 3**). Government Code Section 65088.3 allows CMAs to opt out of CMP requirements without penalty, if a majority of local jurisdictions representing a majority of the county's population formally adopt resolutions requesting to opt out of the program. In the staff report to the Board (File #: 2018-0122), Metro staff concluded that the CMP monitoring framework is outdated and is inconsistent with state-designated transportation performance measures. To date, 45 of the 88 jurisdictions have passed resolutions to support opting out of the CMP.

LADOT recommends that the City adopt the attached resolution to opt out of the CMP. This will align the City's monitoring procedures with the intent of SB 743 to focus on measures to reduce VMT, allow the remaining jurisdictions in Los Angeles County to choose a consistent evaluation standard, and promote uniform regulatory procedures and sustainable land use incentives throughout the county.

**FISCAL IMPACT**

No impact to the City's General Fund is anticipated by this action.

SJR:tc/ds

Attachment 1: City Planning Commission Report, CPC-2018-6577-MS (February 28, 2019)

Attachment 2: Draft CMP Resolution

Attachment 3: Metro Board Report - Congestion Management Program Opt Out (June 20, 2018)



## DEPARTMENT OF CITY PLANNING

### RECOMMENDATION REPORT

#### CITY PLANNING COMMISSION

**Date:** February 28, 2018  
**Time:** After 8:30 AM  
**Place:** Van Nuys City Hall  
 Council Chambers, 2<sup>nd</sup> Floor  
 14410 Sylvan Street  
 Van Nuys, CA 91401

**Public Hearing:** Multiple public hearings held on the following dates in 2018:  
 12/28, 12/29, 12/4, 12/6

**Appeal Status:** N/A  
**Expiration Date:** N/A

**Case No.:** CPC-2018-6577-MS  
**CEQA No.:** N/A  
**Incidental Cases:** N/A  
**Related Cases:** N/A  
**Council No.:** All  
**Plan Area:** Citywide  
**Specific Plan:** All  
**Certified NC:** All

**GPLU:** N/A  
**Zone:** N/A

**Applicant:** N/A  
**Representative:** N/A

**PROJECT LOCATION:** Citywide

**PROPOSED PROJECT:** An update to the Transportation Section of the Los Angeles CEQA Thresholds Guide for the purpose of complying with California Senate Bill 743 and aligning with the update to the State CEQA Guidelines and Appendix G.

#### RECOMMENDED ACTIONS:

1. **Recommend** that the City Council determine based on the whole of the administrative record, that the proposed resolution is not a project under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080(b)(1), CEQA Guidelines Sections 15378 and is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) and Section 15308, and none of the exceptions in Section 15300.2 apply;
2. **Approve and recommend** that the City Council adopt the proposed Resolution (**Exhibit A**) pursuant to Senate Bill 743 (**Exhibit C**) and CEQA Guidelines, Sections 15064.3 (**Exhibit D**) and 15064.7(b) updating the City's adopted transportation thresholds;
3. **Adopt** the staff report as the Commission's report on the subject;
4. **Adopt** the Findings; and
5. **Recommend** that the City Council instruct the Department of City Planning and Department of Transportation to report back annually for two years on status and any additional changes needed to meet the intent of Senate Bill 743.

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 Deputy Director

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 City Planner (213) 978-1194

**ADVICE TO PUBLIC:** \*The exact time this report will be considered during the meeting is uncertain since there may be several other items on the agenda. Written communications may be mailed to the Commission Secretariat, 200 North Spring Street, Room 272, Los Angeles, CA 90012 (Phone No. 213-978-1300). While all written communications are given to the Commission for consideration, the initial packets are sent to the week prior to the Commission's meeting date. If you challenge these agenda items in court, you may be limited to raising only those issues you or someone else raised at the public hearing agendized herein, or in written correspondence on these matters delivered to this agency at or prior to the public hearing. As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability, and upon request, will provide reasonable accommodation to ensure equal access to these programs, services and activities. Sign language interpreters, assistive listening devices, or other auxiliary aids and/or other services may be provided upon request. To ensure availability of services, please make your request not later than three working days (72 hours) prior to the meeting by calling the Commission Secretariat at (213) 978-1300.

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- F – Transportation Assessment Guidelines Chapter 2
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## PROJECT ANALYSIS

### Project Summary

The Los Angeles Departments of City Planning (DCP) and Transportation (LADOT) propose an update to the Transportation Section of the City's California Environmental Quality Act (CEQA) Thresholds Guide (Exhibit B) to comply with and implement Senate Bill (SB) 743 (Steinberg, 2013) (Exhibit C). LADOT is also revising its Transportation Assessment Guidelines (Exhibit F) to update and expand methods of evaluating project-level transportation analysis for topic areas outside of the requirements under CEQA. The update will help to better assess how proposed projects may affect the City's transportation system.

The amendments to the State CEQA Guidelines (Exhibit D), finalized in November 2018, require all cities in California to update their transportation impact analysis metrics to vehicle miles traveled (VMT) before July 1, 2020. This approach prioritizes the safety and access of all street users. In preparation for this shift, DCP and LADOT have undertaken a localized planning approach that considers the scale of and variations within the City of Los Angeles.

### Background

On September 27, 2013, Governor Jerry Brown signed into law Senate Bill (SB) 743 which tasked the Office of Planning and Research (OPR) with developing alternative methods of measuring transportation impacts pursuant to CEQA. On December 30, 2013, OPR released a technical memo which identified objectives for developing alternative criteria in support of the State's goals for greenhouse gas reduction by encouraging higher density, mixed-use development in urban areas served by public transit and more diverse travel options.

In August 2014, OPR proposed to replace Level of Service (LOS), as measured by roadway capacity and vehicle delay, with Vehicle Miles Traveled (VMT), an estimate of the amount and distance people drive by vehicle to reach a destination. Subsequently, City of Los Angeles Councilmember Mike Bonin introduced a motion directing DCP and LADOT to "begin specific tasks in anticipation of the State's adoption of the amended CEQA Guidelines implementing SB 743" (CF 14-1169).

In January 2016, OPR released for public review a revised proposal for changes to the CEQA Guidelines which reinforced VMT as the primary metric for transportation performance and included new threshold recommendations that are better aligned with California's long-term greenhouse gas emission reduction goals.

In November 2017, OPR released proposed updates to the CEQA guidelines in support of the goals to develop a transportation performance metric that would help promote: the reduction of greenhouse gas emissions, the development of multimodal networks, and a diversity of land uses. The proposed updates stated that once the new transportation guidelines are adopted, automobile delay (LOS) generally will no longer be considered to be an environmental impact under CEQA. The guidelines established VMT as the primary metric for evaluating a project's environmental impacts on the transportation system. The guidelines also required that the environmental assessment for a project consider whether the project may conflict with plans or policies addressing the circulation system and removed language regarding conflicting with a congestion management program (CMP), including LOS standards for roads or highways.

OPR granted agencies a phase-in period of two years. All California cities must update their transportation impact analysis metrics to evaluate transportation impacts with a VMT-based

metric prior to July 1, 2020. Agencies ready for the change may implement immediately. Thus far, Pasadena, Oakland, San Francisco, and San Jose have updated their evaluation metrics to VMT.

In December 2018, after over five years of stakeholder-driven development through nearly 200 stakeholder meetings, public convenings, and other outreach events, the California Natural Resources Agency certified and adopted the CEQA Guidelines update package including the Guidelines section implementing SB 743. The final text, final statement of reasons, and related materials are posted at <http://resources.ca.gov/ceqa/>. The changes have been approved by the Office of the Administrative Law and are now in effect.

In response to the state legislation and Council direction, DCP and LADOT submitted an application to the State of California Strategic Growth Council Sustainable Communities Planning Grant and Incentives Program to secure funding for developing a new CEQA review process by which to implement the VMT impact criteria. In 2014, the City was awarded grant funding for a project scope that included both updating procedures and metrics as well as developing new analytical tools for evaluating the transportation impacts of development projects, land use plans, and transportation projects.

In collaboration with the consulting firm Fehr and Peers, new local trip generation rates were collected from affordable housing, market-rate housing, office, and mixed-use projects. The City's Travel Demand Forecasting (TDF) model was updated to include the most robust data sources available, including cell-phone and navigation based location services. The TDF model was validated using vehicle counts collected from on-street loop detectors. In collaboration with City staff, Fehr and Peers developed an analysis program (referred to as the VMT Calculator), which is a customized sketch model tool used to estimate VMT and vehicle trips for development projects. The project team also developed new screening and significance criteria and drafted updates to the City's Transportation Section of the CEQA Threshold Guide in accordance with State guidelines (Exhibit B). To complement the new guidance under CEQA, LADOT updated their guidelines, now referred to as the Transportation Assessment Guidelines (TAG) to include the VMT analysis, and introduced a non-CEQA analysis section that evaluates the operational and safety needs around a project site (Exhibit E and Exhibit F). LADOT updated their website with project information relevant to practitioners, consultants, and the general public to house program materials and analysis tools.

During the update process, DCP and LADOT conducted public outreach to inform residents of Los Angeles about the change. Additionally, staff actively collaborated with other government agencies, organizations, and researchers to inform best practices. These efforts have allowed the City of Los Angeles to be on the forefront of the conversations regarding statewide initiatives and peer-to-peer best practices research. The VMT Subcommittee of the California City Transportation Initiative (CaCTI) – consisting of cities that have already adopted a VMT-based analysis metric, as well as those who are in the process – has provided the venue for cities to collectively analyze the OPR Guidelines and prepare for implementation.

### **Key Topics**

Updated State guidelines require all cities in California to update their transportation impact analysis metrics to vehicle miles traveled (VMT) prior to July 1, 2020. In this analysis process, a portion of discretionary projects will be screened out, some will utilize the VMT Calculator, while others will conduct a model run through the City of Los Angeles TDF model, contingent on criteria identified in the LADOT Transportation Assessment Guidelines (Exhibit E). The following sections review key topic areas of how DCP and LADOT have updated development review and transportation impact analysis methods, pursuant to CEQA and SB 743.

## A. Vehicle Miles Traveled

In order to achieve the State's long-term climate goals, OPR determined that California needs to reduce per capita VMT. The California Air Resources Board (CARB) also determined that it will not be possible to achieve the State's 2030 and post-2030 emissions goals without reducing VMT growth. In addition to reductions in greenhouse gas emissions, VMT reduction can create substantial benefits in near- and long-term human health and the natural environment. Higher vehicle travel rates impact human health by increasing numbers of vehicle crashes, deteriorating air quality, and increasing chronic diseases associated with reduced physical activity. Higher vehicle travel rates also have the potential to impact the natural environment through more collisions with wildlife, fragmented habitat, consumption of more energy, water and open space, and increased flood risk and pollutant transport into waterways.

Pursuant to CEQA, discretionary projects must be evaluated to disclose potential transportation and other impacts. State guidelines identify VMT as the most appropriate metric to evaluate a project's transportation impacts. VMT is a metric that captures automobile trips generated by a proposed development, multiplied by the estimated number of miles driven for each trip. This figure is divided by the number of residents (VMT per capita) or employees (VMT per employee). VMT can be mitigated through transportation demand management (TDM) measures that reduce total miles driven. TDM mitigation measures were selected based on peer-review research demonstrating their effectiveness to lower the projected VMT of new developments.

The following are the seven categories of VMT mitigations and examples of possible measures in each category:

- **Commute Trip Reductions:** The commute trip reduction category includes required commute trip reduction programs, vanpools or ride-share. Employer-sponsored vanpools or shuttles can connect employees to a project site by providing new opportunities for access, through more direct routes at lower costs. Ride share programs increase vehicle occupancy by providing ride-matching services and. These types of strategies replace single-occupancy vehicle trips with multiple riders in one vehicle.
- **Shared Mobility:** The shared mobility category includes carshare, bike share, and school carpool programs. Carshare programs allow people to have on-demand access to a vehicle, as needed, which can serve as a supportive strategy that enhances other TDM strategies, such as parking unbundling. Bike share programs allow people to have on-demand access to a bicycle, as needed, to improve access and connectivity. School carpool programs encourage ride-sharing for students.
- **Bicycle Infrastructure:** The bicycle infrastructure category includes implementing or improving on-street bicycle facilities, bike parking, and showers/changing rooms. These measures can support safe and comfortable bicycle travel through improvements in infrastructure, parking, and supportive facilities.
- **Parking Measures:** The parking measures category includes reducing parking, unbundling parking, permitting parking, and pricing parking. Unbundling parking can allow for a separation of parking cost from property cost, allowing those who wish to purchase parking spaces that option. Similarly, parking cash out requires employers to offer employees a "cash-out" option for the monthly value of the free or subsidized parking space.
- **Transit Improvements:** The transit improvements category includes reduction in transit headways, neighborhood shuttles, transit subsidies. A reduction in transit headways can make transit service more appealing by reducing overall transit trip time, encouraging

drivers to switch from driving to transit use. Implementation of neighborhood shuttles involves a project-operated or sponsored shuttles that can provide new opportunities for access, connections to jobs or activity centers, and transit. Transit subsidies involve the subsidization of transit fare for residents and employees of a project site.

- **Education and Encouragement:** The education and encouragement category includes voluntary travel behavior change programs and promotions and marketing. Voluntary travel behavior change programs can utilize two-way mass communication campaigns and travel feedback programs that actively engage participants making travel choices through a program coordinator. Promotions and marketing involves the use of marketing and promotional tools to educate and inform travelers about site specific transportation options and effects of travel choices.
- **Neighborhood Enhancements:** The neighborhood enhancements category includes traffic calming and pedestrian network improvements. Implementation of traffic calming measures throughout and around a project site can encourage people to walk, bike, or take transit through better connections and elimination of barriers.

Appropriate VMT mitigations to reduce specific potentially significant transportation impacts of a proposed discretionary project are identified in the VMT Calculator.

## **B. Collecting Local Trip Generation Rates**

Trip generation, widely used for forecasting travel demands, estimates the number of trips originating in or destined for a particular transportation analysis zone. Transportation evaluation has traditionally relied on the Institute of Transportation Engineers (ITE) Trip Generation Handbook to estimate the amount of driving associated with the intensity of each land use category. However, transportation characteristics of affordable housing are not captured in existing ITE data collection practices, even though other data sources show marked differences in driving and transit utilization based on income.

The City of Los Angeles collected local trip generation rates, driveway counts, and surveyed parking utilization from 14 mixed use and office sites and 42 affordable housing sites in order to obtain an improved understanding of vehicle trip generation characteristics of land use in Los Angeles, and to yield more localized results. The sites were categorized according to two criteria considered to influence the level of vehicle ownership and tripmaking but also considered to be available and applicable to future projects (i.e., measureable and able to be determined using a readily available data source): proximity to transit and affordable housing type. The selection of study sites were located in a variety of community types within Los Angeles and varied in proximity to transit.

The resulting data indicated that driving rates for mixed-use and affordable housing projects are lower than ITE rates for market rate sites for all three observed time periods (daily, AM peak hour, and PM peak hour) and parking demand is less than the City's standard parking requirements. The empirical trip generation data was used to customize, calibrate and validate the Mixed-Use Development (MXD) Trip Generation Model for the City and was integrated into the program developed to estimate VMT from project sites, the VMT Calculator, to accurately reflect trip generation that is more sensitive to local Los Angeles characteristics and conditions.

## **C. Forecasting Travel Patterns using Local Data**

Transportation Demand Forecasting models are computer models used to estimate travel behavior and demand for a specific future time frame based on assumptions. The City of Los Angeles has utilized TDF models for more than two decades to inform planning decisions through

the evaluation of land use scenarios and transportation alternatives. The updated Los Angeles TDF model was based off of the most recent Southern California Association of Governments (SCAG) Regional Transportation Plan (RTP) model, maintaining vertical consistency while increasing zonal and network detail to create a Los Angeles-specific model.

The update to the City's model provided opportunities to incorporate robust localized data sources, exceeding industry standards for calibration and validation, to improve forecasts of average trip length and future travel patterns. The updated model was calibrated using passive GPS data, or "big data", from location-based services and vehicle navigation systems. The model was validated with the City of Los Angeles Automated Traffic Surveillance and Control (ATSAC) loop volume data over several months.

The model utilizes a rebuilt transit route system with General Transit Feed Specification (GFTS) data from major transit operators, includes transit performance validation statistics such as transit system ridership by mode and carrier, and updated the highway network to reflect major arterial and freeway construction projects. This data driven approach provides greater precision than past TDF models in characterizing how Angelenos travel, improving VMT estimation in smaller analysis zones.

#### **D. Analyzing VMT**

The City of Los Angeles developed a sketch model (VMT Calculator), to provide an accessible tool for transportation practitioners, project applicants, and the public. The VMT Calculator relies on the trip distance estimates from the updated TDF model to evaluate a project's transportation impacts. This program evolves the City's application of sustainable transportation options by quantifying the VMT reduction value of Transportation Demand Management (TDM) Measures based on peer-review research demonstrating their effectiveness. The application of TDM strategies can lower the projected VMT of new developments.

The accompanying program User Guide (Exhibit G) provides detailed instructions, and assists users in determining appropriate inputs and understanding TDM measure descriptions. Similarly, the program Documentation (Exhibit H) allows for a more transparent process by making accessible the calculations utilized for analysis.

#### **E. Screening Criteria**

As a first step in determining whether conditions exist that might indicate an environmental impact, a project is reviewed through a screening criteria evaluation. This screening criteria determines whether further environmental analysis is required. The City proposes the following screening criteria to determine if a land use project should be evaluated for potential VMT impacts:

- The project includes the development of new land use.
- The project would generate a net increase of 250 or more daily vehicle trips.
- The project contains other land uses besides retail; or, if it only includes retail uses, the retail uses exceed 50,000 square feet.

Guidance for applying the screening criteria is described in Exhibit B and Exhibit E.

Under the City's current transportation impact study guidelines, LADOT applies a screening criteria of a net increase of 25 peak hour vehicle trips, under which projects are assumed to not result in environmental impacts. A review of collected survey data indicates that, on average, the observed peak hour trip generation of typical land uses represents ten-percent of a site's daily trip generation. Therefore, to continue using a similar filter but applied to daily trip generation,

LADOT proposes to utilize the same screening threshold of 250 net daily trips for the VMT-based impact analysis methodology.

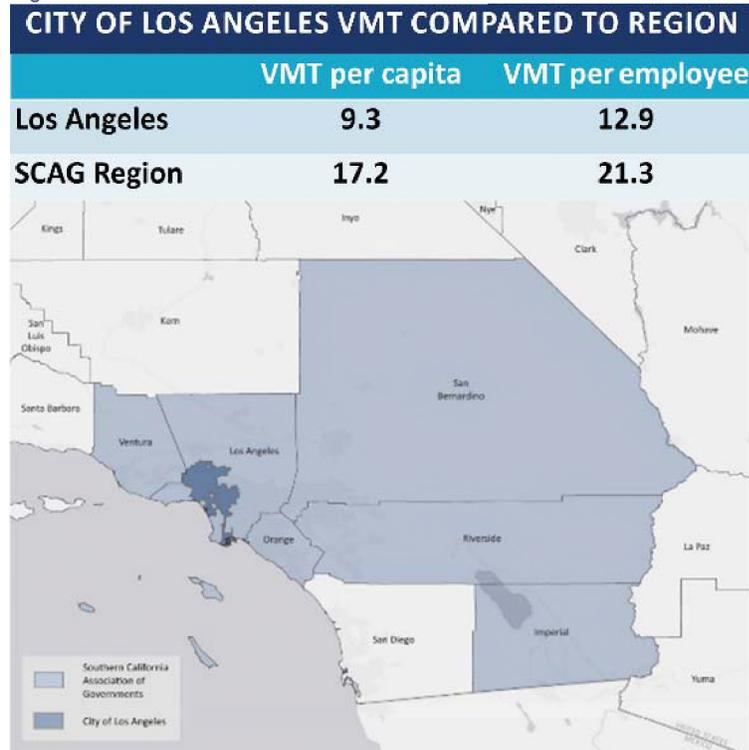
The City's 250 daily trip screening threshold is based on the same guidance OPR recommended for de minimis projects, or projects that are not presumed to have significant impacts, in contributing to transportation impacts under CEQA. In their Technical Advisory, OPR concluded that the addition of 110 or fewer daily trips could be considered not to lead to a significant impact since the trip generation of 110 daily trips sets the lower bound of daily trips expected from existing facilities that are normally considered categorically exempt under CEQA. LADOT proposes a screening criteria of 250 net daily trips based on similar evidence that projects generating less than 250 daily trips are generally exempt by category, and would not be expected to generate transportation impacts. Based on collected trip generation data, land use proposals that would generate 250 daily trips include a 25,000 square-foot office or a 35-unit apartment. Through Section 16.05 of the LAMC, the City establishes the threshold for discretionary review at 50 units for residential projects and 50,000 square feet for commercial projects, which are expected to undergo further environmental analysis. Nonetheless, projects that fall under the proposed 250 daily trip is threshold may still be subject to trip reduction requirements under the proposal to revise the Transportation Demand Management Ordinance currently under development (CF 15-0719-S19).

OPR recommends screening retail projects from further analysis where any new or additional area of retail uses is below 50,000 square feet. Retail projects under 50,000 square feet in area are considered local-serving retail, which would likely result in improving retail destination proximity and thereby shortening trip lengths resulting in lower VMT. However, this redistribution of trips would not be accounted for in a VMT analysis methodology since the calculation considers all trips as new to the project site. Staff recommends applying the same project screening criteria, any new or additional area of retail uses above 50,000 square feet, for retail projects as contained in OPR's Technical Analysis.

#### **F. Recommended Local Threshold for a Context Sensitive Approach**

The State recommended setting the significance impact criteria thresholds for residential and office projects 15% below the existing VMT per capita of the region. The 'region' refers to the Southern California Association of Governments (SCAG), the nation's largest MPO, representing six counties, 191 cities, and more than 19 million residents. City of Los Angeles, located within the SCAG region, is California's largest city and more populous than all but two of the 18 regional MPOs in the State: the Metropolitan Transportation Commission in the Bay Area and SCAG in Southern California, of which Los Angeles is a member jurisdiction.. The City of Los Angeles is more than seven times larger, in terms of population, than all but three other cities in the State (San Diego, San Jose, and San Francisco) and is three times larger than the second most populous city, San Diego. For various reasons, the city's average VMT is much lower than the regional average (Figure 1).

Figure 1



Given the large size of the City of Los Angeles and the great variations in topography and development type throughout Los Angeles, staff proposes that it is more appropriate to establish impact criteria customized to specific areas of the City, rather than measuring against a citywide or regional average. This allows recognition of the differing characteristics of the City. A development in the suburban or rural fringe of the city would not be compared to the same citywide average standard as more densely urbanized sections of the City. At the same time this approach would hold development in more densely urbanized areas of the City to a higher standard than the citywide average. Given size variations, this approach is consistent with the OPR guidance.

An impact criteria of 15% below the average VMT per capita or per employee is proposed for each of the seven Area Planning Commission (APC) areas. The APC areas are equivalent to medium-size California cities and demonstrate consistent travel characteristics, land use, and natural geographies in the City of Los Angeles. A more localized approach allows for recognition of the differing characteristics of the City. The following table (Figure 2) summarizes the recommended VMT impact thresholds by APC, and the map (Figure 3) displays APC boundaries.

Figure 2

<b>CITY OF LA VMT IMPACT THRESHOLD BY APC</b>		
<b>Area Planning Commision</b>	<b>VMT per capita</b>	<b>VMT per employee</b>
<b>Central</b>	<b>6.0</b>	<b>7.6</b>
<b>East LA</b>	<b>7.2</b>	<b>12.7</b>
<b>Harbor</b>	<b>9.2</b>	<b>12.3</b>
<b>North Valley</b>	<b>9.2</b>	<b>15.0</b>
<b>South LA</b>	<b>6.0</b>	<b>11.6</b>
<b>South Valley</b>	<b>9.4</b>	<b>11.6</b>
<b>West LA</b>	<b>7.4</b>	<b>11.1</b>



The City's proposed impact criteria for residential, office, and retail projects are summarized below:

- For residential projects, a project's impact would be considered significant if the project would generate household VMT per capita exceeding 15% below the existing APC average household VMT per capita in the APC in which the project is located.
- For office projects, a project's impact would be considered significant if the project would generate work VMT per employee exceeding 15% below the existing APC average work VMT per employee in the APC in which the project is located.
- For retail projects, a project's impact would be considered significant if the project would result in a net increase in VMT.
- For other land use types, measure the VMT impacts for the work trip element using office criteria.

Staff recommends that DCP, in consultation with LADOT, revise the local thresholds on an as-needed basis in order to meet the goals of SB 743 state legislation. Despite undertaking case studies of existing projects, it is difficult to anticipate the outcome of the implementation of State legislation because it is not possible to predict market trends or how development projects would vary their proposals under a new analysis framework. It is critical for staff to evaluate impacts of this shift and report back on an annual basis on necessary adjustments to thresholds, specifically to incentivize the reduction of greenhouse gas emissions, the development of multimodal networks, and a diversity of land uses, to meet the goals of the state legislation.

### **G. Transportation Assessment Guidelines and other Performance Metrics**

OPR has expressed that lead agencies can apply automobile delay-based analysis to inform land use and transportation-related decisions as part of an agency's planning function. LADOT has accordingly revised its Transportation Assessment Guidelines for evaluating project-level transportation review outside of the requirements under CEQA and to provide direction on how to analyze transportation impacts using VMT.

LADOT retains the ability to impose development conditions to improve operational safety and access around a project site and to better assess how proposed projects may affect the City's transportation system. Updates to LADOT's Transportation Assessment Guidelines require land use proposals to conduct local analyses to evaluate how projects affect the access, circulation, and safety of all users of the transportation system. Where substantial deficiencies are identified, examples of development conditions that could be identified to address safety and access could include: new signalized midblock crossings, new left-turn signal phases, signal timing adjustments, traffic calming neighborhood streets, and siting driveway locations to avoid conflicts with pedestrians.

## Next Steps

### **A. Phase In Plan**

Upon City Council adoption of the Transportation Section of the CEQA Guidelines, a phasing plan is proposed for public agency-initiated projects and projects initiated by private applicants or other public agencies.

#### Public Agency Initiated Projects

A phasing plan is proposed for projects subject to CEQA that do not have an approved CEQA clearance (including but not limited to EIR, MND, ND, SCEA, CE, and SE); where the City is either the Lead Agency or Responsible Agency in certifying or reviewing CEQA documents for public agency-initiated land use projects (City-initiated projects include new General Plan elements, community plans, station area plans, specific plans, streetscape plans, and their implementation ordinances and programs); or for public agency-initiated transportation projects or projects in the public right-of-way. Upon adoption, the proposed metric for identifying transportation impacts is VMT, in accordance with Section 15064.3 of the CEQA Guidelines, and the new proposed thresholds of significance are VMT based thresholds.

Projects may continue to use the current LOS based thresholds of significance if determined necessary for the efficient review and approval of projects and efficient use of City resources until July 1, 2020.

#### Projects Initiated by Private Applicants or Other Public Agencies

Land use development projects that have both executed a Transportation Study Memorandum of Understanding (MOU) with LADOT and filed their entitlement application with DCP prior to the adoption date, and are not expected to have their CEQA clearance adopted or certified by July, 2020, may be able to select between evaluating with VMT or LOS. Projects in this category may continue to utilize LOS as the metric for evaluating CEQA transportation impacts or opt-in to evaluate transportation impacts with VMT. It is proposed that all project CEQA clearances expected to be approved after July 1, 2020 prepare a VMT analysis in order to comply with State legislation.

All land use development projects that have not yet executed an MOU with LADOT and filed their entitlement application with DCP prior to the adoption date, and do not have an approved CEQA clearance, must prepare a VMT analysis to evaluate transportation impacts in order to comply with State legislation.

### **B. TDM Ordinance Update**

In February 2018, City of Los Angeles Councilmember Mike Bonin introduced a motion directing DCP and LADOT to amend the Transportation Demand Management (TDM) ordinance and applicable Los Angeles Municipal Code sections related to project review to ensure consistency with the Mobility Plan 2035 (CF 15-0719-S19). The update to the TDM ordinance (LAMC 12.26J) would apply a uniform application of TDM strategies and project responsibilities whether a project is located in a high VMT area or a high-density area near transit. The update to project review procedures and required findings (LAMC 16.05) would be updated to align with General Plan goals and objectives related to enabling safe transportation access and reducing unsafe conflicts to a property for people utilizing any means of transportation. Next steps include finalizing an environmental clearance document and program description, regrouping with the project Technical Advisory Committee, continuing the public outreach process, and undertaking the ordinance update procedural steps.

LADOT's transportation-related development review fees (LAMC Section 19.15) are expected to be updated during the TDM ordinance update process. The updated fees will take into account the different workload that LADOT will likely undertake as review procedures and responsibilities shift in accordance with the proposed changes to the transportation impact study review processes.

### **Conclusion**

Staff recommends adoption of the proposed update, which will ensure that the City of Los Angeles is consistent with new State regulations while taking into account and reflecting the scale and diversity of the City's varied neighborhood contexts.

## FINDINGS

### General Plan Findings

The update to the Transportation Section of the Los Angeles CEQA Thresholds Guide, pursuant to SB 743, is not an ordinance update, and will not amend any portion of the City's General Plan. As such, adoption does not require findings to ensure consistency with the General Plan, pursuant to City Charter Sections 556 and 558. Regardless, as general practice, the Department recognizes the importance of ensuring that updates are in conformance with the goals, objectives, and policies of the City's General Plan.

#### **A. General Plan Framework Element**

SB 743 tasked OPR with selecting an alternative criteria for evaluating transportation impacts that "promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses". The update to the Transportation Section of the Los Angeles CEQA Thresholds Guide is in substantial conformance with the purpose, intent, and provisions of the General Plan, as outlined in the specific topic areas below:

#### Development of Multi-Modal Transportation Networks

Goal 3L - Districts that promote pedestrian activity and provide a quality experience for the City's residents.

Policy 3.10.2 - Accommodate and encourage the development of multi-modal transportation centers, where appropriate.

#### Diversity of Land Uses

Goal 4A - An equitable distribution of housing opportunities by type and cost accessible to allow residents in the City.

Goal 7B - A City with a balance of land uses that provides for commercial and industrial development which meets the needs of local residents, sustains economic growth, and assures maximum feasible environmental quality.

Goal 7D - A City able to attract and maintain new land uses and businesses.

Goal 7G - A range of housing opportunities in the City.

Objective 7.9 - Ensure that the available range of housing opportunities is sufficient, in terms of location, concentration, type, size, price/rent range, access to local services and access to transportation, to accommodate future population growth and to enable a reasonable portion of the City's workforce to both live and work in the City.

#### **B. Transportation Element**

SB 743 tasked OPR with selecting an alternative criteria for evaluating transportation impacts that "promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses". The update to the Transportation Section of the Los Angeles CEQA Thresholds Guide is in substantial conformance with the purpose, intent, and provisions of the General Plan, in that they would further accomplish the goals,

objectives, and policies of the Transportation Element, Mobility Plan 2035, as outlined in the specific topic areas below:

### Reduction of Greenhouse Gas Emissions

Key Policy Initiative - Target greenhouse gas reductions through a more sustainable transportation system.

Objective - Meet a 9% per capita GHG reduction for 2020 and 16% per capita reduction for 2035 (SCAG RTP).

### Development of Multi-Modal Transportation Networks

Policy 1.1 - Design, plan, and operate streets to prioritize the safety of the most vulnerable roadway user.

Policy 3.1 - Recognize all modes of travel, including pedestrian, bicycle, transit, and vehicular modes - including goods movement - as integral components of the City's transportation system.

### Diversity of Land Uses

Policy 3.3 - Promote equitable land use decisions that result in fewer vehicle trips by providing greater proximity and access to jobs, destinations, and other neighborhood services.

### Analysis of Transportation Impacts with a VMT Metric

Objective - Decrease VMT per capita by 5% every five years, to 20% by 2035.

Policy 4.8 - Encourage greater utilization of Transportation Demand Management strategies to reduce dependence on single-occupancy vehicles.

Policy 5.2 - Support ways to reduce VMT per capita.

Policy 5.3 - Support a range of transportation metrics to evaluate the multiple purposes that streets serve.

### CEQA Findings

The adoption of the proposed update to the Transportation Section of the Los Angeles CEQA Thresholds Guide pursuant to CEQA Guidelines section 15064.7, is not a "project" pursuant to CEQA as defined in CEQA Guidelines section 15378, and is therefore not subject to CEQA pursuant to CEQA Guidelines sections 15060(c)(3). Separately and independently, the proposal is also exempt pursuant to CEQA Guidelines section 15061(b)(3), as it will not result directly or indirectly in significant environmental impacts; and/or Public Resources Code section 21080(b)(1), as the proposal is ministerial, because the City is mandated to adopt the proposal. As such, the new thresholds are categorically exempt pursuant to CEQA Guidelines section 15308 and none of the exceptions in 15300.2 apply.

## **PUBLIC HEARING AND COMMUNICATIONS**

### **Stakeholder and Public Process**

City staff conducted an outreach process that built public awareness around adopting a new evaluation framework that guides transportation-related growth and development decisions. Neighborhood stakeholder groups, interest groups, non-profit organizations, practitioners, and governmental agencies were invited to informational presentations where staff was available to respond to questions. The seven regional neighborhood council alliances and PlanCheck NC meetings provided a venue for staff to discuss the State legislation. Citywide, approximately 1,100 people participated in the outreach process.

City staff have collaborated closely with transportation practitioners and professionals as well to present and refine ideas and concepts throughout the shift. The City of Los Angeles hosted three workshops including a Trip Generation Advisor meeting, a VMT Impact Criteria Panel, and a Practitioners Workshop. Each were critical milestones in the progression of the project and provided valuable feedback in shaping key decisions. The Practitioner Workshop provided an opportunity to introduce the beta VMT Calculator. Subsequently, staff invited attendees to beta test the Calculator and provide user feedback, which assisted the project team in refining and fine-tuning the analytical tool.

Following rounds of public outreach, a draft of the Transportation Section of the CEQA Thresholds Guide was released on November 6, 2018. Notice of the availability of the draft, as well as the hearing notice for the informational open houses and staff public hearings, was posted on the DCP and LADOT websites, emailed to a list of interested parties and organizations who had previously expressed an interest in the topic, shared with Council Offices, disseminated through departmental weekly email lists, posted to social media platforms, and included in the Department of Neighborhood Empowerment newsletter. DCP hosted four informational open houses and staff public hearings in November and December 2018 in various regions of the City. An estimated 75 people attended. Spoken or written testimony was submitted by eleven individuals at the hearings.

Project information is available on the project webpage, including presentations decks, project frequently asked questions, a draft of the CEQA Transportation Section, explanatory videos, the VMT Calculator tool and user guide, reference materials, and contact information. This resource serves to ensure a user-friendly and supportive shift for all involved and can be accessed at the following link: <http://ladot.lacity.org/what-we-do/planning-development-review/transportation-planning-policy>

### **Summary of Comments from Public Outreach Events**

Throughout the outreach and engagement process DCP and LADOT staff received a variety of comments and questions touching on a broad range of topics. City staff compiled and answered many of the questions in the CEQA Transportation Section Update Frequently Asked Questions, which have been made available at outreach meetings as well as on the DCP and LADOT websites. The Department's response to questions and comments not included in the FAQ are arranged by topic area and discussed below.

#### **A. Outreach and Noticing**

Comments received spoke to the transparency of this process and the opportunity for the public to get informed about a technical subject matter. Other comments noted a desire for additional enhanced noticing. Staff have made every effort to conduct outreach on this topic area, reaching

approximately 1,100 people in the process, and will continue to seek additional methods of communication for noticing of future meetings and open houses.

## **B. CEQA Guidelines Update**

Comments regarding the State's requirements to update the way cities measure transportation impacts were both supportive of the direction and implementation of the State legislation as well as concerned regarding potential risks. Comments that were in favor of this shift touched on VMT analysis as a means to reduce greenhouse gas emissions, promote infill development, and address the City's shortage of affordable housing options.

Other comments received identified potential for legal challenges due to potential inconsistencies with other plans. The updated State CEQA Guidelines include a response on the topic: "Some comments expressed concern that the Guidelines would enable litigation. Litigation risk exist with or without these Guidelines. The Agency is mindful of those concerns, and where possible, has written the Guidelines to avoid those outcomes." Furthermore, the shift to VMT is consistent with the City's recently updated Mobility Plan 2035, the Transportation Element of the General Plan.

## **C. Selection of the VMT Metric**

Common areas of interest included the selection of VMT as the appropriate metric for analyzing transportation impacts pursuant to CEQA. Measuring air quality changes related to idling with a metric such as vehicle hours traveled, or VHT, was suggested as an alternative. Additionally, the desire to continue measuring congestion through LOS were expressed.

The selection of VMT over VHT and other metrics was determined by OPR, based on the following reasoning:

- The tools to measure VHT may not be available or data might not be available to support VHT analysis;
- In the near term, VHT can be mitigated by increasing travel speeds, for example by increasing roadway capacity. Over time, however, increased travel speeds induce additional vehicle travel, eventually re-congesting the roadway and increasing VMT;
- Increased vehicle speeds may also adversely affect bicycle and pedestrian travel, contrary to the goals of the State, which sought to select a metric that prioritizes safety and access for people using all modes of travel.

OPR has found evidence to support that measuring transportation-related impacts with VMT can better address climate change due to the direct correlation with greenhouse gas and other air pollutant emissions. Air quality, including from mobile source emissions from idling vehicles, will also continue to be assessed in the Air Quality impact category of CEQA, as is standard practice. Similarly, greenhouse gas will continue to be assessed in the greenhouse gas impact category. According to a response by OPR, reducing vehicle miles traveled reduces congestion regionally, decreasing travel times, and may also encourage more investment in multi-modal infrastructure. Even if there is localized congestion, due to increased density of development, travel times decrease because of better proximity.

Additional questions arose about whether LOS will continue to be measured. SB 743 indicates that automobile delay, commonly measured by LOS, may no longer constitute a transportation impact. However, OPR has expressed that lead agencies can review a project by applying an automobile delay-based level-of-service (LOS) analysis to inform land use and transportation-related decisions as part of an agency's planning functions, outside of CEQA analysis. Thus,

LADOT retains the ability to impose development conditions to improve operational safety and access around a project site and to better assess how proposed projects may affect the City's transportation system. A project's impacts resulting in transportation delay may also continue to inform Air Quality, Noise, and other sections of CEQA analysis.

#### **D. Goods Movement**

Questions arose around the inclusion of trucks and freight vehicles as part of the analysis of transportation impacts, pursuant to CEQA. Proposed CEQA Section 15064.3, subdivision (a) states in regards to land use projects, "For the purposes of this section VMT refers to the amount and distance of automobile travel attributable to a project." Here, the term "automobile" refers to on-road passenger vehicles, specifically cars and light trucks. Although goods movement is not generally an analysis area under the CEQA Transportation Section, trucks and goods movement are an important regional consideration. SCAG and Caltrans are the main agencies tasked with analysis of goods movement, since truck travel is regional, and often national, rather than within the boundaries of any one city or jurisdiction.

#### **E. Development Review**

Questions arose around relation to other project analysis, including by-right projects, dedication and widenings, and effects on affordable development. Discretionary land use projects that are estimated to surpass the screening criteria will be required to analyze environmental impacts related to transportation as part of their environmental review process. However, by-right projects are exempt from the CEQA review process.

In order to meet the intent of the State legislation, CEQA transportation impact analysis will shift from a focus on reducing driver delay to reducing VMT from a project location, and therefore will not result in widening roads to address vehicular congestion. However, development projects may still be subject to roadway dedication and widening procedures where applicable to ensure City streets are meeting standards and accommodating both current and future mobility needs. Projects subject to dedication and improvement requirements under the Los Angeles Municipal Code must determine the street designation and improvement standard for any project frontage along streets classified as an Avenue or Boulevard, as designated in the City's General Plan or in NavigateLA. If an applicant proposes modifications to the roadway dimension, LADOT and DCP will review modifications to assess if the modification conflicts with or obstructs policies to support all modes of transportation.

Regarding affordability of development, OPR expects that the shift to VMT will lower the costs of environmental study and remove barriers to infill development. Cities that have already implemented a VMT based metric found that housing approvals are speedier and less costly. The shift from LOS to VMT is expected to create opportunities for more infill development and mixed-use neighborhoods, enabling more people to live closer to where they work and spend time, inducing a reduction in both housing and transportation cost - the largest two components of household expenses. Affordable housing development can benefit from a holistic approach that considers the following: land use incentives near rail transit stations (TOC, etc.), Density Bonus program, CEQA streamlining for Transit Priority Areas (TPAs), and switching to a VMT based metric for evaluating transportation impacts under CEQA.

In addition, in their December 2018 update to their Technical Advisory, OPR suggests additional analysis where a site is redeveloped to replace existing affordable housing units with mixed-income or market-rate housing units, even if the project otherwise would have been presumed to be less than significant. They suggest that the aggregate VMT increase experienced by displaced residents be included in the overall VMT per capita assessed for the project.

## **F. Mitigation Measures**

Comments received included those that encouraged DCP and LADOT to explore additional mitigation measures, such as telecommuting, measures for areas of the City not located near transit, networks of protected bicycle lanes, congestion pricing, elimination of parking minimums, and caps on number of vehicles (if caps are imposed on scooters). Other comments suggested that the public be able to provide input into the selection of mitigation measures.

The VMT reducing mitigation measures included in the VMT Calculator are based on peer-review research demonstrating their effectiveness to reduce VMT. Evidence regarding the effectiveness of telecommuting to reduce VMT is inconclusive at the time of writing. In regards to areas of the City further from transit, the mitigation measures included in the VMT Calculator are holistic and account for varying land use types and proximity to transit.

The other mitigations suggested, including networks of protected bicycle lanes, congestion pricing, elimination of parking minimums, and caps on number of vehicles, are not included as project-level mitigations, due to their nature as policy and program level considerations. Instead, they may be acted upon by decision-makers and included in policy documents, rather than addressed through the CEQA process.

The City's planning process will continue to allow and encourage community members to weigh in on land use changes and transportation projects through existing venues and methods, including opportunities to provide comments, speak at public hearings, and contact elected representatives on proposed new development. City staff will consider community-suggested VMT mitigation measures and incorporate in the analysis methodology if there is supporting peer-review evidence demonstrating the mitigation results in VMT reductions. If effectiveness of potential VMT reduction measures are empirically demonstrated, the VMT Calculator will be updated to include those new mitigation options.

## **G. Modeling**

Questions arose regarding whether pass-through travel is accounted for in the modeling process, specifically in areas such as West Los Angeles. The City of Los Angeles travel demand forecasting (TDF) model captures and considers the effect of physical barriers (such as the 405 freeway barrier to east/west travel in West Los Angeles) and the effect of vehicle congestion in the network (including background pass-through trips), which informed the average trip lengths that the TDF model estimated for each transportation analysis zone (TAZ). The average TAZ trip length estimate, in turn, informs the significance VMT thresholds per APC, and also informs the average trip length estimate of each development project. Therefore, pass through trips and physical barriers are captured in the analysis.

## **H. Monitoring and Future Updates**

Questions arose about future updates and monitoring through a feedback loop that measures VMT for new projects. As part of the shift to VMT, the City will monitor and collect data to evaluate the effectiveness of TDM measures. DCP and LADOT propose to evaluate and update the thresholds of significance, as needed, to meet the intent of SB 743, and to report annually on the findings of the evaluation. Staff also recommend that the VMT Calculator accordingly be reviewed and updated.

## **LIST OF EXHIBITS**

A – Proposed Resolution

B – Proposed Transportation Section of the CEQA Thresholds Guide

C – Senate Bill 743

D – State CEQA Guidelines

E – Transportation Assessment Guidelines Fact Sheet

F – Transportation Assessment Guidelines Chapter 2

G – VMT Calculator User Guide

H – VMT Calculator Documentation

**EXHIBIT A**

**Proposed Resolution**

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES, CALIFORNIA,  
UPDATING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT TRANSPORTATION  
THRESHOLDS OF SIGNIFICANCE PURSUANT TO SENATE BILL 743

**WHEREAS**, Governor Edmund G. Brown signed Senate Bill (SB) 743 in 2013, which directed the Office of Planning and Research (OPR) to develop updated criteria for measuring transportation impacts using alternative metrics that promote a reduction in greenhouse gases, the development of multimodal transportation, and a diversity of land uses; and

**WHEREAS**, the Office of Planning and Research (OPR) released the Proposed Updates to the CEQA Guidelines in November 2017; and

**WHEREAS**, the Natural Resources Agency released the Final Statement of Reasons for Regulatory Action Amendments to the State CEQA Guidelines in November 2018; and

**WHEREAS**, the Office of Administrative Law approved the CEQA Guidelines on December 28, 2019; and

**WHEREAS**, the City of Los Angeles City Council introduced a motion directing the Department of City Planning (DCP) and the Department of Transportation (LADOT) to “begin specific tasks in anticipation of the State’s adoption of the amended CEQA Guidelines implementing SB 743”; and

**WHEREAS**, CEQA Guidelines Section 15064.7(b) allows lead agencies to adopt thresholds of significance for the lead agency’s general use in its environmental review process; and

**WHEREAS**, the DCP and LADOT have prepared the proposed updated Transportation thresholds of significance, pursuant to Senate Bill 743 and CEQA Guidelines Section 15064.3, for the City Council’s consideration and adoption; and

**WHEREAS**, the proposed Transportation thresholds of significance are more stringent than OPR’s recommendation, in order to account for the size and varying travel characteristics of the City of Los Angeles; and

**WHEREAS**, staff may need to update Transportation thresholds of significance, based on a data-driven evaluation, in order to meet the intent of State legislation and Council direction; and

**WHEREAS**, City Charter Section 506 grants the head of each department the power to make and enforce all rules and regulations necessary for the exercise of the powers conferred upon the department by the Charter, including rules and regulations to implement CEQA compliance for the department’s projects, such as, establishing thresholds of significance.

NOW, THEREFORE, BE IT RESOLVED BY THE City Council of the City of Los Angeles, California, hereby:

1. Adopts the proposed Transportation thresholds of significance as the City's thresholds of significance for transportation-related environmental impacts in the City's projects, pursuant to CEQA, replacing all other City transportation thresholds of significance including but not limited to those identified in 2006 CEQA Thresholds Guide (Threshold Guide) (including as described on pages L. 1-1 to L.8-1, with the exception of emergency access covered in K.2).
2. Authorizes the Director of the DCP, in consultation with LADOT, to update the Transportation thresholds of significance for land use projects and plans, as necessary and appropriate, provided any update is consistent with the intent of Senate Bill 743 and in compliance with procedural and substantive requirement of CEQA and all other applicable state and local laws.
3. Authorizes the General Manager of the LADOT, in consultation with DCP, to update the Transportation thresholds of significance for transportation projects, as necessary and appropriate, provided any update is consistent with the intent of Senate Bill 743 and in compliance with procedural and substantive requirement of CEQA and all other applicable state and local laws.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_ by the following vote, to wit:

## **EXHIBIT B**

# **Proposed Transportation Section of the CEQA Thresholds Guide**

**CITY OF LOS ANGELES**

**PROPOSED CALIFORNIA  
ENVIRONMENTAL QUALITY ACT (CEQA)  
TRANSPORTATION SECTION UPDATE**

## LOS ANGELES CEQA TRANSPORTATION SECTION UPDATE

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## TRANSPORTATION

### I. INTRODUCTION AND BACKGROUND

#### A. OVERVIEW

This issue area covers impacts related to transportation system. In 2013, when Governor Edmund G. Brown Jr. signed Senate Bill (SB) 743 into law, the Governor's Office of Planning and Research (OPR) was charged with developing new guidelines for evaluating transportation impacts under CEQA using methods that no longer focus on measuring automobile delay and level of service (LOS). SB 743 directed agencies to develop new guidelines that develop a transportation performance metric that can help promote: the reduction of greenhouse gas emissions, the development of multimodal networks, and a diversity of land uses. OPR's proposed updates to the CEQA guidelines in support of these goals<sup>1</sup> establish vehicle miles traveled (VMT) as the primary metric for evaluating a project's environmental impacts on the transportation system. The guidelines also require that the environmental assessment for a project consider whether the project may conflict with plans or policies addressing the circulation system, hazards due to design or incompatible issues, and inadequate emergency access.

#### Projects Addressed

Discretionary development projects, land use plans (e.g., community plans, area plans, specific plans), and transportation projects.

#### Not Covered in This Impact Area

- Air quality impacts associated with transportation (see Section 3.III. Air Quality)
- Greenhouse gas impacts associated with transportation (See Section 3.VIII. Greenhouse Gas Emissions)
- Noise impacts associated with transportation (see Section XI. Noise)

#### B. THRESHOLDS OF SIGNIFICANCE

The thresholds of significance for impacts to the transportation system are the following Appendix G Environmental Checklist thresholds:

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<sup>1</sup> State of California, Governor's Office of Planning and Research, *Proposed Updates to the CEQA Guidelines, Final*, November 2017.

**THRESHOLD T-1:** Would the project conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?

**THRESHOLD T-2** Would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)?

**T-2.1** For a land use project<sup>2</sup>, would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(1)?<sup>3</sup>

**T-2.2** For a transportation project, would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(2)?<sup>4</sup>

**THRESHOLD T-3:** Would the project substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

**THRESHOLD T-4:** Would the project result in inadequate emergency access?

## C. REGULATORY FRAMEWORK

The regulatory framework for transportation resources includes state, regional, and local regulations. Some of the primary plans and regulations that apply to transportation resources are identified below. Detailed information regarding plans and policies identified below may be found in the Regulatory Framework Document.

### STATE

- Assembly Bill 1358 (AB 1358), the California Complete Streets Act of 2008

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<sup>2</sup> A land use project includes any discretionary action that either changes development capacity (such as a zone change or redesignation of a general plan land use) or results in new construction, additions or change of use.

<sup>3</sup> Subdivision (b)(1) establishes the following criteria for analyzing transportation impacts of land use projects: "Vehicle miles traveled exceeding an applicable threshold of significance may indicate a significant impact. Generally, projects within one-half mile of either an existing major transit stop or a stop along an existing high quality transit corridor should be presumed to cause a less than significant transportation impact. Projects that decrease vehicle miles traveled in the project area compared to existing conditions should be presumed to have a less than significant transportation impact."

<sup>4</sup> Subdivision (b)(2) provides the following direction for analyzing transportation impacts of transportation projects: "Transportation projects that reduce, or have no impact on, vehicle miles traveled should be presumed to cause a less than significant transportation impact. For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements. To the extent that such impacts have already been adequately addressed at a programmatic level, such as in a regional transportation plan EIR, a lead agency may tier from that analysis as provided in Section 15152."

In Section F of their Technical Advisory, OPR provides further direction to lead agencies who determine that vehicle miles traveled is the appropriate measure of impact for transportation projects. (See OPR. Technical Advisory, November 2017).

- Senate Bill 375 (SB 375), the Sustainable Communities and Climate Protection Act of 2008
- Senate Bill 743 (SB 743)
- State of California, Governor's Office of Planning and Research, *Proposed Updates to the CEQA Guidelines, Final*, November 2017.
- State of California, Governor's Office of Planning and Research, *Technical Advisory on Evaluating Transportation Impacts in CEQA*, April 2018.

## REGIONAL

- Southern California Association of Governments (SCAG) 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS)

## LOCAL

- City of Los Angeles General Plan
- City of Los Angeles Framework Element
- City of Los Angeles Community Plans
- City of Los Angeles Mobility Plan 2035
- The pLAN for Healthy Los Angeles
- Los Angeles Municipal Code (LAMC)
- LADOT Transportation Assessment Guidelines
- Citywide Design Guidelines for Residential, Commercial, and Industrial Development
- LADOT Transportation Technology Strategy – Urban Mobility in a Digital Age
- LADOT Vision Zero Action Plan
- LADOT Vision Zero Corridor Plans
- Pedestrian Safety Action Plan (pending)
- The Sustainable City pLAN
- Walkability Checklist

## II. SCREENING AND EVALUATION

As a first step in determining whether conditions exist that might indicate an environmental impact, a project is reviewed through the following screening and evaluation process. The screening and evaluation process includes a series of screening criteria that are used to determine whether any further analysis is required. If the project does not pass the screen, further research will be necessary, as described in Section III, to analyze whether the project may result in significant impacts related to the transportation system. If based on the instructions for the screening criteria the project passes the screen, no further analysis will be required for that threshold question, and a no impact determination can be made for that particular threshold.

**GUIDANCE AND CONSIDERATIONS** The Mobility Plan 2035 established policies to prioritize the safety of all road users when planning, designing and operating streets. In determining Threshold T-1, to assess if a project conflicts with a program, plan, ordinance, or policy, the analysis should consider the degree to which a project may hinder the safe and comfortable access to a project site from other locations, with a special focus on people relying on transit services or active transportation modes such as biking or walking. The metric of auto-vehicle delay shall not be used since the means to address vehicle travel capacity may conflict with the City's goal to reduce auto-vehicle miles traveled.

A transportation project may induce additional travel demand. Since travel demand is largely a function of project scale, while also influenced by location, a project's impact on the transportation system should be evaluated for new development activity or transportation projects that exceed the screening criteria described below.

### SCREENING CRITERIA FOR THRESHOLD T-1

*Would the project conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadways, bicycle and pedestrian facilities?*

If the answer is no to all of the following questions, further analysis will not be required for Threshold T-1, and a no impact determination can be made for that threshold:

**Question 1a:** Would the project generate a net increase of 250 or more daily vehicle trips?

**How to Determine:** See Section 2.1.2 in the LADOT Transportation Assessment Guidelines.

**Sources:** Project plans and LADOT's VMT Calculator.

**Question 1b:** Is the project proposing to, or required to make any voluntary or required, modifications to the public right-of-way (i.e. street dedications, reconfigurations of curb line, etc.)?

**How to Determine:** For projects subject to dedication and improvement requirements under the Los Angeles Municipal Code (LAMC), determine the street designation and improvement standard for any project frontage along streets classified as an Avenue or Boulevard (as designated in the City’s General Plan) using the Mobility Plan 2035, or Navigate LA. If any street fronting the project site is an Avenue or Boulevard and it is determined that additional dedication, or physical modifications to the public right-of-way are proposed or required, the answer to this question is yes. For projects not subject to dedication and improvement requirements under the Los Angeles Municipal Code, though the project does propose dedications or physical modifications to the public right-of-way, the answer to this question is yes.

**Question 1c:** Is the project on a lot that is ½ acre or more in total gross area, or is the project’s frontage along a street classified as an Avenue or Boulevard (as designated in the Mobility Plan 2035) 250 linear feet or more, or is the project’s frontage encompassing an entire block along an Avenue or Boulevard (as designated in the Mobility Plan 2035)?

**How to Determine:** Determine the project’s total gross lot area (using Zimas); if greater than ½ acre the answer to this question is yes. Determine the classification of (b)1 the street(s) fronting the project site (as designated in the City’s General Plan, or Navigate LA). If any street fronting the project site is an Avenue or Boulevard and the project’s frontage along that street is 250 linear feet or more, the answer to this question is yes. If any street fronting the project site is an Avenue or Boulevard and the project’s frontage encompasses an entire block along that street, the answer to this question is yes.

**Sources:** Project site plans, Navigate LA, City of Los Angeles General Plan, Zimas.

## SCREENING CRITERIA FOR THRESHOLD T-2.1

*For a land use project<sup>5</sup>, would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(1)?<sup>6</sup>*

If the answer is no to any of the following questions, further analysis will not be required for Threshold T-2.1, and a no impact determination can be made for that threshold:

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<sup>5</sup> See footnote 2 for definition of a land use project.

<sup>6</sup> This threshold relates to vehicle miles of travel generated by a land use development project.

**Question 1:** Would the land use project<sup>7</sup> generate a net increase of 250 or more daily vehicle trips?

**How to Determine:** See Section 2.2.4 in the LADOT Transportation Assessment Guidelines.

**Sources:** Project plans, the LADOT Transportation Assessment Guidelines, and the VMT Calculator.

**Question 2:** Would the Project or Plan located within a one-half mile of a fixed-rail transit station replace an existing number of residential units with a smaller number of residential units?

**Sources:** Project plans.

**Question 3:** Would the project generate a net increase in daily VMT?

**How to Determine:** See Section 2.2.4 in the LADOT Transportation Assessment Guidelines.

**Sources:** Project plans, LADOT Transportation Assessment Guidelines, and the VMT Calculator.

In addition to the above screening criteria, the portion of, or the entirety of a project that contains small-scale or local serving retail uses<sup>8</sup> are assumed to have less than significant VMT impacts. If the answer to the following question is no, that portion of the project meets the screening criteria and a “no impact” determination can be made for the portion of the project that contains retail uses. However, if the retail project is part of a larger mixed-use project, then the remaining portion of the project may be subject to further analysis in accordance with the above screening criteria. Projects that include retail uses in excess of the screening criteria would need to evaluate the entirety of the project’s vehicle miles traveled, as specified in Section 2.2.4 in the LADOT Transportation Assessment Guidelines.

**Question 4:** If the project includes retail uses, does the portion of the project that contains retail uses exceed a net 50,000 square feet?

**How to Determine:** Review the project plans.

**Sources:** Project plans.

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<sup>7</sup> See footnote 2 for definition of a land use project.

<sup>8</sup> The definition of retail for this purpose includes restaurant.

## SCREENING CRITERIA FOR THRESHOLD T-2.2

*For a transportation project, would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(2)?<sup>9</sup>*

If the answer is no to the following question, further analysis will not be required for Threshold T-2.2, and a no impact determination can be made for that threshold:

**Question 1:** Would the project include the addition of through traffic lanes on existing or new highways, including general purpose lanes, high-occupancy vehicle (HOV) lanes, peak period lanes, auxiliary lanes, and lanes through grade-separated interchanges (except managed lanes, transit lanes, bicycle lanes, and auxiliary lanes of less than one mile in length designed to improve roadway safety)?

**How to Determine:** Review the project plans.

**Sources:** Project plans.

## SCREENING CRITERIA FOR THRESHOLD T-3

*Would the project substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?*

If the answer is yes to either of the following questions, further analysis will be required for Threshold T-3, and if the answer is no to both questions a no impact determination can be made for that threshold:

**Question 1:** Is the project proposing new driveways, or introducing new vehicle access to the property from the public right-of-way?

**Question 2:** Is the project proposing to, or required to make any voluntary or required, modifications to the public right-of-way (i.e. street dedications, reconfigurations of curb line, etc.)?

**How to Determine:** For projects subject to dedication and improvement requirements under the Los Angeles Municipal Code, determine the street designation and improvement standard for the any project frontage along streets classified as an Avenue or Boulevard (as designated in the City's General Plan) using the Mobility Plan 2035, or Navigate LA. If any street fronting the project site is an Avenue or Boulevard and it is determined that additional dedication, or physical modifications to the public right-of-way are proposed or required, the answer to this question is yes. For projects not subject to dedication and

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<sup>9</sup> This threshold relates to vehicle miles of travel induced by a transportation project that increases roadway capacity.

improvement requirements under the Los Angeles Municipal Code, though the project does propose dedications or physical modifications to the public right-of-way, the answer to this question is yes.

## SCREENING CRITERIA FOR THRESHOLD T-4

*Would the project result in inadequate emergency access?*

**How to Determine:** Refer to 2006 L.A. CEQA Thresholds Guide K.2. FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES

## III. IMPACT ANALYSIS

If an impact threshold was not screened out using the Screening Criteria or scoped out from the initial study under the Scope of Analysis, then the City should consider whether there will be an impact to any transportation system resources under the Appendix G Environmental Checklist threshold questions using the threshold analyses below.

### A. THRESHOLD AREAS

The following section presents the thresholds as they should be analyzed for transportation system impacts. Each threshold is stated and is followed by a series of questions that the user should answer to determine the extent to which the project may cause an impact under the threshold. Each question has a corresponding criteria that provides direction to the user to best determine the answer.

#### **THRESHOLD T-1: Would the project conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadways, bicycle and pedestrian facilities?**

To determine if there is an impact under the threshold above, depending on whether you have a project or a plan, you will need to address the following:

**Development Project<sup>10</sup> Question 1:** Would the project conflict with applicable program, plans, ordinances or policies addressing the circulation system?

**How to Determine:** The project will have a potential impact if:

- The project is inconsistent with transportation-related policies applicable to the proposed project. Determine potential impact with respect to

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<sup>10</sup> Development projects are a subset of land use projects where the intended project outcome in terms of site plans, use and building permits are well enough defined to inform a project level of analysis. They typically will involve new construction, additions or change of use, or can include a specific plan, general plan amendment and/or zone changes if the project outcome is specific as to the building use, intensity and placement to be completed over a predetermined time period.

consistency with plans, ordinances, and policies based on overall consistency with each program/plan/ordinance/policy.

- The determination of impact for this threshold is based on a nuanced consideration of overall plan, ordinance, and policy consistency. An impact determination would result if (1) the project directly conflicts with a standard established by a plan, policy or ordinance, and the finding(s) that govern relief cannot be made, and (2) that standard is adopted to protect the environment. In general, transportation standards adopted to protect the environment are those that support multimodal transportation options and a reduction in VMT. A project that generally conforms with, and does not obstruct the City's development programs, ordinances, plans and policies will generally be considered to be consistent.

**Sources:** For guidance on addressing project specific questions, see Section 2.1 in LADOT Transportation Assessment Guidelines.

**Plan Project<sup>11</sup> Question 1:** Would the plan conflict with applicable plans, ordinances, or policies addressing the circulation system?

**How to Determine:** The plan will have a potential impact if:

- The plan is inconsistent with applicable State, Regional, and Local policy documents, such as the SCAG RTP/SCS and the City of Los Angeles *Mobility Plan 2035*. Determine potential impact with respect to consistency with plans, and policies based on overall consistency with each plan/policy.
- The determination of impact for this threshold is based on a nuanced consideration of overall plan, ordinance, and policy consistency. An impact determination would result if (1) the project directly conflicts with a standard established by a plan, policy or ordinance, and the finding(s) that govern relief cannot be made, and (2) that standard is adopted to protect the environment. In general, transportation standards adopted to protect the environment are those that support multimodal transportation options and a reduction in VMT. A project that generally conforms with, and does not obstruct the City's development programs, ordinances, plans and policies will generally be considered to be consistent.

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<sup>11</sup> Plan Projects are a subset of land use projects where the specific information is not available as to the sequence of discrete development projects that is necessary to inform a project level of analysis. Plan Projects typically will involve community plans, land use plans, or other general plan elements or citywide or areawide ordinances. Plan Projects can include specific plans, general plan amendments and/or zone changes if specific information is not available as to the building use, intensity and placement to be completed over a predetermined time period, and such assumptions of specific project outcomes would be too remote and speculative to inform a project-level analysis.

- The plan may propose new goals and policies that could be seen to conflict with, or be inconsistent with the existing plan. However, upon plan adoption, the updated plan may now internally align with the proposed goals and policies. As such, the proposed plan will be evaluated as to the consistency with the plan and policies as revised under the relevant legislative and policy making procedures.

**Sources:** For guidance on addressing plan specific questions, see Section 2.1 in LADOT Transportation Assessment Guidelines.

**THRESHOLD T-2.1: For a land use project<sup>12</sup>, would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(1)?**

To determine if there is an impact under the threshold above, depending on whether you have a development project or a plan, you will need to address the following:

**Development Project<sup>13</sup> Question 1:** Would the project cause substantial VMT per capita, per employee, or total (depending on project type)?

**How to Determine:** The project will have a potential impact if:

- For residential projects, the project would generate household VMT per capita exceeding 15% below the existing average household VMT per capita in the Area Planning Commission (APC) in which the project is located.
- For office projects, the project would generate work VMT per employee exceeding 15% below the existing average work VMT per employee in the APC in which the project is located.
- For retail projects, the project would result in a net increase in VMT.
- For other land use types, the project would generate work VMT per employee exceeding 15% below the existing average work VMT per employee in the APC in which the project is located.
- For mixed-use projects, evaluate each project land use component separately using the criteria in the above bullets. Note, no separate evaluation is needed for the total sum retail components of a project that are under 50,000 square feet.

**Sources:** See Section 2.2 in LADOT Transportation Assessment Guidelines or project Frequently Asked Questions (FAQ).

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<sup>12</sup> See footnote 2 for definition of a Land Use Project.

<sup>13</sup> See footnote 10 for definition of Development Projects.

**Plan Project<sup>14</sup> Question 1:** Would the plan cause substantial VMT per capita or per employee?

**How to Determine:** The plan will have a potential impact if:

- The land use growth anticipated under the plan in conjunction with transportation system improvements included in the plan would result in average household VMT per capita exceeding the average household VMT per capita projected for the plan area with the SCAG RTP/SCS cumulative year land use forecast and transportation system improvements and policies.
- The land use growth anticipated under the plan in conjunction with transportation system improvements included in the plan would result in average work VMT per employee exceeding the average work VMT per employee projected for the plan area with the SCAG RTP/SCS cumulative year land use forecast and transportation system improvements and policies.

**Sources:** See Section 2.2 in LADOT Transportation Assessment Guidelines.

**THRESHOLD T-2.2: For a transportation project, would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(2)?**

To determine if there is an impact under the threshold above, you will need to address the following:

**Question 1:** Would the transportation project increase the project area<sup>15</sup> VMT?

**How to Determine:** The project will have a potential impact if:

- The project will increase the project area<sup>16</sup> VMT as measurable by the City's base year travel demand model plus an induced travel elasticity factor per lane mile.

**Sources:** See Section 2.3 in LADOT Transportation Assessment Guidelines.

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<sup>14</sup> See footnote 11 for definition of Plan Projects.

<sup>15</sup> The project area, for the purposes of a VMT analysis of transportation projects will be defined on a project by project basis. The area shall include the transportation analysis zones that contain a non-significant amount of vehicles traveling somewhere along their journey and also along the project corridor segment.

<sup>16</sup> See footnote 15.

**THRESHOLD T-3: Would the project substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?**

To determine if there is an impact under the threshold above, you will need to address the following:

**Question 1:** Would the project substantially increase hazards due to a geometric design feature?

**How to Determine:** Preliminary project access plans are to be reviewed in light of commonly-accepted traffic engineering design standards to ascertain whether any deficiencies are apparent in the site access plans which would be considered significant. The determination of significance shall be on a case-by-case basis, considering the following factors:

- The relative amount of pedestrian activity at project access points.
- Design features/physical configurations that affect the visibility of pedestrians and bicyclists to drivers entering and exiting the site, and the visibility of cars to pedestrians and bicyclists.
- The type of bicycle facilities the project driveway(s) crosses and the relative level of utilization.
- The physical conditions of the site and surrounding area, such as curves, slopes, walks, landscaping or other barriers, that could result in vehicle/pedestrian, vehicle/bicycle, or vehicle/vehicle impacts.
- Any other conditions, including the approximate location of incompatible uses that would substantially increase a transportation hazard.

**Sources:** See Section 2.4 in LADOT Transportation Assessment Guidelines.

**THRESHOLD T-4: Would the project result in inadequate emergency access?**

**How to Determine:** Refer to 2006 L.A. CEQA Thresholds Guide K.2. FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES

**B. CUMULATIVE ANALYSIS**

**THRESHOLD T-1: Would the project conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadways, bicycle and pedestrian facilities?**

To determine if there is a cumulative impact under the threshold above, depending on whether you have a project or a land use plan, you will need to address the following:

**Development Project<sup>17</sup> Question 1:** Would the project in combination with the effect of related projects along the same block or street frontage cumulatively conflict with applicable programs, plans, ordinances or policies addressing the circulation system?

**How to Determine:** The project will have a potential cumulative impact if:

- The project is inconsistent with major policies applicable to the proposed project. Determine potential impact with respect to consistency with plans, ordinances, and policies based on overall consistency with each plan/ordinance/policy and considering the cumulative effect of nearby related projects.
- The determination of impact for this threshold is based on a nuanced consideration of overall plan, ordinance, and policy consistency. An impact determination would result if (1) the project directly conflicts with a standard established by a plan, policy or ordinance, and the finding(s) that govern relief cannot be made, and (2) that standard is adopted to protect the environment. In general, transportation standards adopted to protect the environment are those that support multimodal transportation options and a reduction in VMT. A project that generally conforms with, and does not obstruct the City's development programs, ordinances, plans and policies will generally be considered to be consistent.

**Sources:** For guidance on addressing project specific questions, see Section 2.1 in LADOT Transportation Assessment Guidelines.

**Plan Project<sup>18</sup> Question 1:** Would the plan in combination with the effect of other nearby plans cumulatively conflict with applicable program, plans, ordinances or policies addressing the circulation system?

**How to Determine:** The plan will have a potential cumulative impact if:

- The plan is inconsistent with applicable State, Regional, and Local policy documents, such as the SCAG RTP/SCS and the City of Los Angeles *Mobility Plan 2035*. Determine potential impact with respect to consistency with plans, ordinances, and policies based on overall consistency with each plan/policy and considering the cumulative effect of other plan or development projects.
- The determination of impact for this threshold is based on a nuanced consideration of overall plan, and policy consistency. An impact determination would result if (1) the project directly conflicts with a standard established by a plan, policy or ordinance, and the finding(s) that

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<sup>17</sup> See footnote 10 for definition of Development Projects.

<sup>18</sup> See footnote 11 for definition of Plan Projects.

govern relief cannot be made, and (2) that standard is adopted to protect the environment. In general, transportation standards adopted to protect the environment are those that support multimodal transportation options and a reduction in VMT. A project that generally conforms with, and does not obstruct the City's development programs, ordinances, plans and policies will generally be considered to be consistent.

- The plan may propose new goals and policies that could be seen to conflict with, or be inconsistent with the existing plan. However, upon plan adoption, the updated plan may now internally align with the proposed goals and policies. As such, the proposed plan will be evaluated as to the consistency with the plan and policies as revised under the relevant legislative and policy making procedures.

**Sources:** For guidance on addressing plan specific questions, see Section 2.1 in LADOT Transportation Assessment Guidelines.

**THRESHOLD T-2.1: For a land use project<sup>19</sup>, would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(1)?**

To determine if there is a cumulative impact under the threshold above, depending on whether you have a project or a land use plan, you will need to address the following:

**Development Project<sup>20</sup> Question 1:** Is the project inconsistent with the RTP/SCS and, if so, does that inconsistency indicate a significant impact on transportation?

**How to Determine:** For projects development project that are subjected to an efficiency-based impact threshold such residential, office and/or mixed use projects that do not include regional serving retail uses, the project will have a potential impact if:

- The project analysis demonstrates both:
  - a project impact relative to the efficiency-based Threshold T-2.1 (i.e. VMT per capita or VMT per employee), and
  - that the project is inconsistent with the RTP/SCS in terms of development location, density, and intensity, or is located in an area where the RTP/SCS does not specify any development, and in either case the project results in an increase in household VMT per capita, or work VMT per employee (depending on project type)

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<sup>19</sup> See footnote 2 for definition of a land use projects.

<sup>20</sup> See footnote 10 for definition of Development Projects.

above that which was forecasted by the RTP/SCS for the project area in the RTP/SCS horizon year.

For regional serving retail projects<sup>21</sup>, the project will have a potential impact if:

- The regional serving retail project would result in a cumulative impact if a cumulative "plus project" scenario were shown to lead to a net increase in daily VMT as compared to the cumulative "no project" scenario representing the adopted RTP/SCS horizon year conditions (as incorporated into the City's travel demand model).

**Sources:** See Section 2.2 in LADOT Transportation Assessment Guidelines.

**Plan Project<sup>22</sup> Question 1:** Is the plan inconsistent with the RTP/SCS and, if so, does that inconsistency indicate a significant impact on transportation?

**How to Determine:** The plan will have a potential impact if:

- The land use growth anticipated under the plan in conjunction with transportation system improvements included in the plan would result in average household VMT per capita exceeding the average household VMT per capita projected for the plan area with the SCAG RTP/SCS cumulative year land use forecast and transportation system improvements and policies.
- The land use growth anticipated under the plan in conjunction with transportation system improvements included in the plan would result in average work VMT per employee exceeding the average work VMT per employee projected for the plan area with the SCAG RTP/SCS cumulative year land use forecast and transportation system improvements and policies.

**Sources:** See Section 2.2 in LADOT Transportation Assessment Guidelines.

**THRESHOLD T-2.2: For a transportation project, would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(2)?**

To determine if there is a cumulative impact under the threshold above, you will need to address the following:

**Question 1:** Is the project inconsistent with the RTP/SCS and, if so, does that inconsistency indicate a significant impact on transportation?

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<sup>21</sup> Regional serving retail projects are defined as retail projects that are above 50,000 square foot in total area

<sup>22</sup> See footnote 11 for definition of Plan Projects.

**How to Determine:** The project will have a potential impact if:

- The transportation project is not included in the RTP/SCS and the project results in an increase in VMT.

**Sources:** See Section 2.3 in LADOT Transportation Assessment Guidelines.

**THRESHOLD T-3: Would the project substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?**

To determine if there is a cumulative impact under the threshold above, you will need to address the following:

**Question 1:** Would the project in combination with other related projects substantially increase hazards due to a geometric design feature?

**How to Determine:** Review project site access plans for related projects with access points proposed along the same block(s) as the proposed project. Determine the combined impact and the project's contribution.

**Sources:** See Section 2.4 in LADOT Transportation Assessment Guidelines.

**THRESHOLD T-4: The project would result in inadequate emergency access.**

**How to Determine:** Refer to 2006 L.A. CEQA Thresholds Guide K.2. FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES

**C. MITIGATION AND RESIDUAL IMPACTS**

**THRESHOLD T-1: Would the project conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadways, bicycle and pedestrian facilities?**

Identify mitigation measures that could reduce or eliminate any inconsistencies with applicable plans, ordinances, or policies. Determine level of significance after mitigation.

**THRESHOLD T-2.1: For a land use project<sup>23</sup>, would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(1)?**

Identify mitigation measures that could reduce the amount of vehicle miles traveled per capita or per employee (such as transportation demand management [TDM] measures or changes in land use mix). Determine level of significance after mitigation.

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<sup>23</sup> See footnote 2 for definition of a land use projects.

**THRESHOLD T-2.2: For a transportation project, would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(2)?**

Identify mitigation measures that could reduce the amount of increased vehicle travel induced by capacity increases (such as tolling new lanes to encourage carpools and fund transit improvements, converting existing general purpose lanes to high occupancy vehicle [HOV]/high occupancy toll [HOT] or bus lanes, implementing or funding TDM measures off-site, or implementing intelligent transportation systems [ITS] strategies to improve passenger throughput on existing lanes). Determine level of significance after mitigation.

**THRESHOLD T-3: Would the project substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?**

Identify mitigation measures that could reduce or eliminate hazards due to a geometric design feature. Determine level of significance after mitigation.

**THRESHOLD T-4: The project would result in inadequate emergency access.**

**How to Determine:** Refer to 2006 L.A. CEQA Thresholds Guide K.2. FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES

#### **IV. REFERENCE SECTION**

##### **A. DEFINITIONS**

The “**Regional Transportation Plan**” (RTP), is a planning document prepared every four years by the Southern California Association of Governments (SCAG) for the six county region that includes Los Angeles, Orange, Riverside, San Bernardino, Ventura and Imperial counties. The RTP also contains a Sustainable Communities Strategy (SCS), that provides regional guidance with respect to land use in response to state laws (AB 32, SB 375) requiring reduction in greenhouse gas emissions. The RTP also provides the basis for conformance with the Clean Air Act with respect to mobile sources (the Air Quality Management Plan provides documentation with respect to stationary sources and other sources such as trains, planes and ships). The RTP includes growth projections for the next 20 years for each jurisdiction in the region. It is this growth projection that is the default projection used for most land use (and related) analyses in the region unless more specific data is available from the Los Angeles Department of City Planning (DCP).

The “**General Plan**” is a dynamic document consisting of several elements, including the Land Use Element. For the City of LA, the Land Use Element is comprised of 35 Community Plans plus plans for the Port of Los Angeles and Los Angeles World Airport (LAWA). California state law requires that every city and county prepare and adopt a

long-term, comprehensive General Plan for its future development. The Land Use Element plan should be integrated and internally consistent with a compatible statement of goals, objectives, policies and programs that provide a decision-making basis for physical development. Government Code Sections 65860 requires that zoning ordinances be consistent with the General Plan.

A “**Community Plan**” is a planning document prepared for each of 35 areas (communities) within the City that (together with plans for the Port and LAWA) comprise the Land Use Element of the General Plan. The 35 community plans develop, maintain and implement the General Plan as appropriate for each community.

“**Mobility Plan 2035**” (MP2035) provides the policy foundation for achieving a transportation system that balances the needs of all road users. As the City’s General Plan Transportation Element, the MP2035 incorporates “complete streets” principles and lays the policy foundation for how future generations of Angelenos interact with their streets.

The “**Framework Element**”, or the General Plan Framework Element, is a strategy for long-term growth that sets a citywide context to guide the update of the community plans and citywide elements. The Framework Element responds to State and Federal mandates to plan for the future. The Framework Element does not mandate or encourage growth. The Framework Element establishes the broad overall policy and direction for the entire General Plan. It provides a citywide context and a comprehensive long-range strategy to guide the comprehensive update of the General Plan’s other elements. The Framework Element also provides guidance for the preparation of related General Plan implementation measures including specific plans, ordinances, or programs, including the City’s Capital Improvement Program.

An “**ordinance**” is a law set forth by a governmental authority; a municipal regulation.

## **B. SOURCES**

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Transportation Research Board, *2010 Highway Capacity Manual*, 2010.

Transportation Research Board, National Cooperative Highway Research Program (NCHRP) Report 684, *Enhancing Internal Trip Capture Estimation for Mixed-Use Developments*.

## **C. DATA RESOURCES**

### **NAVIGATE LA**

Navigate LA is the Department of Public Works web tool. Navigate LA consolidates information from several City departments and provides a variety of information including haul route maps, Mobility Plan 2035 street designations, and whether a street is on the High Injury Network.

### **ZIMAS**

The City maintains a GIS-based Zone Information and Map Access System (ZIMAS) database. ZIMAS provides several searching tools for locating properties of interest. Users can find specific sites by searching on address, Assessor Identification Number (AIN), or legal description. If this information is unknown, users can initiate a search for a general location by entering street intersections or may visually search for the property on the map display using the various tools that interact with the map. Information that can be obtained from ZIMAS:

- Parcel size
- Assessor Parcel No (APN)

- Community Plan Area
- Council District
- Building Permit Information
- Zoning
- General Plan Land Use
- Hillside Area
- Specific Plan
- Historic Places LA
- Community Design overlay
- Clean Up Green Up applicability

**EXHIBIT C**

**Senate Bill 743**



**SB-743 Environmental quality: transit oriented infill projects, judicial review streamlining for environmental leadership development projects, and entertainment and sports center in the City of Sacramento. (2013-2014)**

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**Senate Bill No. 743**

CHAPTER 386

An act to amend Sections 65088.1 and 65088.4 of the Government Code, and to amend Sections 21181, 21183, 21186, 21187, 21189.1, and 21189.3 of, to add Section 21155.4 to, to add Chapter 2.7 (commencing with Section 21099) to Division 13 of, to add and repeal Section 21168.6.6 of, and to repeal and add Section 21185 of, the Public Resources Code, relating to environmental quality.

[ Approved by Governor September 27, 2013. Filed with Secretary of State September 27, 2013. ]

LEGISLATIVE COUNSEL'S DIGEST

SB 743, Steinberg. Environmental quality: transit oriented infill projects, judicial review streamlining for environmental leadership development projects, and entertainment and sports center in the City of Sacramento.

(1) The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 requires a party bringing an action or proceeding alleging that a lead agency's approval of a project certified by the Governor as an environmental leadership development project is in violation of the California Environmental Quality Act to file the action or proceeding with the Court of Appeal with geographic jurisdiction over the project and requires the Court of Appeal to issue its decision within 175 days of the filing of the petition. The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 requires the lead agency to concurrently prepare the record of proceeding for the leadership project with the review and consideration of the project. The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 provides that the above provision does not apply to a project for which a lead agency fails to certify an environmental impact report on or before June 1, 2014. The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 is repealed by its own terms on January 1, 2015.

This bill would instead require the Judicial Council, on or before July 1, 2014, to adopt a rule of court to establish procedures applicable to actions or proceedings seeking judicial review of a public agency's action in certifying the environmental impact report and in granting project approval that requires the actions or proceedings, including any appeals therefrom, be resolved, within 270 days of the certification of the record of proceedings. The bill would extend the operation of the judicial review procedures unless the lead agency fails to certify an environmental impact report for an environmental leadership project on or before January 1, 2016. The bill would provide that the above provisions do not apply to a project if the Governor does not certify the project as an environmental leadership development project prior to January 1, 2016. Because this bill would extend the time period for which a lead agency would be required to concurrently prepare the record of proceeding with the review and consideration of the environmental leadership development projects, this bill would impose a state-mandated local program. The bill would require the lead agency, within 10 days of the Governor's certification, to issue, at the applicant's expense, a specified public notice, thereby imposing a state-mandated local program. The bill would repeal the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 on January 1, 2017.

(2) The California Environmental Quality Act, commonly known as CEQA, requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA establishes a procedure by which a person may seek judicial review of the decision of the lead agency made pursuant to CEQA.

This bill would provide that aesthetic and parking impacts of a residential, mixed-use residential, or employment center project, as defined, on an infill site, as defined, within a transit priority area, as defined, shall not be considered significant impacts on the environment. The bill would require the Office of Planning and Research to prepare and submit to the Secretary of the Natural Resources Agency, and the secretary to certify and adopt, revisions to the guidelines for the implementation of CEQA establishing criteria for determining the significance of transportation impacts of projects within transit priority areas.

This bill would, except for specified circumstances, exempt from CEQA residential, employment center, and mixed-use development projects meeting specified criteria. Because a lead agency would be required to determine the applicability of this exemption, this bill would impose a state-mandated local program.

This bill would require the public agency, in certifying the environmental impact report and in granting approvals for a specified entertainment and sports center project located in the City of Sacramento, including the concurrent preparation of the record of proceedings and the certification of the record of proceeding within 5 days of the filing of a specified notice, to comply with specified procedures. Because a public agency would be required to comply with those new procedures, this bill would impose a state-mandated local program. The bill would require the Judicial Council, on or before July 1, 2014, to adopt a rule of court to establish procedures applicable to actions or proceedings seeking judicial review of a public agency's action in certifying the environmental impact report and in granting project approval that requires the actions or proceedings, including any appeals therefrom, be resolved, to the extent feasible, within 270 days of the certification of the record of proceedings. The bill would provide that the above provisions are inoperative and repealed on January 1 of the following year if the applicant fails to notify the lead agency before the release of the draft environmental impact report for public comment that the applicant is electing to proceed pursuant to the above provisions.

(3) Existing law requires the development, adoption, and updating of a congestion management program for each county that includes an urbanized area, as defined. The plan is required to contain specified elements and to be submitted to regional agencies, as defined, for determination of whether the program is consistent with regional transportation plans. The regional agency is then directed to monitor the implementation of all elements of each congestion management program. The required elements include traffic level of service standards for a system of designated highways and roadways. Existing law defines "infill opportunity zone" for purposes of the above-described provisions and exempts streets and highways in an infill opportunity zone from the level of service standards specified in the above-described provisions and instead requires alternate level of service standards to be applied. Existing law prohibits a city or county from designating an infill opportunity zone after December 31, 2009.

This bill would revise the definition of "infill opportunity zone," as specified. The bill would authorize the designation of an infill opportunity zone that is a transit priority area within a sustainable communities strategy or alternative planning strategy adopted by an applicable metropolitan planning organization.

(4) Existing law terminates the designation of an infill opportunity zone if no development project is completed within that zone within 4 years from the date of the designation.

This bill would repeal this provision.

This bill would make findings and declarations as to the necessity of a special statute for the City of Sacramento.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** (a) The Legislature finds and declares the following:

(1) With the adoption of Chapter 728 of the Statutes of 2008, popularly known as the Sustainable Communities and Climate Protection Act of 2008, the Legislature signaled its commitment to encouraging land use and transportation planning decisions and investments that reduce vehicle miles traveled and contribute to the reductions in greenhouse gas emissions required in the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code). Similarly, the California Complete Streets Act of 2008 (Chapter 657 of the Statutes of 2008) requires local governments to plan for a balanced, multimodal transportation network that meets the needs of all users of streets, roads, and highways for safe and convenient travel.

(2) Transportation analyses under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) typically study changes in automobile delay. New methodologies under the California Environmental Quality Act are needed for evaluating transportation impacts that are better able to promote the state's goals of reducing greenhouse gas emissions and traffic-related air pollution, promoting the development of a multimodal transportation system, and providing clean, efficient access to destinations.

(b) It is the intent of the Legislature to do both of the following:

(1) Ensure that the environmental impacts of traffic, such as noise, air pollution, and safety concerns, continue to be properly addressed and mitigated through the California Environmental Quality Act.

(2) More appropriately balance the needs of congestion management with statewide goals related to infill development, promotion of public health through active transportation, and reduction of greenhouse gas emissions.

**SEC. 2.** The Legislature further finds and declares all of the following:

(a) The Federal Reserve has stated that "[m]ost policymakers estimate the longer-run normal rate of unemployment is between 5.2 and 6 percent." At 7.6 percent, the current United States unemployment rate remains markedly higher than the normal rate and both the unemployment rates in Sacramento County and California are higher than the current national unemployment rate.

(b) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) requires that the environmental impacts of development projects be identified and mitigated. The act also guarantees the public an opportunity to review and comment on the environmental impacts of a project and to participate meaningfully in the development of mitigation measures for potentially significant environmental impacts.

(c) The existing home of the City of Sacramento's National Basketball Association (NBA) team, the Sleep Train Arena, is an old and outmoded facility located outside of the City of Sacramento's downtown area and is not serviced by the region's existing heavy and light rail transportation networks. It was constructed 25 years ago and a new, more efficient entertainment and sports center located in downtown Sacramento is needed to meet the city's and region's needs.

(d) The City of Sacramento and the region would greatly benefit from the addition of a multipurpose event center capable of hosting a wide range of events including exhibitions, conventions, sporting events, as well as musical, artistic, and cultural events in downtown Sacramento.

(e) The proposed entertainment and sports center project is a public-private partnership between the City of Sacramento and the applicant that will result in the construction of a new state-of-the-art multipurpose event center, and surrounding infill development in downtown Sacramento as described in the notice of preparation released by the City of Sacramento on April 12, 2013.

(f) The project will generate over 4,000 full-time jobs including employees hired both during construction and operation of the entertainment and sports center project. This employment estimate does not include the substantial job generation that will occur with the surrounding development uses, which will generate additional hospitality, office, restaurant, and retail jobs in Sacramento's downtown area.

(g) The project also presents an unprecedented opportunity to implement innovative measures that will significantly reduce traffic and air quality impacts and mitigate the greenhouse gas emissions resulting from the project. The project site is located in downtown Sacramento near heavy and light rail transit facilities, situated to

maximize opportunities to encourage nonautomobile modes of travel to the entertainment and sports center project, and is consistent with the policies and regional vision included in the Sustainable Communities Strategy adopted pursuant to Chapter 728 of the Statutes of 2008 by the Sacramento Area Council of Governments in April of 2012. The project is also located within close proximity to three major infill development areas including projects (The Bridge District, Railyards, and Township Nine) that received infill infrastructure grants from the state pursuant to Proposition 1C.

(h) It is in the interest of the state to expedite judicial review of the entertainment and sports center project, as appropriate, while protecting the environment and the right of the public to review, comment on, and, if necessary, seek judicial review of, the adequacy of the environmental impact report for the project.

**SEC. 3.** Section 65088.1 of the Government Code is amended to read:

**65088.1.** As used in this chapter the following terms have the following meanings:

(a) Unless the context requires otherwise, "agency" means the agency responsible for the preparation and adoption of the congestion management program.

(b) "Bus rapid transit corridor" means a bus service that includes at least four of the following attributes:

- (1) Coordination with land use planning.
- (2) Exclusive right-of-way.
- (3) Improved passenger boarding facilities.
- (4) Limited stops.
- (5) Passenger boarding at the same height as the bus.
- (6) Prepaid fares.
- (7) Real-time passenger information.
- (8) Traffic priority at intersections.
- (9) Signal priority.
- (10) Unique vehicles.

(c) "Commission" means the California Transportation Commission.

(d) "Department" means the Department of Transportation.

(e) "Infill opportunity zone" means a specific area designated by a city or county, pursuant to subdivision (c) of Section 65088.4, that is within one-half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan. A major transit stop is as defined in Section 21064.3 of the Public Resources Code, except that, for purposes of this section, it also includes major transit stops that are included in the applicable regional transportation plan. For purposes of this section, a high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

(f) "Interregional travel" means any trips that originate outside the boundary of the agency. A "trip" means a one-direction vehicle movement. The origin of any trip is the starting point of that trip. A roundtrip consists of two individual trips.

(g) "Level of service standard" is a threshold that defines a deficiency on the congestion management program highway and roadway system which requires the preparation of a deficiency plan. It is the intent of the Legislature that the agency shall use all elements of the program to implement strategies and actions that avoid the creation of deficiencies and to improve multimodal mobility.

(h) "Local jurisdiction" means a city, a county, or a city and county.

(i) "Multimodal" means the utilization of all available modes of travel that enhance the movement of people and goods, including, but not limited to, highway, transit, nonmotorized, and demand management strategies including, but not limited to, telecommuting. The availability and practicality of specific multimodal systems,

projects, and strategies may vary by county and region in accordance with the size and complexity of different urbanized areas.

(j) (1) "Parking cash-out program" means an employer-funded program under which an employer offers to provide a cash allowance to an employee equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space. "Parking subsidy" means the difference between the out-of-pocket amount paid by an employer on a regular basis in order to secure the availability of an employee parking space not owned by the employer and the price, if any, charged to an employee for use of that space.

(2) A parking cash-out program may include a requirement that employee participants certify that they will comply with guidelines established by the employer designed to avoid neighborhood parking problems, with a provision that employees not complying with the guidelines will no longer be eligible for the parking cash-out program.

(k) "Performance measure" is an analytical planning tool that is used to quantitatively evaluate transportation improvements and to assist in determining effective implementation actions, considering all modes and strategies. Use of a performance measure as part of the program does not trigger the requirement for the preparation of deficiency plans.

(l) "Urbanized area" has the same meaning as is defined in the 1990 federal census for urbanized areas of more than 50,000 population.

(m) Unless the context requires otherwise, "regional agency" means the agency responsible for preparation of the regional transportation improvement program.

**SEC. 4.** Section 65088.4 of the Government Code is amended to read:

**65088.4.** (a) It is the intent of the Legislature to balance the need for level of service standards for traffic with the need to build infill housing and mixed use commercial developments within walking distance of mass transit facilities, downtowns, and town centers and to provide greater flexibility to local governments to balance these sometimes competing needs.

(b) Notwithstanding any other provision of law, level of service standards described in Section 65089 shall not apply to the streets and highways within an infill opportunity zone.

(c) The city or county may designate an infill opportunity zone by adopting a resolution after determining that the infill opportunity zone is consistent with the general plan and any applicable specific plan, and is a transit priority area within a sustainable communities strategy or alternative planning strategy adopted by the applicable metropolitan planning organization.

**SEC. 5.** Chapter 2.7 (commencing with Section 21099) is added to Division 13 of the Public Resources Code, to read:

**CHAPTER 2.7. Modernization of Transportation Analysis for Transit-Oriented Infill Projects**

**21099.** (a) For purposes of this section, the following terms mean the following:

(1) "Employment center project" means a project located on property zoned for commercial uses with a floor area ratio of no less than 0.75 and that is located within a transit priority area.

(2) "Floor area ratio" means the ratio of gross building area of the development, excluding structured parking areas, proposed for the project divided by the net lot area.

(3) "Gross building area" means the sum of all finished areas of all floors of a building included within the outside faces of its exterior walls.

(4) "Infill site" means a lot located within an urban area that has been previously developed, or on a vacant site where at least 75 percent of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses.

(5) "Lot" means all parcels utilized by the project.

(6) "Net lot area" means the area of a lot, excluding publicly dedicated land and private streets that meet local standards, and other public use areas as determined by the local land use authority.

(7) "Transit priority area" means an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations.

(b) (1) The Office of Planning and Research shall prepare, develop, and transmit to the Secretary of the Natural Resources Agency for certification and adoption proposed revisions to the guidelines adopted pursuant to Section 21083 establishing criteria for determining the significance of transportation impacts of projects within transit priority areas. Those criteria shall promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses. In developing the criteria, the office shall recommend potential metrics to measure transportation impacts that may include, but are not limited to, vehicle miles traveled, vehicle miles traveled per capita, automobile trip generation rates, or automobile trips generated. The office may also establish criteria for models used to analyze transportation impacts to ensure the models are accurate, reliable, and consistent with the intent of this section.

(2) Upon certification of the guidelines by the Secretary of the Natural Resources Agency pursuant to this section, automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion shall not be considered a significant impact on the environment pursuant to this division, except in locations specifically identified in the guidelines, if any.

(3) This subdivision does not relieve a public agency of the requirement to analyze a project's potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation. The methodology established by these guidelines shall not create a presumption that a project will not result in significant impacts related to air quality, noise, safety, or any other impact associated with transportation. Notwithstanding the foregoing, the adequacy of parking for a project shall not support a finding of significance pursuant to this section.

(4) This subdivision does not preclude the application of local general plan policies, zoning codes, conditions of approval, thresholds, or any other planning requirements pursuant to the police power or any other authority.

(5) On or before July 1, 2014, the Office of Planning and Research shall circulate a draft revision prepared pursuant to paragraph (1).

(c) (1) The Office of Planning and Research may adopt guidelines pursuant to Section 21083 establishing alternative metrics to the metrics used for traffic levels of service for transportation impacts outside transit priority areas. The alternative metrics may include the retention of traffic levels of service, where appropriate and as determined by the office.

(2) This subdivision shall not affect the standard of review that would apply to the new guidelines adopted pursuant to this section.

(d) (1) Aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area shall not be considered significant impacts on the environment.

(2) (A) This subdivision does not affect, change, or modify the authority of a lead agency to consider aesthetic impacts pursuant to local design review ordinances or other discretionary powers provided by other laws or policies.

(B) For the purposes of this subdivision, aesthetic impacts do not include impacts on historical or cultural resources.

(e) This section does not affect the authority of a public agency to establish or adopt thresholds of significance that are more protective of the environment.

**SEC. 6.** Section 21155.4 is added to the Public Resources Code, to read:

**21155.4.** (a) Except as provided in subdivision (b), a residential, employment center, as defined in paragraph (1) of subdivision (a) of Section 21099, or mixed-use development project, including any subdivision, or any zoning, change that meets all of the following criteria is exempt from the requirements of this division:

(1) The project is proposed within a transit priority area, as defined in subdivision (a) of Section 21099.

(2) The project is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified.

(3) The project is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emissions reduction targets.

(b) Further environmental review shall be conducted only if any of the events specified in Section 21166 have occurred.

**SEC. 7.** Section 21168.6.6 is added to the Public Resources Code, to read:

**21168.6.6.** (a) For the purposes of this section, the following definitions shall have the following meanings:

(1) "Applicant" means a private entity or its affiliates that proposes the project and its successors, heirs, and assignees.

(2) "City" means the City of Sacramento.

(3) "Downtown arena" means the following components of the entertainment and sports center project from demolition and site preparation through operation:

(A) An arena facility that will become the new home to the City of Sacramento's National Basketball Association (NBA) team that does both of the following:

(i) Receives Leadership in Energy and Environmental Design (LEED) gold certification for new construction within one year of completion of the first NBA season.

(ii) Minimizes operational traffic congestion and air quality impacts through either or both project design and the implementation of feasible mitigation measures that will do all of the following:

(I) Achieve and maintain carbon neutrality or better by reducing to at least zero the net emissions of greenhouse gases, as defined in subdivision (g) of Section 38505 of the Health and Safety Code, from private automobile trips to the downtown arena as compared to the baseline as verified by the Sacramento Metropolitan Air Quality Management District.

(II) Achieve a per attendee reduction in greenhouse gas emissions from automobiles and light trucks compared to per attendee greenhouse gas emissions associated with the existing arena during the 2012-13 NBA season that will exceed the carbon reduction targets for 2020 and 2035 achieved in the sustainable communities strategy prepared by the Sacramento Area Council of Governments for the Sacramento region pursuant to Chapter 728 of the Statutes of 2008.

(III) Achieve and maintain vehicle-miles-traveled per attendee for NBA events at the downtown arena that is no more than 85 percent of the baseline.

(B) Associated public spaces.

(C) Facilities and infrastructure for ingress, egress, and use of the arena facility.

(4) "Entertainment and sports center project" or "project" means a project that substantially conforms to the project description for the entertainment and sports center project set forth in the notice of preparation released by the City of Sacramento on April 12, 2013.

(b) (1) The city may prosecute an eminent domain action for 545 and 600 K Street, Sacramento, California, and surrounding publicly accessible areas and rights-of-way within 200 feet of 600 K Street, Sacramento, California, through order of possession pursuant to the Eminent Domain Law (Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure) prior to completing the environmental review under this division.

(2) Paragraph (1) shall not apply to any other eminent domain actions prosecuted by the City of Sacramento or to eminent domain actions based on a finding of blight.

(c) Notwithstanding any other law, the procedures established pursuant to subdivision (d) shall apply to an action or proceeding brought to attack, review, set aside, void, or annul the certification of the environmental impact report for the project or the granting of any project approvals.

(d) On or before July 1, 2014, the Judicial Council shall adopt a rule of court to establish procedures applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report for the project or the granting of any project approvals that require the actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 270 days of certification of the record of proceedings pursuant to subdivision (f).

(e) (1) The draft and final environmental impact report shall include a notice in not less than 12-point type stating the following:

THIS EIR IS SUBJECT TO SECTION 21168.6.6 OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT THE LEAD AGENCY NEED NOT CONSIDER CERTAIN COMMENTS FILED AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD FOR THE DRAFT EIR. ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OF THE EIR OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN SECTION 21168.6.6 OF THE PUBLIC RESOURCES CODE. A COPY OF SECTION 21168.6.6 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE APPENDIX TO THIS EIR.

(2) The draft environmental impact report and final environmental impact report shall contain, as an appendix, the full text of this section.

(3) Within 10 days after the release of the draft environmental impact report, the lead agency shall conduct an informational workshop to inform the public of the key analyses and conclusions of that report.

(4) Within 10 days before the close of the public comment period, the lead agency shall hold a public hearing to receive testimony on the draft environmental impact report. A transcript of the hearing shall be included as an appendix to the final environmental impact report.

(5) (A) Within five days following the close of the public comment period, a commenter on the draft environmental impact report may submit to the lead agency a written request for nonbinding mediation. The lead agency and applicant shall participate in nonbinding mediation with all commenters who submitted timely comments on the draft environmental impact report and who requested the mediation. Mediation conducted pursuant to this paragraph shall end no later than 35 days after the close of the public comment period.

(B) A request for mediation shall identify all areas of dispute raised in the comment submitted by the commenter that are to be mediated.

(C) The lead agency shall select one or more mediators who shall be retired judges or recognized experts with at least five years experience in land use and environmental law or science, or mediation. The applicant shall bear the costs of mediation.

(D) A mediation session shall be conducted on each area of dispute with the parties requesting mediation on that area of dispute.

(E) The lead agency shall adopt, as a condition of approval, any measures agreed upon by the lead agency, the applicant, and any commenter who requested mediation. A commenter who agrees to a measure pursuant to this subparagraph shall not raise the issue addressed by that measure as a basis for an action or proceeding challenging the lead agency's decision to certify the environmental impact report or to grant one or more initial project approvals.

(6) The lead agency need not consider written comments submitted after the close of the public comment period, unless those comments address any of the following:

(A) New issues raised in the response to comments by the lead agency.

(B) New information released by the public agency subsequent to the release of the draft environmental impact report, such as new information set forth or embodied in a staff report, proposed permit, proposed resolution, ordinance, or similar documents.

(C) Changes made to the project after the close of the public comment period.

(D) Proposed conditions for approval, mitigation measures, or proposed findings required by Section 21081 or a proposed reporting and monitoring program required by paragraph (1) of subdivision (a) of Section 21081.6,

where the lead agency releases those documents subsequent to the release of the draft environmental impact report.

(E) New information that was not reasonably known and could not have been reasonably known during the public comment period.

(7) The lead agency shall file the notice required by subdivision (a) of Section 21152 within five days after the last initial project approval.

(f) (1) The lead agency shall prepare and certify the record of the proceedings in accordance with this subdivision and in accordance with Rule 3.1365 of the California Rules of Court. The applicant shall pay the lead agency for all costs of preparing and certifying the record of proceedings.

(2) No later than three business days following the date of the release of the draft environmental impact report, the lead agency shall make available to the public in a readily accessible electronic format the draft environmental impact report and all other documents submitted to or relied on by the lead agency in the preparation of the draft environmental impact report. A document prepared by the lead agency or submitted by the applicant after the date of the release of the draft environmental impact report that is a part of the record of the proceedings shall be made available to the public in a readily accessible electronic format within five business days after the document is prepared or received by the lead agency.

(3) Notwithstanding paragraph (2), documents submitted to or relied on by the lead agency that were not prepared specifically for the project and are copyright protected are not required to be made readily accessible in an electronic format. For those copyright protected documents, the lead agency shall make an index of these documents available in an electronic format no later than the date of the release of the draft environmental impact report, or within five business days if the document is received or relied on by the lead agency after the release of the draft environmental impact report. The index must specify the libraries or lead agency offices in which hardcopies of the copyrighted materials are available for public review.

(4) The lead agency shall encourage written comments on the project to be submitted in a readily accessible electronic format, and shall make any such comment available to the public in a readily accessible electronic format within five days of its receipt.

(5) Within seven business days after the receipt of any comment that is not in an electronic format, the lead agency shall convert that comment into a readily accessible electronic format and make it available to the public in that format.

(6) The lead agency shall indicate in the record of the proceedings comments received that were not considered by the lead agency pursuant to paragraph (6) of subdivision (e) and need not include the content of the comments as a part of the record.

(7) Within five days after the filing of the notice required by subdivision (a) of Section 21152, the lead agency shall certify the record of the proceedings for the approval or determination and shall provide an electronic copy of the record to a party that has submitted a written request for a copy. The lead agency may charge and collect a reasonable fee from a party requesting a copy of the record for the electronic copy, which shall not exceed the reasonable cost of reproducing that copy.

(8) Within 10 days after being served with a complaint or a petition for a writ of mandate, the lead agency shall lodge a copy of the certified record of proceedings with the superior court.

(9) Any dispute over the content of the record of the proceedings shall be resolved by the superior court. Unless the superior court directs otherwise, a party disputing the content of the record shall file a motion to augment the record at the time it files its initial brief.

(10) The contents of the record of proceedings shall be as set forth in subdivision (e) of Section 21167.6.

(g) (1) As a condition of approval of the project subject to this section, the lead agency shall require the applicant, with respect to any measures specific to the operation of the downtown arena, to implement those measures that will meet the requirements of this division by the end of the first NBA regular season or June of the first NBA regular season, whichever is later, during which an NBA team has played at the downtown arena.

(2) To maximize public health, environmental, and employment benefits, the lead agency shall place the highest priority on feasible measures that will reduce greenhouse gas emissions on the downtown arena site and in the neighboring communities of the downtown arena. Mitigation measures that shall be considered and

implemented, if feasible and necessary, to achieve the standards set forth in subclauses (I) to (III), inclusive, of clause (ii) of subparagraph (A) of paragraph (3) of subdivision (a), including, but not limited to:

(A) Temporarily expanding the capacity of a public transit line, as needed, to serve downtown arena events.

(B) Providing private charter buses or other similar services, as needed, to serve downtown arena events.

(C) Paying its fair share of the cost of measures that expand the capacity of a public fixed or light rail station that is used by spectators attending downtown arena events.

(3) Offset credits shall be employed by the applicant only after feasible local emission reduction measures have been implemented. The applicant shall, to the extent feasible, place the highest priority on the purchase of offset credits that produce emission reductions within the city or the boundaries of the Sacramento Metropolitan Air Quality Management District.

(h) (1) (A) In granting relief in an action or proceeding brought pursuant to this section, the court shall not stay or enjoin the construction or operation of the downtown arena unless the court finds either of the following:

(i) The continued construction or operation of the downtown arena presents an imminent threat to the public health and safety.

(ii) The downtown arena site contains unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values that would be materially, permanently, and adversely affected by the continued construction or operation of the downtown arena unless the court stays or enjoins the construction or operation of the downtown arena.

(B) If the court finds that clause (i) or (ii) is satisfied, the court shall only enjoin those specific activities associated with the downtown arena that present an imminent threat to public health and safety or that materially, permanently, and adversely affect unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values.

(2) An action or proceeding to attack, set aside, void, or annul a determination, finding, or decision of the lead agency granting a subsequent project approval shall be subject to the requirements of Chapter 6 (commencing with Section 21165).

(3) Where an action or proceeding brought pursuant to this section challenges aspects of the project other than the downtown arena and those portions or specific project activities are severable from the downtown arena, the court may enter an order as to aspects of the project other than the downtown arena that includes one or more of the remedies set forth in Section 21168.9.

(i) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(j) (1) This section does not apply to the project and shall become inoperative on the date of the release of the draft environmental impact report and is repealed on January 1 of the following year, if the applicant fails to notify the lead agency prior to the release of the draft environmental impact report for public comment that the applicant is electing to proceed pursuant to this section.

(2) The lead agency shall notify the Secretary of State if the applicant fails to notify the lead agency of its election to proceed pursuant to this section.

**SEC. 8.** Section 21181 of the Public Resources Code is amended to read:

**21181.** This chapter does not apply to a project if the Governor does not certify a project as an environmental leadership development project eligible for streamlining provided pursuant to this chapter prior to January 1, 2016.

**SEC. 9.** Section 21183 of the Public Resources Code is amended to read:

**21183.** The Governor may certify a leadership project for streamlining pursuant to this chapter if all the following conditions are met:

(a) The project will result in a minimum investment of one hundred million dollars (\$100,000,000) in California upon completion of construction.

(b) The project creates high-wage, highly skilled jobs that pay prevailing wages and living wages and provide construction jobs and permanent jobs for Californians, and helps reduce unemployment. For purposes of this subdivision, "jobs that pay prevailing wages" means that all construction workers employed in the execution of the project will receive at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code. If the project is certified for streamlining, the project applicant shall include this requirement in all contracts for the performance of the work.

(c) The project does not result in any net additional emission of greenhouse gases, including greenhouse gas emissions from employee transportation, as determined by the State Air Resources Board pursuant to Division 25.5 (commencing with Section 38500) of the Health and Safety Code.

(d) The project applicant has entered into a binding and enforceable agreement that all mitigation measures required pursuant to this division to certify the project under this chapter shall be conditions of approval of the project, and those conditions will be fully enforceable by the lead agency or another agency designated by the lead agency. In the case of environmental mitigation measures, the applicant agrees, as an ongoing obligation, that those measures will be monitored and enforced by the lead agency for the life of the obligation.

(e) The project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council pursuant to subdivision (f) of Section 21185.

(f) The project applicant agrees to pay the costs of preparing the administrative record for the project concurrent with review and consideration of the project pursuant to this division, in a form and manner specified by the lead agency for the project.

**SEC. 10.** Section 21185 of the Public Resources Code is repealed.

**SEC. 11.** Section 21185 is added to the Public Resources Code, to read:

**21185.** On or before July 1, 2014, the Judicial Council shall adopt a rule of court to establish procedures applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report for an environmental leadership development project certified by the Governor pursuant to this chapter or the granting of any project approvals that require the actions or proceedings, including any potential appeals therefrom, be resolved, within 270 days of certification of the record of proceedings pursuant to Section 21186.

**SEC. 12.** Section 21186 of the Public Resources Code is amended to read:

**21186.** Notwithstanding any other law, the preparation and certification of the administrative record for a leadership project certified by the Governor shall be performed in the following manner:

(a) The lead agency for the project shall prepare the administrative record pursuant to this division concurrently with the administrative process.

(b) All documents and other materials placed in the administrative record shall be posted on, and be downloadable from, an Internet Web site maintained by the lead agency commencing with the date of the release of the draft environmental impact report.

(c) The lead agency shall make available to the public in a readily accessible electronic format the draft environmental impact report and all other documents submitted to, or relied on by, the lead agency in the preparation of the draft environmental impact report.

(d) A document prepared by the lead agency or submitted by the applicant after the date of the release of the draft environmental impact report that is a part of the record of the proceedings shall be made available to the public in a readily accessible electronic format within five business days after the document is released or received by the lead agency.

(e) The lead agency shall encourage written comments on the project to be submitted in a readily accessible electronic format, and shall make any comment available to the public in a readily accessible electronic format within five days of its receipt.

(f) Within seven business days after the receipt of any comment that is not in an electronic format, the lead agency shall convert that comment into a readily accessible electronic format and make it available to the public in that format.

(g) Notwithstanding paragraphs (b) to (f), inclusive, documents submitted to or relied on by the lead agency that were not prepared specifically for the project and are copyright protected are not required to be made readily accessible in an electronic format. For those copyright-protected documents, the lead agency shall make an index of these documents available in an electronic format no later than the date of the release of the draft environmental impact report, or within five business days if the document is received or relied on by the lead agency after the release of the draft environmental impact report. The index must specify the libraries or lead agency offices in which hardcopies of the copyrighted materials are available for public review.

(h) The lead agency shall certify the final administrative record within five days of its approval of the project.

(i) Any dispute arising from the administrative record shall be resolved by the superior court. Unless the superior court directs otherwise, a party disputing the content of the record shall file a motion to augment the record at the time it files its initial brief.

(j) The contents of the record of proceedings shall be as set forth in subdivision (e) of Section 21167.6.

**SEC. 13.** Section 21187 of the Public Resources Code is amended to read:

**21187.** Within 10 days of the Governor certifying an environmental leadership development project pursuant to this section, the lead agency shall, at the applicant's expense, issue a public notice in no less than 12-point type stating the following:

"THE APPLICANT HAS ELECTED TO PROCEED UNDER CHAPTER 6.5 (COMMENCING WITH SECTION 21178) OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OF THE EIR OR THE APPROVAL OF THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN SECTIONS 21185 TO 21186, INCLUSIVE, OF THE PUBLIC RESOURCES CODE. A COPY OF CHAPTER 6.5 (COMMENCING WITH SECTION 21178) OF THE PUBLIC RESOURCES CODE IS INCLUDED BELOW."

The public notice shall be distributed by the lead agency as required for public notices issued pursuant to paragraph (3) of subdivision (b) of Section 21092.

**SEC. 14.** Section 21189.1 of the Public Resources Code is amended to read:

**21189.1.** If, prior to January 1, 2016, a lead agency fails to approve a project certified by the Governor pursuant to this chapter, then the certification expires and is no longer valid.

**SEC. 15.** Section 21189.3 of the Public Resources Code is amended to read:

**21189.3.** This chapter shall remain in effect until January 1, 2017, and as of that date is repealed unless a later enacted statute extends or repeals that date.

**SEC. 16.** With respect to certain provisions of this measure, the Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique need for the development of an entertainment and sports center project in the City of Sacramento in an expeditious manner.

**SEC. 17.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

**EXHIBIT D**

**State CEQA Guidelines**

CALIFORNIA NATURAL RESOURCES AGENCY



FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

AMENDMENTS TO THE STATE CEQA GUIDELINES

OAL NOTICE FILE NO. Z-2018-0116-12

NOVEMBER 2018

# Final Statement of Reasons

## Update to the Initial Statement of Reasons

The California Natural Resources Agency (the “Natural Resources Agency” or “Agency”) proposes to amend the Guidelines Implementing the California Environmental Quality Act (Pub. Resources Code section 21000, et seq.) (“CEQA Guidelines”). The proposed amendments address legislative changes to the California Environmental Quality Act (CEQA), clarify certain portions of the existing CEQA Guidelines, and update the CEQA Guidelines to be consistent with recent court decisions.

CEQA generally requires public agencies to review the environmental impacts of proposed projects, and, if those impacts may be significant, to consider feasible alternatives and mitigation measures that would substantially reduce significant adverse environmental effects. Section 21083 of the Public Resources Code requires the adoption of guidelines to provide public agencies and members of the public with guidance about the procedures and criteria for implementing CEQA. The guidelines required by section 21083 of the Public Resources Code are promulgated in the California Code of Regulations, title 14, sections 15000-15387, plus appendices. Public agencies, project proponents, and third parties, who wish to enforce the requirements of CEQA, rely on the CEQA Guidelines to provide a comprehensive guide on compliance with CEQA. Subdivision (f) of section 21083 requires the Agency, in consultation with the Office of Planning and Research (“OPR”), to certify, adopt, and amend the CEQA Guidelines at least once every two years.

The Natural Resources Agency has made the following changes to the CEQA Guidelines:

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, and Appendix G, Appendix M and Appendix N.

The CEQA Guidelines are unique among administrative regulations. They provide a carefully organized, step-by-step guide to the environmental review process. As a result, rather than turning to the statute and case law, many agency staff and planners look to the CEQA Guidelines as a comprehensive source of information regarding CEQA’s requirements.

## Background

The last comprehensive update to the CEQA Guidelines occurred in the late 1990s. Since 2011, the Governor’s Office of Planning and Research (“OPR”) and the Natural Resources Agency have informally collected ideas on possible improvements to the CEQA Guidelines. In 2013, OPR and the Agency distributed a formal Solicitation for Input on possible improvements. Specifically, the solicitation asked for suggestions on efficiency improvements, substantive improvements, and technical improvements. Stakeholders offered many ideas. After considering this input, OPR developed a possible list of topics to

address in the update, and again sought and received substantial public input. Based on that input, as well as input received during informal stakeholder meetings, conferences, and other venues, OPR, in consultation with the Agency, developed a Preliminary Discussion Draft of proposed changes to the CEQA Guidelines. As that process proceeded, OPR, again in consultation with the Agency, developed proposed updates related to transportation impacts, as well as a proposed update related to the evaluation of hazards in response to the California Supreme Court's holding in *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal. 4th 369.

In November 2017, OPR finalized the package of updates and transmitted them to the Natural Resources Agency. The Agency then prepared the rulemaking documents required by the Administrative Procedures Act, including a Standardized Regulatory Impact Assessment to evaluate the potential economic impacts of the package.

### 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.

Regarding the change related to transportation impacts, the Agency's Statement of Regulatory Impact Assessment identified numerous potential direct and indirect benefits of reducing vehicle miles traveled. Realization of those benefits will depend on the degree to which, pursuant to this CEQA Guidelines update, lead agencies use the streamlined approaches for analysis of low-VMT projects, mitigate high-VMT projects, or choose lower VMT project alternatives.<sup>1</sup> Some of the benefits, among many others, that may result from reducing vehicle miles traveled are described qualitatively below:

- *Better health and avoided health care costs.* Higher vehicle miles traveled is associated with more auto collisions, more air pollution, more greenhouse gas 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.<sup>2</sup>

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<sup>1</sup> Lead agencies determine whether any particular mitigation measure is feasible in the context of the project under review. (See, e.g., CEQA Guidelines § 15091.) Further, CEQA allows a lead agency to approve a project that has significant environmental impacts so long as it finds that the benefits of the project outweigh those impacts. (*Id.* at § 15093.)

<sup>2</sup> Maizlish N. *Increasing Walking, Cycling, and Transit: Improving Californians' Health, Saving Costs, and Reducing Greenhouse Gases. Final Report.* California Department of Public Health (CDPH), 2016.

- *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 development, which is associated with lower vehicle miles traveled, 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 vehicle miles traveled by about 12 percent below 2014 levels.<sup>3</sup> That combination of reduced vehicle miles traveled 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 vehicle miles traveled reduces congestion regionally, decreasing travel times, and may also encourage more investment in multi-modal infrastructure. Even if there is localized congestion, due to increased density of development, travel times decrease because of better proximity (Mondschein, 2015).<sup>4</sup>
- *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.

The Agency also expects more sustainable development decisions to result from the clarified sections addressing water supply, energy, wildfire, greenhouse gas emissions, as well as the clarified exemptions for transit oriented developments and upgrades to existing facilities. Other benefits of the remainder of the CEQA Guidelines update are expected to include greater certainty for both public agencies and private applicants, as well as time and cost savings due to clearer rules.

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<https://www.cdph.ca.gov/programs/Documents/IncreasingWalkingCyclingTransitFinalReport2016rev2017-01-28.pdf>

<sup>3</sup> Busch C., et al., *Moving California Forward, How Smart Growth Can Help California Reach Its 2030 Climate Target While Creating Economic and Environmental Co-Benefits*, Nov. 2015, at p. 26.

<sup>4</sup> Mondschein A. *Congested Development: A Study of Traffic Delays, Access, and Economic Activity in Metropolitan Los Angeles*, Institute of Transportation Studies, UCLA Luskin School of Public Affairs, Sept. 2105.

## What is in this Package?

This rulemaking package contains changes or additions involving nearly thirty different sections of the Guidelines addressing nearly every step of the environmental review process. It is a balanced package that is intended to make the process easier and quicker to implement, and better protect natural and fiscal resources consistent with California's environmental policies.

### Efficiency Improvements

The package includes several changes intended to result in a smoother, more predictable process for agencies, project applicants and the public.

First, the package promotes use of existing regulatory standards in the CEQA process. Using standards as "thresholds of significance" creates a predictable starting point for environmental analysis, and allows agencies to rely on the expertise of the regulatory body, without foreclosing consideration of possible project-specific effects.

Second, the package updates the environmental checklist that most agencies use to conduct their environmental review. Redundant questions in the existing checklist are proposed to be eliminated and some questions would be updated to address contemporary topics. The checklist has also been updated with new questions related to transportation and wildfire, pursuant to Senate Bill 743 (Steinberg, 2013), and Senate Bill 1241 (Kehoe, 2012), respectively.

Third, the package includes several changes to make existing programmatic environmental review easier to use for later projects. Specifically, it clarifies the rules on tiering, and provides additional guidance on when a later project may be considered within the scope of a program EIR.

Fourth, the package enhances several exemptions. For example, consistent with Senate Bill 743 (Steinberg, 2013), it updates an existing exemption for projects implementing a specific plan to include not just residential, but also commercial and mixed-use projects near transit. It also clarifies the rules on the exemption for changes to existing facilities so that vacant buildings can more easily be redeveloped. Changes to that same exemption will also promote pedestrian, bicycle and streetscape improvements within an existing right of way.

Finally, the package includes a new section to assist agencies in complying with CEQA following resolution of a court challenge, and help the public and project proponents understand the effect of the remand on project implementation.

### Substantive Improvements

The package also contains substantive improvements related to environmental protection.

First, the package provides guidance regarding energy impacts analysis. Specifically, it requires an EIR to include an analysis of a project's energy impacts that addresses not just building design, but also transportation, equipment use, location, and other relevant factors.

Second, the package includes guidance on the analysis of water supply impacts. The guidance is built on the holding in the California Supreme Court decision in *Vineyard Area Citizens for Responsible Growth v.*

*City of Rancho Cordova* (2007) 40 Cal. 4th 412. It requires analysis of a proposed project’s possible sources of water supply over the life of the project and the environmental impacts of supplying that water to the project. The analysis must consider any uncertainties in supply, as well as potential alternatives.

Third, as directed in Senate Bill 743, the package includes a new section addressing the evaluation of transportation impacts. The current emphasis on traffic congestion in transportation analyses tends to promote increased vehicle use. This new guidance instead focuses on a project’s effect on vehicle miles traveled, which should promote project designs that reduce reliance on automobile travel.

Fourth, the package updates the guideline addressing greenhouse gas emissions to reflect recent case law. Among other changes, the Agency clarifies 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 changes also 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.

### Technical Improvements

The package also includes many technical changes to conform to recent cases and statutory changes. For example, one of the changes clarifies when agencies must consider the effects of locating projects in hazardous locations, in response to the California Supreme Court’s ruling in *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal. 4th 369. Others clarify when it may be appropriate to use projected future conditions as the environmental baseline. Another change addresses when agencies may defer specific details of mitigation measures until after project approval. The package also includes a set of changes related to the duty of lead agencies to provide detailed responses to comments on a project. The changes clarify that a general response may be appropriate when a comment submits voluminous data and information without explaining its relevance to the project. Other changes address a range of topics such as selecting the lead agency, posting notices with county clerks, clarifying the definition of “discretionary,” and others. Detailed Description of Proposed Changes

The specific changes proposed in this package are described in detail below in the order in which they would appear in the CEQA Guidelines.

### 15004. TIME OF PREPARATION

#### **Specific Purposes of the Amendment**

CEQA Guidelines section 15004 states the requirement that environmental impact reports (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.

In *Save Tara v. City of West Hollywood* (“*Save Tara*”) (2008) 45 Cal.4th 116, the California Supreme Court addressed the issue of when CEQA applies to certain activities that precede project approval. The court declined to set forth a bright-line rule. Instead, the court concluded

that several factors are relevant to the determination of when CEQA review must be completed. The purpose of the addition of subdivision (b)(4) is to assist lead agencies in applying the principles identified by the California Supreme Court in the *Save Tara* decision. The first sentence of subdivision (b)(4) acknowledges that pre-approval agreements may fall on a spectrum between mere interest in a project and a commitment to a definite course of action. That sentence also reflects the Supreme Court's holding that circumstances surrounding the activity are relevant to the determination of whether an agency has, as a practical matter, committed to a project. The second sentence provides an example of what could likely not precede CEQA review, such as an agreement that vests development rights. The third sentence, on the other hand, provides examples of characteristics of agreements that may be executed prior to CEQA review. These include agreements that do not foreclose any mitigation measures or project alternative and that are conditioned on completion of CEQA review.

### **Necessity**

The proposed addition of (b)(4) of CEQA Guidelines section 15004 is reasonably necessary to reflect the California Supreme Court's decision in *Save Tara*. The additional language will ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with case law that has interpreted CEQA, and the proposed action adds no new substantive requirements. The Natural Resources 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 California Supreme Court's determination in *Save Tara*.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing case law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## 15051. CRITERIA FOR IDENTIFYING THE LEAD AGENCY

### **Specific Purposes of the Amendment**

This CEQA Guidelines section provides criteria for identifying the Lead Agency when a project may require approval by more than one public agency under CEQA. Public Resources Code section 21067 defines “lead agency” as “the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.” Similarly, the CEQA Guidelines define the lead agency as “the public agency which has the principal responsibility for carrying out or approving a project.... Criteria for determining which agency will be the lead agency for a project is contained in section 15051.” (CEQA Guidelines, § 15367.) CEQA Guidelines section 15051, subdivisions (a) and (b), explain which entity will act as lead agency under usual circumstances, and subdivisions (c) and (d) address circumstances when more than one agency could potentially be lead.

CEQA Guidelines, section 15051, subdivision (c), states that, “[w]here more than one public agency equally meet the criteria in subdivision (b), the agency which will act first on the project in question shall be the lead agency.” However, subdivision (d) states that “[w]here the provisions of subdivisions (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency....” As these sections are currently written, where two public agencies equally meet the criteria for lead agency, the agency which will act first must be the lead under subdivision (c), which effectually renders subdivision (d) inapplicable other than with respect to subdivision (a). The existing language, if read literally, would prevent two potential lead agencies which meet the criteria in subdivision (b), each with a substantial claim to be the lead, from agreeing to designate one as the lead unless both happen to act at the exact same moment on the project.

The purpose of the amendment is to increase the flexibility in the determination of a lead agency by changing the word “shall” to “will normally” to clarify that where more than one public agency meets the criteria in subdivision (b), the agencies may agree pursuant to subdivision (d) to designate one entity as the lead.

### **Necessity**

The proposed changes are reasonably necessary to provide clarity and to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be internally consistent, and the proposed action adds no new substantive requirements. The Natural Resources 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law and makes this CEQA Guideline internally consistent. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## **15061. REVIEW OF EXEMPTION**

### **Specific Purposes of the Amendment**

CEQA Guidelines section 15061 describes when a project or activity is exempt from CEQA. The Natural Resources Agency proposes to amend subdivision (b)(3) of Section 15061. Currently, subdivision (b)(3) states that an activity is covered by the "general rule" that an activity is exempt from CEQA if there is no possibility that activity may have a significant effect on the environment. The Natural Resources Agency proposes to replace the phrase "general rule" with the phrase "common sense exemption" in order to match the language used by the California Supreme Court when evaluating the application of this CEQA exemption. (See, *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal. 4th 372, 389 (using the phrase "common sense exemption" to apply Section 15061).)

### **Necessity**

This clarification is needed to match practitioners' customary use of the term "common sense exemption" and to prevent possible confusion for others who see or hear references to the term but cannot find it in the text of the CEQA Guidelines. Additionally, the proposed change is reasonably necessary to provide clarity and to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with case law that has interpreted CEQA, and the proposed action adds no new substantive requirements. The Natural Resources 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing case law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

### **15062. NOTICE OF EXEMPTION Specific Purposes of the Amendment**

This section prescribes the use and content of the Notice of Exemption. Agencies are authorized but, in most cases, not required to file this notice. The regulation spells out minimum contents so that people can recognize whether a particular notice applies to the project with which they are concerned. The section notes that the effect of filing the notice is to start a short statute of limitations period. If the notice is not filed, a longer period would apply. Failure to comply with all of the requirements for filing notices of exemption results in the longer, 180-day, statute of limitations.

Pursuant to Assembly Bill 320 (Hill, 2011), the Natural Resources Agency added a new subdivision (a)(6) to Section 15062 of the CEQA Guidelines. AB 320 amended Public Resource Code, sections 21108 and 21152 requiring certain information to be included in the Notice of Exemption consistent with CEQA Guidelines section 21065, subdivisions (b) and (c). Specifically, AB 320 requires the Notice of Exemption 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 Natural Resources Agency added subdivision (a)(6) to section 15062 of the CEQA Guidelines to provide consistency with Public Resources Code, section 21108 and 21152.

### **Necessity**

This addition is necessary to implement the requirements of AB 320 (Hill, 2011) and to be consistent with Public Resources code, sections 21108 and 21152.

## **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with Sections 21108 and 21152 of the Public Resources Code, and the proposed action adds no new substantive requirements per se. Rather, additional information regarding the project applicant must be included in the forms filed by public agencies. The Natural Resources 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 the change is a clarifying change only.

## **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

### **15063. INITIAL STUDY**

#### **Specific Purposes of the Amendment**

The purpose of this section is to describe the process, contents, and use of the Initial Study. The Natural Resources Agency proposes to add a new subsection (4) to Section 15063, subdivision (a), to specify the arrangements a lead agency may use to prepare an initial study. The Public Resources Code states that a public agency may prepare a draft environmental impact report or negative declaration directly or under contract to that public agency. (Pub. Resources Code, § 21082.1.) Section 15084 of the CEQA Guidelines implements the Public Resources Code by allowing lead agencies to prepare a draft environmental impact report directly or under contract. (See CEQA Guidelines, § 15084 subd. (d).) The CEQA Guidelines do not currently, however, contain a parallel provision for negative declarations or mitigated declarations.

A draft or mitigated negative declaration must include a copy of an initial study. (See CEQA Guidelines, § 15071, subd. (d) (stating that a negative declaration circulated for public review must include a copy of the initial study).) Therefore, the Natural Resources Agency proposes to add the new subsection to Section 15063, subdivision (a) to match the methods and arrangement used to prepare a draft environmental impact report and increase consistency in report preparation.

## **Necessity**

This addition is necessary to provide consistent guidance for lead agencies preparing environmental documents.

## **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be internally consistent, and the proposed action adds no new substantive requirements. The Natural Resources 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 the change is a clarifying change only.

## **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing case law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

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

### **Specific Purposes of the Amendment**

A key step in the environmental review process is to determine whether a project may cause a significant effect on the environment. Section 15064 of the CEQA Guidelines provides general criteria to guide agencies in determining the significance of environmental effects of their projects as required by section 21083 of the Public Resources Code. The Natural Resources Agency updated CEQA Guidelines Section 15064 to expressly clarify that agencies may rely on standards adopted for environmental protection as thresholds of significance. Specifically, the Natural Resources Agency added subdivision (b)(2) to Section 15064.

The first sentence of subdivision (b)(2) states the rule, set forth in cases interpreting CEQA, that thresholds of significance may be used in the determination of significance. (See *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98 111; see also *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1111.) Importantly, this new sentence also provides a cross-reference to CEQA Guidelines, Section 15064.7, which defines a threshold of significance.

The second sentence of this new subdivision provides that an agency that relies on a threshold of significance should explain how application of the threshold indicates a less than significant effect. This sentence recognizes the court's caution in *Protect the Historic Amador Waterways* that "thresholds cannot be used to determine automatically whether a given effect will or will not be significant." (*Protect the Historic Amador Waterways, supra*, 116 Cal. App. 4th at pp. 1108-1109.) This sentence is also consistent with several other provisions in the Guidelines. (See, e.g., CEQA Guidelines § 15064(h)(3) ("When relying on a plan, regulation or program [to evaluate cumulative impacts], the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable"); § 15063, subd. (d)(3) (initial study must include sufficient information to support its conclusions).) Notably, the explanation need not be lengthy. CEQA Guidelines Section 15128 provides the explanation that an impact is determined to be less than significant, and therefore was not analyzed in an EIR, need only be brief.

Finally, the third sentence of this new subdivision cautions that a lead agency must evaluate any substantial evidence supporting a fair argument that, despite compliance with thresholds, the project's impacts are nevertheless significant. (*Protect the Historic Amador Waterways, supra*, 116 Cal. App. 4th at pp. 1108-1109 ("thresholds cannot be used to determine automatically whether a given effect will or will not be significant[;]" rather, "thresholds of significance can be used only as a measure of whether a certain environmental effect 'will normally be determined to be significant' or 'normally will be determined to be less than significant' by the agency"); see also *CBE, supra*, 103 Cal.App.4th at 112-113.)

This sentence does not alter the standard of review. Thus, in the context of an environmental impact report, a lead agency may weigh the evidence before it to reach a conclusion regarding the significance of a project's effects. This added sentence clarifies, however, that a project's compliance with a threshold does not excuse an agency of its obligation to consider the information presented to it regarding a project's impacts. (*Rominger v. County of Colusa* (2014) 229 Cal. App. 4th 690, 717.) In other words, thresholds shall not be applied in a rote manner; analysis and evaluation of the evidence is still required. In this regard, this sentence is similar to a lead agency's requirement to review and consider comments submitted on its environmental documents. (CEQA Guidelines, §§ 15074, subd. (b), 15088.)

### **Necessity**

The change is necessary to clarify a lead agency's obligation to determine the significance of a proposed project and what evidence it must consider in reaching that conclusion. The Natural Resources Agency's revision will clarify that compliance with relevant standards may be a basis for determining that the project's impacts are less than significant.

## **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Natural Resources Agency's Reasons for Rejecting Those Alternatives**

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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be internally consistent, and the proposed action adds no new substantive requirements. The Natural Resources 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 the change is a clarifying change only.

## **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. The proposed action also does not alter the applicable standard of review. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

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

Californians drive approximately 332 billion vehicle miles each year. Traffic studies used in CEQA documents have typically focused on one thing: the impact of projects on traffic flows. Senate Bill 743 (2013) required OPR and the Natural Resources Agency to develop alternative methods of measuring transportation impacts under CEQA. At a minimum, the new methods must apply within areas that are served by transit; however, the Guidelines may extend the new methods statewide. Once the Agency adopts the new transportation guideline, automobile delay (often called Level of Service) will no longer be considered to be an environmental impact under CEQA.

### **Explanation of Proposed New Section 15064.3**

New section 15064.3 contains several subdivisions, which are described below. In brief, these Guidelines provide that transportation impacts of projects are, in general, best measured by evaluating the project's vehicle miles traveled. Methodologies for evaluating such impacts are already in use for most land use projects, as well as many transit and active transportation projects. Methods for evaluating vehicle miles traveled for highway capacity projects continue to evolve, however, and so these Guidelines recognize a lead agency's discretion to analyze such projects, provided such analysis is consistent with CEQA and applicable planning requirements.

#### *Subdivision (a): Purpose*

Subdivision (a) sets forth the purpose of the entire new section 15064.3. First, the subdivision clarifies that the primary consideration, in an environmental analysis, regarding transportation is the amount

and distance that a project might cause people to drive. This captures two measures of transportation impacts: auto trips generated and vehicle miles traveled. These factors were identified by the legislature in SB 743. The last sentence clarifies that automobile delay is not a significant effect on the environment.

#### *Subdivision (b): Criteria for Analyzing Transportation Impacts*

While subdivision (a) sets forth general principles related to transportation analysis, subdivision (b) focuses on specific criteria for determining the significance of transportation impacts. It is further divided into four subdivisions: (1) land use projects, (2) transportation projects, (3) qualitative analysis, and (4) methodology.

#### Subdivision (b)(1): Land Use Projects

SB 743 did not authorize the Agency to set thresholds, but it did direct OPR and the Agency to develop Guidelines “for determining the significance of transportation impacts of projects[.]” (Pub. Resources Code § 21099(b)(2).) Therefore, to provide guidance on determining the significance of impacts, subdivision (b)(1) describes factors that might indicate whether the amount of a project’s vehicle miles traveled may be significant, or not.

#### Subdivision (b)(2): Transportation Projects

While subdivision (b)(1) addresses vehicle miles traveled associated with land use projects, subdivision (b)(2) focuses on impacts that result from certain transportation projects. Subdivision (b)(2) clarifies that lead agencies should presume that projects that reduce vehicle miles traveled, such as pedestrian, bicycle and transit projects, will have a less than significant impact. This subdivision further provides that lead agencies have discretion in which measure to use to evaluate highway capacity projects, provided that any such analysis is consistent with the requirements of CEQA and any other applicable requirements (e.g., local planning rules). Importantly, this provision does not prohibit capacity expansion. It also does not relieve agencies of the requirement to analyze any other potential impacts of such projects, including, but not limited to, greenhouse gas emissions and other air pollutants. Finally, recognizing that highway capacity projects may be analyzed at a programmatic level, subdivision (b)(2) states that lead agencies may be able to tier from a programmatic analysis that adequately addresses the effects of such capacity projects.

#### Subdivision (b)(4): Methodology

Lead agencies have the discretion to choose the most appropriate methodology to analyze a project’s vehicle miles traveled. Depending on the project, vehicle miles traveled may be best measured on a per person, per household or other similar unit of measurement. Subdivision (b)(4) also recognizes the role for both models and professional judgment in estimating vehicle miles traveled.

#### *Subdivision (c): Applicability*

The new procedures may be used immediately upon the effective date of these Guidelines by lead agencies that are ready to begin evaluating vehicle miles traveled, but jurisdictions will have until 2020 to start analyzing vehicle miles traveled if they need that time to update their procedures. In that case, those agencies would continue to evaluate transportation impacts by measuring congestion.

### **Necessity**

The proposed addition of CEQA Guidelines section 15064.3 is reasonably necessary to implement the direction in Public Resources Code 21099 that the CEQA Guidelines provide for a new methodology for analyzing transportation impacts of projects. The language of this section of the CEQA Guidelines follows the direction of the Legislature and ensures that that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Natural Resources Agency's Reasons for Rejecting Those Alternatives**

The Natural Resources Agency considered and rejected two alternatives to the proposed action. Under Alternative 1, the change from level of service 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 level of service, or other measures of congestion.

The Agency rejected Alternative 1 for several reasons. First, this alternative would forgo substantial cost and time savings that are expected to result from studying vehicle miles traveled instead of congestion. 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 vehicle miles traveled 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, vehicle miles traveled promotes those statutory purposes better than level of service.

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

The Agency rejected Alternative 2 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.”

### **The Action Will Not Have a Significant Adverse Economic Impact on Business**

The Agency has determined that the proposed action will not have a significant adverse economic impact on businesses, and instead, would lead to an overall economic benefit. Project proponents, including businesses, would experience time and cost savings related to document preparation largely because, with the changes required by SB 743, traffic studies would be less complicated and CEQA analysis may be streamlined, depending on the project’s proximity to transit. Private consulting businesses that prepare environmental documents may generate less revenue for preparing less expensive studies, but their receipts would vary based on project-specific factors, including project complexity and location.

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

### **Specific Purposes of Amendment**

The Agency has amended several portions of existing section 15064.4, as described below. The Agency added section 15064.4 to the CEQA Guidelines in 2010 as part of a package of amendments addressing greenhouse gas emissions, as directed by Senate Bill 97 (Dutton, 2007). The purpose of section 15064.4 is to assist lead agencies in determining the significance of a project’s greenhouse gas emissions on the environment.

#### *Subdivision (a)*

The first change is in subdivision (a) of section 15064.4. Subdivision (a) currently states that lead agencies “should” make a good faith effort to estimate or describe a project’s greenhouse gas emissions. The Agency replaced the word “should” with the word “shall” to clarify that evaluation of a project’s greenhouse gas emissions is a requirement of CEQA. (See Pub. Resources Code, § 21083.05; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 90-91 [“climate-change impacts are significant environmental impacts requiring analysis under CEQA”]; *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497 (SANDAG); see also CEQA Guidelines, § 15005 [defining the terms “should” and “shall”].) This clarification is necessary because some agencies continue to provide information regarding climate change in their projects’ environmental documents without actually determining whether the project’s greenhouse gas emissions are significant. A similar clarifying change has been made in subdivision (b), replacing the word “assessing” with the word “determining.” CEQA requires a lead agency to determine the significance of all environmental impacts. (Pub. Resources Code, § 21082.2; CEQA Guidelines, § 15064.)

#### *Subdivision (b)*

The Agency updated subdivision (b) of section 15064.4 by adding four sentences. That subdivision currently provides a list of factors that a lead agency should use when evaluating a project's greenhouse gas emissions. First, the Agency added a sentence clarifying that the focus of the lead agency's analysis should be on the project's effect on climate change. This clarification is necessary to avoid an incorrect focus on the quantity of emissions, and in particular how that quantity of emissions compares to statewide or global emissions. (See, e.g., *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 842 [invalidating an EIR that based its significance determination partly on comparing the project's emissions to statewide emissions]; *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 228 [invalidating an EIR because the lead agency did not provide sufficient evidence that "the Scoping Plan's statewide measure of emissions reduction can also serve as the criterion for an individual land use project"]; see also *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160-198-200 [upholding agency's greenhouse gas analysis that did not quantify emissions].) The Agency further clarified that lead agencies should consider the reasonably foreseeable incremental contribution of the project's emissions to the effects of climate change. In doing that analysis, agencies should avoid speculation. (CEQA Guidelines, §§ 15144 ["an agency must use its best efforts to find out and disclose all that it reasonably can"], 15145 ["[i]f, after a thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact"].)

In the second sentence of subdivision (b), the Agency clarified that a project's incremental contribution may be cumulatively considerable even if it appears relatively small compared to statewide, national or global emissions. This change is consistent with existing case law discussing cumulative impacts and the applicable portions of the Public Resources Code. The impacts analysis of greenhouse gas emissions is global in nature; "the fact that carbon dioxide and other greenhouse gases, once released into the atmosphere, are not contained in the local area of their emission means that the impacts to be evaluated are also global rather than local." (*Center for Biological Diversity v. Dept. of Fish & Wildlife*, *supra*, 62 Cal.4th at p. 220; *SANDAG*, *supra*, 3 Cal.5th at p. 512.) "[A]n individual project's emissions will most likely not have any appreciable impact on the global problem by themselves, but they will contribute to the significant cumulative impact caused by greenhouse gas emissions from other sources around the globe." (*Center for Biological Diversity v. Dept. of Fish & Wildlife*, *supra*, 62 Cal.4th at p. 219; *SANDAG*, *supra*, 3 Cal.5th at p. 512.) Thus, the primary question to be answered in the impacts analysis is "whether the project's incremental addition of greenhouse gases is 'cumulatively considerable' in light of the global problem, and thus significant." (*Ibid.*) Depending on the proposed project, the project's incremental contribution of greenhouse gases, even if minor, may be cumulatively considerable. (See *SANDAG*, *supra*, 3 Cal.5th at p. 515 ["The fact that a regional plan's contribution to reducing greenhouse gas emissions is likely to be small on a statewide level is not necessarily a basis for concluding that its impact will be insignificant in the context of a statewide goal."].)

In the third sentence of subdivision (b), the Agency added that lead agencies should consider a timeframe for the analysis that is appropriate for the project. CEQA requires agencies to consider a project's direct and indirect significant impacts on the environment, "giving due consideration to both the short-term and long-term effects." (CEQA Guidelines, § 15126.2, subd. (a); see Pub. Resources Code,

§ 21001, subd. (d) [state policy “[e]nsure[s] that the long-term protection of the environment . . . shall be the guiding criterion in public decisions”]; § 21001, subd. (g) [state policy requires “governmental agencies at all levels to consider . . . long-term benefits and costs, in addition to short-term benefits and costs . . .”]; § 21083 [requiring preparation of an EIR for a project that “has the potential to . . . achieve short-term, to the disadvantage of long-term, environmental goals”].) In some cases, it would be appropriate for agencies to consider a project’s long-term greenhouse gas impacts, such as for projects with long time horizons for implementation.

In the fourth sentence of subdivision (b), the Agency clarified that an agency’s analysis must reasonably reflect evolving scientific knowledge and state regulatory schemes. This clarification acknowledges *SANDAG, supra*, 3 Cal.5th 497. In that case, the California Supreme Court addressed the adequacy of an EIR prepared for a long-range regional transportation plan. In addressing the plan’s greenhouse gas emissions, the Court held the lead agency did not abuse its discretion by declining to analyze the consistency of projected long-term greenhouse gas emissions with the goals of an executive order declaring an emissions reduction goals for 2050. But the Court further stated: “we do not hold that the analysis of greenhouse gas impacts employed by SANDAG in this case will necessarily be sufficient going forward. CEQA requires public agencies like SANDAG to ensure that such analysis stay in step with evolving scientific knowledge and state regulatory schemes.” (*Id.* at p. 504; *see id.* at p. 519.)

The agency also changed subdivision (b)(3) of section 15064.4. That subdivision currently discusses the consideration of whether a project complies with a plan or regulation to reduce greenhouse gas emissions. The Agency clarified the first sentence of subdivision (b)(3) by adding a reference to CEQA Guidelines section 15183.5, which governs the contents of an agency’s plan for the reduction of greenhouse gas emissions. This addition is needed to clarify that lead agencies may rely on plans prepared pursuant to section 15183.5 in evaluating a project’s greenhouse gas emissions. This change is consistent with the Agency’s Final Statement of Reasons for the addition of section 15064.4, which states that “proposed section 15064.4 is intended to be read in conjunction with . . . proposed section 15183.5. Those sections each indicate that local and regional plans may be developed to reduce GHG emissions.” (Natural Resources Agency, Final Statement of Reasons (December 2009), p. 27; *see Mission Bay Alliance v. Office of Community Investment & Infrastructure, supra*, 6 Cal.App.5th at pp. 201-202 [upholding agency’s reliance on greenhouse gas strategy].)

Finally, the Agency added another sentence to subdivision (b)(3). The Agency clarified that in determining the significance of a project’s impacts, the lead agency may consider a project’s consistency with the State’s long-term climate goals or strategies, provided that substantial evidence supports the agency’s analysis of how those goals or strategies address the project’s incremental contribution to climate change and its conclusion that the project’s incremental contribution is consistent with those plans, goals, or strategies. This clarification implements the California Supreme Court’s decision in *Center for Biological Diversity v. Dept. of Fish & Wildlife, supra*, 62 Cal.4th 204. In that case, the EIR used consistency with Assembly Bill 32’s greenhouse gas emissions reduction goals as a significance threshold. The EIR also discussed the California Air Resources Board’s Scoping Plan and “business as usual” (BAU) scenario, and found that the project would emit less than the BAU scenario. The Court concluded that the agency used a permissible significance threshold, but failed to support with

substantial evidence the finding that the project’s greenhouse gas emissions would not have a cumulatively significant impact on the environment. (Id. at pp. 218-222, 225.) As the Court stated, the lead agency failed to establish through substantial evidence “a quantitative equivalence between the Scoping Plan’s statewide comparison and the EIR’s own project-level comparison . . . .” (Id. at p. 227.)

#### *Subdivision (c)*

The Agency added subdivision (c) to address the use of models and methodologies. The Agency clarifies that the lead agency has discretion to select the model or methodology it considers most appropriate to enable decision makers to intelligently take into account the project’s incremental contribution to climate change. Most of the text in the new subdivision (c) was taken from subdivision (a)(1) of the current section 15064.4. Additionally, the clarification regarding the agency’s discretion in selecting an appropriate model or methodology is consistent with CEQA Guidelines section 15151, which addresses the standards for adequacy of EIRs. (*Ibid.* [“An EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make decision which intelligently takes account of environmental consequences.”].) Models play a role not only in estimating a project’s greenhouse gas emissions, but also in determining baseline emissions and applying thresholds. Moving the text to subdivision (c) clarifies that the guidance on models applies to the entire section. However, when an agency relies completely on a single quantitative method, it must research and document the quantitative parameters essential to that method. (*Center for Biological Diversity v. Dept. of Fish & Wildlife, supra*, 62 Cal.4th at p. 228.)

#### **Necessity**

The proposed amendments to CEQA Guidelines section 15064.4 are necessary to reflect recent case law involving climate change analysis, including decisions from the California Supreme Court. (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497; *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70.) In addition to proposing necessary updates to this section, the 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.

#### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

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 case law. Additionally, the proposed action adds no new substantive requirements. 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 the change is a clarifying change only and would be implementing existing case law.

## **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The action implements and clarifies existing case law. Because the action does not add new substantive requirements, it will not result in an adverse impact on businesses in California.

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

#### **Specific Purposes of the Amendment**

This section provides additional explanation of thresholds of significance. Section 15064.7 defines a threshold as “an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will *normally* be determined to be significant by the agency and compliance with which means the effect *normally* will be determined to be less than significant.” (CEQA Guidelines § 15064.7, subd. (a) (emphasis added).)

Thresholds of significance can inform not only the decision of whether to prepare an EIR but also the identification of effects to be analyzed in depth in the EIR, the requirement to make detailed findings on the feasibility of alternatives or mitigation measures to reduce or avoid the significant effects, and when found to be feasible, changes in the project to lessen the adverse environmental impacts.

Because environmental standards, if used correctly, may promote efficiency in the environmental review process, the Natural Resources Agency added subdivision (d) to CEQA Guidelines, Section 15064.7 on thresholds of significance. Consistent with the rulings in both *Communities for a Better Environment, et al., v. Resources Agency* (2002) 103 Cal.App.4th and *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4<sup>th</sup>, the first sentence recognizes that lead agencies may treat environmental standards as thresholds of significance. By promoting the use of environmental standards as thresholds of significance, the changes in Section 15064.7 are intended to make determinations of significance simpler and more predictable for all participants in the environmental review process.

The second sentence explains that in adopting or applying an environmental standard as a threshold, the lead agency should explain how application of the environmental standard indicates a less than significant effect. This sentence recognizes the court’s caution in *Protect the Historic Amador Waterways* that “thresholds cannot be used to determine automatically whether a given effect will or will not be significant.” (*Protect the Historic Amador Waterways, supra*, 116 Cal. App. 4<sup>th</sup> at pp. 1108-1109; see also *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 717.) This sentence is also consistent with a similar provision in existing subdivision (h)(3), which states: “When relying on a plan, regulation or program [to evaluate cumulative impacts], the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project’s incremental

contribution to the cumulative effect is not cumulatively considerable.” (CEQA Guidelines, § 15064, subd. (h)(3); see also §§ 15063, subd. (d)(3) (requiring an initial study to include sufficient information to support its conclusions); and, 15128 (requiring a lead agency to explain briefly the reasons that an impact is determined to be less than significant and therefore was not analyzed in an EIR).)

Finally, the third sentence provides criteria to assist a lead agency in determining whether a particular environmental standard is appropriate for use as a threshold of significance. The first criterion requires that the standard actually be adopted by some formal mechanism. Standards that have already undergone the scrutiny of a formal adoption process are more likely to provide a sound benchmark against which to measure a particular project’s impacts. The second criterion requires the standard to actually be adopted for the purpose of environmental protection. Such standards are more likely to provide useful information about a project’s environmental impacts than, for example, consumer protection standards. The third criterion requires that the standard actually govern the impact at issue. This is necessary to ensure that the standard relates to the impact of concern. (See, e.g., *Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 16–20; *Berkeley Keep Jets Over the Bay Com. v. Board of Port Comm.* (2001) 91 Cal.App.4th 1344, 1382 (requiring analysis of single event noise despite compliance with cumulative noise standard).) The last criterion is that the standard must actually govern the project type. For example, some standards address plan-level activities, while others address project-specific activities.

Other changes in this section clarify that lead agencies may, but are not required to, formally adopt thresholds. Lead agencies may also use thresholds on a case-by-case basis.

### **Necessity**

The change is necessary to clarify a lead agency’s obligation to determine the significance of a proposed project and what evidence it must consider in reaching that conclusion. The Natural Resources Agency’s revision clarifies that compliance with relevant standards may be a basis for determining that the project’s impacts are less than significant. The changes in this section are necessary to assist lead agencies in determining when environmental standards may be used for this purpose.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Natural Resources Agency’s Reasons for Rejecting Those Alternatives**

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 Natural Resources Agency’s determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with current case law, and the proposed action adds no new substantive

requirements. The Natural Resources 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

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

### **Specific Purposes of the Amendment**

CEQA Guidelines section 15072 describes a lead agency's obligations to provide notices of intent to specified recipients before the lead agency adopts a negative declaration or a mitigated negative declaration. The Natural Resources Agency made two changes to this section in response to concerns raised by stakeholders.

First, stakeholders have noted that there is some confusion about the word "referenced" as used in the CEQA Guidelines. (CEQA Guidelines, §§ 15072 and 15087.) Specifically, Section 15072(h) states that a notice of intent must list the address where all documents referenced in an initial study must be specified. Some agencies interpret "referenced" to mean every document that is cited in the environmental document, where others interpret it to mean every document that is incorporated by reference into the document pursuant to CEQA Guidelines, section 15150.

Documents that are "incorporated by reference" provide a portion of the document's overall analysis, and because the final initial study must reflect the independent judgment of the lead agency, one would expect a copy of the incorporated document to actually be among the lead agency's files. Other referenced documents may only provide supplementary information, and may be contained in a consultant's files or research libraries. While still valid sources of information, it is less important for such documents to actually be in the lead agency's possession. The Natural Resources Agency, therefore, finds that the latter interpretation to be a more practical interpretation of CEQA.

Second, the Natural Resources Agency added a sentence to subdivision (e) of Section 15072. The purpose of this subdivision is to list the agencies and entities in which a lead agency shall or may consult prior to completing an environmental impact report. (See, Pub. Resources Code, § 21104 (stating that the lead agency shall consult with, and obtain comments from each responsible,

trustee, or public agency that has jurisdiction over the project).) The Agency has clarified in this subdivision that lead agencies should consult public transit agencies with facilities within one-half mile of the proposed project. Doing so is likely to promote early information sharing and to avoid potential conflicts.

### **Necessity**

This addition is necessary to improve noticing standards, provide internal consistency between sections 15072, 15082 and 15150 of the CEQA Guidelines, and clarify that CEQA itself does not mandate that a lead agency include every document cited in an EIR for public review.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Natural Resources Agency's Reasons for Rejecting Those Alternatives**

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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be internally consistent, and the proposed action adds no new substantive requirements. The Natural Resources 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

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

### **Specific Purposes of the Amendment**

This section prescribes the use and content of a Notice of Determination on a project for which a proposed negative or mitigated negative declaration has been approved. The existing regulation spells out minimum contents so that people can recognize whether a particular notice applies to the project with which they are concerned. The section notes that the effect of filing the notice is to start a short statute of limitations period. If the notice is not filed, a longer period would apply. Failure to comply with all the requirements for filing notices of determination results in the longer, 180-day, statute of limitations.

Pursuant to Assembly Bill 320 (Hill, 2011), the Natural Resources Agency has added a new subdivision (b)(8) to Section 15075 of the CEQA Guidelines. AB 320 amended Public Resource Code sections 21108 and 21152 to require certain information to be included in the Notice of Determination consistent with CEQA Guidelines section 21065, subdivisions (b) and (c). AB 320 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. Thus, the Natural Resources Agency added subdivision (b)(8) to section 15075 of the CEQA Guidelines to provide consistency with Public Resources Code, section 21108 and 21152.

### **Necessity**

The amendment to CEQA Guidelines section 15075 is necessary to reflect the Legislative changes. The language of this section of the CEQA Guidelines follows the direction of the Legislature and ensures that that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Natural Resources Agency's Reasons for Rejecting Those Alternatives**

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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with Sections 21108 and 21152 of the Public Resources Code, and the proposed action adds no new substantive requirements per se. Rather, additional information regarding the project applicant must be included in the forms filed by public agencies. The Natural Resources 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

### **15082. NOTICE OF PREPARATION AND DETERMINATION OF SCOPE OF EIR Specific Purposes of the Amendment**

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, among a lead agency and responsible and trustee agencies where the lead agency is preparing an EIR that will be used by these agencies in reviewing and approving a project.

The Natural Resources Agency amended subdivision (a) of Section 15082 of the CEQA Guidelines. Currently, subdivision (a) of Section 15082 states that a lead agency must 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. Public Resources Code, Section 21092.3 also requires that the notices be posted in the office of the county clerk of each county in which the project will be located. The Natural Resources Agency, therefore, included a statement that the notice must also be filed with the county clerk of each county within which the project is located.

### **Necessity**

This addition is necessary to accurately reflect the procedural requirement stated in the Public Resources Code, which also requires posting with the county clerk.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Natural Resources Agency’s Reasons for Rejecting Those Alternatives**

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 Natural Resources Agency’s determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with the Act, and the proposed action adds no new substantive requirements. The Natural Resources 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## **15086. CONSULTATION CONCERNING DRAFT EIR Specific Purposes of the Amendment**

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. (Pub. Resources Code, § 21092.4.)

Among the other agencies with whom a lead agency should consult, the Natural Resources Agency clarified in subdivision (a)(5) of Section 15086 that lead agencies should also consult public transit agencies facilities within one-half mile of the proposed project. Doing so is likely to promote early information sharing and resolution of potential conflicts.

### **Necessity**

This addition is necessary to improve noticing standards by involving affected public transit agencies in the preparation of an environmental impact report and to ensure environmental transportation impacts are fully considered in accordance to the general statutory mandate under CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Natural Resources Agency's Reasons for Rejecting Those Alternatives**

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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to be consistent with the Act, and the proposed action adds no new substantive requirements. The Natural Resources 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

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

### **Specific Purposes of the Amendment**

CEQA Guidelines section 15087 sets forth procedures for public notice applying to the public review of draft EIRs.

The Natural Resources Agency made two separate amendments to this section. The first is an addition to subdivision (c)(2) of section 15087 that the lead agency may specify the manner in

which it will receive written comments. The second clarifies the requirement in (g)(4) of section 15087 that all documents referenced in the draft environmental impact report or negative declaration be available for review.

*CEQA Guidelines section 15087, subd. (c)(2)*

Advances in technology have altered the nature of the public's interactions with government agencies. Many public agencies now incorporate the internet and social media into their outreach and public participation strategies. (See, e.g., Office of Planning and Research, Book of Lists (2003), pp. 94-99 (listing local governments that use the internet and e-mail as forms of public engagement); see also Institute for Local Government, "A Local Official's Guide to Online Public Engagement" (2012).) In light of these changes, it is appropriate to allow a lead agency to specify that formal written comments must be submitted to a particular physical or electronic mail address and not, for example, a posting on social media.

Similarly, the public has expanded its use of the internet and digital storage to provide increasing amounts of data and information to decision-makers.

Therefore, the Natural Resources Agency clarified in Section 15087, subdivision (c)(2) that the lead agency may specify the manner in which it will receive written comments. This is an important clarification given that failure to respond to a timely submitted comment may lead to invalidation of a project for failure to comply with CEQA. Further, it is important for the public to understand the way to best make its views known to decisionmakers. Thus, this change promotes both public participation in the CEQA process and predictable outcomes in the CEQA process.

*CEQA Guidelines, 15087, subd. (c)(5)*

CEQA requires a lead agency to provide notice that it is preparing an EIR or a negative declaration, and such notice "shall specify ... the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review ...." (Pub. Resources Code § 21092, subds. (a) and (b).) Stakeholders have noted that there is some confusion about the word "referenced" as used in that section and in the CEQA Guidelines. (CEQA Guidelines §§ 15072, 15087.) Some agencies interpret "referenced" to mean every document that is cited in the environmental document, where others interpret it to mean every document that is incorporated by reference into the document pursuant to Section 15150.

Documents that are "incorporated by reference" provide a portion of the document's overall analysis, and because the final initial study must reflect the independent judgment of the lead agency, one would expect a copy of the incorporated document to actually be among the lead agency's files. Other referenced documents may only provide supplementary information, and may be contained in a consultant's files or research libraries. While still valid sources of information, it is less important for

such documents to actually be in the lead agency's possession. The Natural Resources Agency, therefore, finds that the latter interpretation to be a more practical interpretation of CEQA.

### **Necessity**

The clarification of subdivision (c)(2), of section 15087 is necessary to accommodate those agencies that wish to publicize the availability a draft environmental impact report on the internet or social media, and to make clear that responses will not be prepared for comments made in internet chat-rooms or via social media.

Additionally, in enacting CEQA, the Legislature declared that "it is the policy of the state that ... [a]ll persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner ...." (Pub. Resources Code § 21003, subd. (f).) The changes to subdivision (c)(5) would also provide internal consistency between sections 15072, 15082 and 15150 of the Guidelines and would clarify that CEQA itself does not mandate that a lead agency include every document cited in an EIR for public review.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Natural Resources Agency's Reasons for Rejecting Those Alternatives**

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 Natural Resources Agency's determination that the proposed action is necessary to update the CEQA Guidelines to carry out the CEQA process in the most efficient, expeditious manner, to be internally consistent, and the proposed action adds no new substantive requirements. The Natural Resources 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

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

### **Specific Purposes of the Amendment**

This section explains that evaluation and response to public comments is an essential part of the CEQA process. Failure to comply with these requirements can lead to disapproval of a project. To avoid this problem, it is necessary to identify the requirements for responding to comments

in the CEQA Guidelines. This section is also necessary to explain different ways in which the responses to comments can be prepared. The options of revising the draft or adding the comments and responses as a separate section of the final EIR match the permissible approaches under NEPA.

In light of the increasing use of the internet in public engagement, as well as current case law, the Natural Resources Agency clarified the scope of a lead agency's duty to respond to comments as described in Section 15088. Specifically, the Agency updated that section to state that responses to general comments may be general. Further, the Agency clarified 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.

The Natural Resources Agency also clarified in Section 15088, subdivision (b) that a lead agency may provide proposed responses to public agency comments in electronic form. This change is consistent with the policy stated in Public Resources Code Section 21003, subdivision (f), that "agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner[.]" The change is also consistent with the trend of making more government documents available electronically. (*See, e.g.,* Senate Bill 122 (Jackson, 2016) (allowing the State Clearinghouse to require submission of documents in electronic form).)

### **Necessity**

This clarification is necessary to define the scope of a lead agency's duty to respond to comments as described in section 15088. Specifically, these changes are necessary to clarify that responses to general comments may be general. Further, these changes are necessary 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. Additionally, in enacting CEQA, the Legislature declared that "it is the policy of the state that ... [a]ll persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner ...." (Pub. Resources Code § 21003, subd. (f).)

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

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 carry out the CEQA process in the most efficient, expeditious manner, to be internally consistent, and the

proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## **15094. NOTICE OF DETERMINATION**

### **Specific Purposes of the Amendment**

This section prescribes the use and content of the Notice of Determination. The existing regulation spells out minimum contents so that people can recognize whether a particular notice applies to the project with which they are concerned. The section notes that the effect of filing the notice is to start a short statute of limitations period. If the notice is not filed, a longer period would apply. Failure to comply with all of the requirements for filing notices of determination results in the longer, 180-day, statute of limitations.

Pursuant to Assembly Bill 320 (Hill, 2011), the Natural Resources Agency added a new subdivision (b)(10) to Section 15094 of the CEQA Guidelines. AB 320 amended Public Resource Code, sections 21108 and 21152 requiring information to be included in the Notice of Determination consistent with CEQA Guidelines section 21065, subdivisions (b) and (c). AB 320 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. Thus, the Agency added subdivision (b)(10) to section 15094 of the CEQA Guidelines to provide consistency with Public Resources Code, section 21108 and 21152.

### **Necessity**

The amendment to CEQA Guidelines section 15094 is necessary to reflect the Legislative changes made in AB 320 (2011). The language of this section of the CEQA Guidelines follows the direction of the Legislature and ensures that that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

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 Sections 21108 and 21152 of the Public Resources Code, and the proposed action adds no new substantive requirements. Rather, additional information regarding the project applicant must be included in the forms filed by public agencies. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

### **15107. COMPLETION OF NEGATIVE DECLARATION FOR CERTAIN PRIVATE PROJECTS Specific Purposes of the Amendment**

This section reflects the statutory requirement that a Negative Declaration be completed and adopted within 180 days of the day a private project is accepted as complete for processing. The Natural Resources Agency added a sentence to Section 15107 clarifying 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.

### **Necessity**

This addition is necessary to allow 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. (CEQA Guidelines, § 15108 (lead agency may extend the deadline for the completion of an environmental impact report "...[O]nce for a period of not more than 90 days upon consent of the lead agency and the applicant".))

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

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

internally consistent, and the proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## **15124. PROJECT DESCRIPTION**

### **Specific Purposes of the Amendment**

This section requires the EIR 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. The Natural Resources Agency amended subdivision (b) of Section 15124 to clarify that the general description of a project 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.

### **Necessity**

This clarification is necessary to ensure that the CEQA Guidelines are consistent with case law. (See *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 192 (determined an accurate project description allows decision makers to balance the proposal's benefit against its environmental cost).) The clarification ensures that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

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 the case law, and the proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

## **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

### **15125. ENVIRONMENTAL SETTING**

#### **Specific Purposes of the Amendment**

This section of the CEQA Guidelines requires an EIR to describe the environmental setting of the project so that the changes can be seen in context. Section 15125 of the CEQA Guidelines has for years described the general rule: “normally,” the baseline consists of physical environmental conditions “as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced.” In recent years, several decisions of the courts of appeal and the California Supreme Court have focused on exceptions to this general rule. In response, the Natural Resources Agency has added a statement of purpose and three subdivisions to subdivision Section 15125, subdivision (a).

#### *Subdivision (a) – Purpose*

In the body of subdivision (a), the Natural Resources Agency added a sentence stating 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. This sentence paraphrases the Supreme Court’s description of the requirement in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439. (See *id.* at 455 (“Even when a project is intended and expected to improve conditions in the long term--20 or 30 years after an EIR is prepared--decision makers and members of the public are entitled under CEQA to know the short- and medium-term environmental costs of achieving that desirable improvement. ... [¶] ... The public and decision makers are entitled to the most accurate information on project impacts practically possible, and the choice of a baseline must reflect that goal”); see also *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310.) The purpose of adding this sentence to subdivision (a) is to guide lead agencies in the choice between potential alternative baselines. When in doubt, lead agencies should choose the baseline that most meaningfully informs decision-makers and the public of the project’s possible impacts.

#### *Subdivision (a)(1) – General Rule*

New subdivision (a)(1) sets forth the general rule: normally, conditions existing at the time of the environmental review should be considered the baseline. The first sentence largely consists of language that was moved from the body of existing subdivision (a) and that states this general rule. The second sentence provides that a lead agency may look back to historic conditions to establish a baseline where existing conditions fluctuate, provided that it can

document such historic conditions with substantial evidence. (See, *Communities for a Better Environment, supra*, 48 Cal.4th at pp. 327-328 (“Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods”) (quoting *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125); see also *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.)

The third sentence provides that a lead agency may describe both existing conditions as well as future conditions. (*Neighbors, supra*, 57 Cal. 4th at p. 454 (“nothing in CEQA law precludes an agency... from considering both types of baseline--existing and future conditions--in its primary analysis of the project's significant adverse effects”).) The court in the *Neighbors* decision described examples of when it might be appropriate to focus on conditions existing at the time the project commences operations:

For example, in an EIR for a new office building, the analysis of impacts on sunlight and views in the surrounding neighborhood might reasonably take account of a larger tower already under construction on an adjacent site at the time of EIR preparation. For a large-scale transportation project ..., to the extent changing background conditions during the project's lengthy approval and construction period are expected to affect the project's likely impacts, the agency has discretion to consider those changing background conditions in formulating its analytical baseline.

(*Id.* at 453.)

#### *Subdivision (a)(2) – Exceptions to the General Rule*

Proposed subdivision (a)(2) sets forth the exception to the general rule, and conditions allowing lead agencies to use an alternative baseline. The first sentence explains that existing conditions may be omitted in favor of an alternate baseline where “use of existing conditions would be either misleading or without informative value to decision-makers and the public.” (See, *Neighbors, supra*, 57 Cal.4th at p. 453 (“To the extent a departure from the ‘norm[.]’ of an existing conditions baseline (CEQA Guidelines, § 15125(a)) promotes public participation and more informed decisionmaking by providing a more accurate picture of a proposed project's likely impacts, CEQA permits the departure. Thus, an agency may forego analysis of a project's impacts on existing environmental conditions if such an analysis would be uninformative or misleading to decision makers and the public”).) Notably, the Court in the *Neighbors* case highlighted a useful example of when future conditions might provide a more useful analysis:

In this illustration, an existing industrial facility currently emits an air pollutant in the amount of 1,000 pounds per day. By the year 2020, if no new project is undertaken at the facility, emissions of the pollutant are projected to fall to 500 pounds per day due to enforcement of regulations already adopted and to turnover in the facility's vehicle fleet. The operator proposes to use the facility for a new project that will emit 750 pounds per day of the pollutant upon implementation and through at least 2020. An

analysis comparing the project's emissions to existing emissions would conclude the project would reduce pollution and thus have no significant adverse impact, while an analysis using a baseline of projected year 2020 conditions would show the project is likely to increase emissions by 250 pounds per day, a (presumably significant) 50 percent increase over baseline conditions.

(*Neighbors, supra*, 57 Cal. 4th at 453, n 5.)

The first sentence in subdivision (a)(2) also describes the procedural requirement that the lead agency must expressly justify its decision not to use existing conditions as the baseline for environmental analysis, and that justification must be supported with substantial evidence in the record. (See *id.* at 457.) The second sentence provides that if future conditions are to be used, they must be based on reliable projections grounded in substantial evidence. This provision reflects the court's concern regarding gamesmanship and manipulation as stated in the *Neighbors* decision, as well as the concern that predictive modeling may not be readily understood by the public. (*Id.* at pp. 455-456; see also Pub. Resources Code, §§ 21003(b) (CEQA documents shall "be organized and written in a manner that will be meaningful and useful to decision makers and to the public"), 21080(e)(2) ("Substantial evidence" does not include "speculation ... or ... evidence that is clearly inaccurate or erroneous").)

#### *Subdivision (a)(3) – Hypothetical Conditions*

Subdivision (a)(3) specifies that hypothetical conditions may not be used as a baseline. Specifically, this proposed subdivision states that lead agencies may not measure project impacts against conditions that are neither existing nor historic, such as those that might be allowed under existing permits or plans. As the Supreme Court explained in its *CBE* decision: "[a]n approach using hypothetical allowable conditions as the baseline results in 'illusory' comparisons that 'can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts,' a result at direct odds with CEQA's intent." (*Communities for a Better Environment, supra*, 48 Cal. 4th at 322 (quoting *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal. App. 3d 350, 358).)

These changes reflect in large part suggestions of the Association of Environmental Professionals and American Planning Association, and, to a degree, those submitted by the California Building Industry Association. (See "Recommendations for Updating the State CEQA Guidelines American Planning Association, California Chapter; Association of Environmental Professionals; and Enhanced CEQA Action Team (August 30, 2013), at pp. 1-2; see also Letter from the California Building Industry Association, February 14, 2014.) This proposal, however, breaks the new guidance into subdivisions to more clearly identify (1) the general rule, (2) acceptable exceptions to the general rule and conditions for using alternative baselines, and (3) prohibited alternative baselines.

#### **Necessity**

This clarification is necessary to reflect the California Supreme Court’s decision in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4<sup>th</sup> 439. The description of the environmental setting plays a key role in the CEQA process by providing the baseline against which the project’s potential impacts are measured. It is necessary to guide lead agencies in the choice between potential alternative baselines.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

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 the California Supreme Court’s decision, and the proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

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

### **Specific Purposes of the Amendment**

This section of the CEQA Guidelines describes how an EIR must identify and focus on the significant environmental effects, unavoidable significant environmental effects, unavoidable significant environmental effects, significant irreversible environmental changes, and growth-inducing impacts which may result from a project. The Natural Resources Agency made two separate additions to this section.

#### *Changes in Subdivision (a), Relating to Hazards*

First, the Natural Resources Agency changed subdivision (a) to specifically address the California Supreme Court’s decision in *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4<sup>th</sup> 369. In that case, the Court held that “agencies subject to CEQA generally are not required to analyze the impact of existing environmental conditions on a project’s future users or residents” but they must analyze hazards the project might risk

exacerbating. In reaching that conclusion, the Court also found that two sentences in existing Section 15126.2, subdivision (a), were invalid.

Changes appear in the first, as well as the fifth through the eighth, sentences in existing Section 15126.2(a). The first change clarifies that the focus of a CEQA analysis is the project's effect on the environment. Second, these changes add the words "or risks exacerbating" to the fifth sentence regarding impacts a project may cause by bringing people or development to the affected area. This addition clarifies that an EIR must analyze not just impacts that a project might cause, but also existing hazards that the project might make worse. This clarification implements the Supreme Court's holding in the *CBIA* case. (62 Cal. 4th at 377 ("when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users").) In this context, an effect that a project "risks exacerbating" is similar to an "indirect" effect. Describing "indirect effects," the CEQA Guidelines state: "If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment." (State CEQA Guidelines § 15064(d)(2).) Just as with indirect effects, a lead agency should confine its analysis of exacerbating effects to those that are reasonably foreseeable. (*Id.* at subd. (d)(3).) Notably, by stating that EIRs should analyze effects that a project might "cause or risk exacerbating," this clarification also makes clear that EIRs need not analyze effects that the project does not cause directly or indirectly.

The third change deletes the sentences (using developing on a fault-line as an example of a hazard that requires analysis) that the Supreme Court specifically held exceeded CEQA's scope. This change is necessary to implement the Court's holding regarding the scope of analysis that CEQA requires.

Notably other laws require analysis of seismic hazards. Public Resources Code Section 2697, for example, requires cities and counties to prepare a site-specific geologic report prior to approval of most projects in a seismic hazard zone. Regulations further clarify that such "project shall be approved only when the nature and severity of the seismic hazards at the site have been evaluated in a geotechnical report and appropriate mitigation measures have been proposed." (Cal. Code Regs, tit. 14, § 3724.) Further, the California Building Code contains provisions requiring all buildings to be designed to withstand some seismic activity. (See, e.g., tit. 24, § 1613.1.)

The safety elements of local general plans will also describe potential hazards, including: "any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence; liquefaction; and other seismic hazards ..., and other geologic hazards known to the legislative body; flooding; and wildland and urban fires." (Gov. Code § 65302(g)(1).) Hazards associated with flooding, wildfire and climate change require special consideration. (*Id.* at subd. (g)(2)-(g)(4).) Lead agencies must "discuss any inconsistencies between the proposed project and applicable general plans" related to a project's potential environmental impacts in a project's environmental review. (State CEQA Guidelines § 15125(d).) Local governments may regulate land use to protect public health and welfare pursuant to their police power. (Cal. Const., art. XI, § 7; *California Building Industry Assn. v. City of San*

*Jose* (2015) 61 Cal. 4th 435, 455 (“so long as a land use restriction or regulation bears a reasonable relationship to the public welfare, the restriction or regulation is constitutionally permissible”).)

The fourth change clarifies that a project’s direct and indirect and cumulative effects may affect the hazardous condition, and therefore, must still be evaluated in CEQA. In fact, such effects are particularly important when a project locates in a hazardous location. For example, a project proposed on a coastline may not itself cause pre-existing erosive forces. However, according to the Court in the *CBIA* case, a lead agency would need to include any relevant hazards in the environmental document’s description of the environmental setting. Further, in the case of coastal development, if sea walls or other shoreline structures are necessary to protect the project from erosion, the sea wall may contribute to cumulative erosion impacts nearby on the coast. Such a development might also lead to indirect effects such as dispersion of pollutants from inundation, increased maintenance and repair-related construction, impedance of evacuation routes, increased demand on emergency services, etc. Thus, harm to the project would not mandate a finding of a significant effect; however, any environmental effects that might result from the harm to the project, and predictable responses to that harm, are properly evaluated in a CEQA evaluation.

The final addition clarifies that a lead agency should consider not just existing hazards, but the potential for increasing severity of hazards over time. This change is necessary because certain types of hazards are expected to be more severe in the future due to our changing climate. Examples include increased flooding (resulting from more precipitation falling as rain instead of snow as well as from rising sea levels) and more intense wildfires. These types of climate change impacts may worsen a proposed project’s direct, indirect, or cumulative environmental effects in the future. A lead agency need not engage in speculation regarding such effects. Rather, hazard zones may be clearly identified in authoritative maps, such as those found on the Cal-Adapt website (<http://cal-adapt.org/>), or in locally adopted general plan safety elements and local hazard mitigation plans. Notably, pursuant to new requirements in Government Code section 65302(g)(4), added by Senate Bill 379, general plans will identify “geographic areas at risk from climate change impacts[.]” Focus on both short-term and long-term effects is also necessary to implement express legislative policy. (Pub. Resources Code §§ 21001(d), (g); 21083(b)(1).)

Consideration of future conditions in determining whether a project’s impacts may be significant is consistent with CEQA’s rules regarding baseline. “[N]othing in CEQA law precludes an agency ... from considering both types of baseline—existing and future conditions—in its primary analysis of the project’s significant adverse effects.” (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439, 454.) “The key ... is the EIR’s role as an informational document.” (*Id.* at 453.)

#### *New Subdivision (b), Relating to Energy Impacts*

The Natural Resources Agency also added a new subdivision (b) to Section 15126.2 discussing the required contents of an environmental impact report. The new subdivision specifically addressed the required analysis of a project’s potential energy impacts which is currently

housed within Appendix F of the CEQA Guidelines. Appendix F was revised in 2009 to clarify that analysis of energy impacts is mandatory. The Agency adds a subdivision on energy impacts to further elevate the issue and remove any question about whether such an analysis is required.

As background, in 1974, the Legislature adopted the Warren-Alquist State Energy Resources Conservation and Development Act. (Pub. Resources Code, § 25000 et seq.) That act created what is now known as the California Energy Commission, and enabled it to adopt building energy standards. (See, e.g., *id.* at § 25402.) At that time, the Legislature found the “rapid rate of growth in demand for electric energy is in part due to wasteful, uneconomic, inefficient, and unnecessary uses of power and a continuation of this trend will result in serious depletion or irreversible commitment of energy, land and water resources, and potential threats to the state’s environmental quality.” (*Id.* at § 25002; see also § 25007 (“It is further the policy of the state and the intent of the Legislature to employ a range of measures to reduce wasteful, uneconomical, and unnecessary uses of energy, thereby reducing the rate of growth of energy consumption, prudently conserve energy resources, and assure statewide environmental, public safety, and land use goals”).)

The same year that the Legislature adopted Warren-Alquist, it also added section 21100(b)(3) to CEQA, requiring environmental impact reports to include “measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.” As explained by a court shortly after that provision was enacted, the “energy mitigation amendment is *substantive* and not procedural in nature and was enacted for the purpose of requiring the lead agencies to focus upon the energy problem in the preparation of the final EIR.” (*People v. County of Kern* (1976) 62 Cal.App.3d 761, 774 (emphasis added).) It compels an affirmative investigation of the project’s potential energy use and feasible ways to reduce that use.

Though Appendix F of the CEQA Guidelines has contained guidance on energy analysis for decades, implementation among lead agencies has not been consistent. (See, e.g., *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 209.) While California is a leader in energy conservation, the importance of addressing energy impacts has not diminished since 1974. On the contrary, given the need to avoid the effects of climate change, energy use is an issue that we cannot afford to ignore. As the California Energy Commission’s Integrated Energy Policy Report (2016) explains:

Energy fuels the economy, but it is also the biggest source of greenhouse gas emissions that lead to climate change. Despite California’s leadership, Californians are experiencing the impacts of climate change including higher temperatures, prolonged drought, and more wildfires. There is an urgent need to reduce greenhouse gas emissions and increase the state’s resiliency to climate change. . . . ¶ . . . With transportation accounting for about 37 percent of California’s greenhouse gas emissions in 2014, transforming California’s transportation system away from gasoline to zero-emission and near-zero-emission vehicles is a fundamental part of the state’s efforts to meet its climate goals. . . . ¶ . . . Energy efficiency and demand response are also key components of the state’s strategy to reduce greenhouse gas emissions.

(*Id.* at pp. 5, 8, 10.)

Appendix F was revised in 2009 to clarify that analysis of energy impacts is mandatory. The Agency now adds a subdivision in section 15126.2 on energy impacts to further elevate the issue, and remove any question about whether such an analysis is required.

The first sentence clarifies that an EIR must analyze whether a project will result in significant environmental effects due to “wasteful, inefficient, or unnecessary consumption of energy.” This clarification is necessary to implement Public Resources Code section 21100(b)(3). Because the duty to impose mitigation measures arises when a lead agency determines that the project may have a significant effect, section 21100(b)(3) necessarily requires both analysis and a determination of significance in addition to energy efficiency measures. (Pub. Resources Code, § 21002.)

The second sentence further clarifies that all aspects of the project must be considered in the analysis. This clarification is consistent with the rule that lead agencies must consider the “whole of the project” in considering impacts. It is also necessary to ensure that lead agencies consider issues beyond just building design. (*See, e.g., California Clean Energy Com. v. City of Woodland, supra*, 225 Cal.App.4th at pp. 210-212.) The analysis of vehicle miles traveled provided in proposed section 15064.3 (implementing Public Resources Code section 21099 (SB 743)) on transportation impacts may be relevant to this analysis.

The third sentence signals that the analysis of energy impacts may need to extend beyond building code compliance. (*Ibid.*) The requirement to determine whether a project’s use of energy is “wasteful, inefficient, and unnecessary” compels consideration of the project in its context. (Pub. Resources Code, § 21100(b)(3).) While building code compliance is a relevant factor, the generalized rules in the building code will not necessarily indicate whether a particular project’s energy use could be improved. (*Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 933 (after analysis, lead agency concludes that project proposed to be at least 25% more energy efficient than the building code requires would have a less than significant impact); *see also* CEQA Guidelines, Appendix F, § II.C.4 (describing building code compliance as one of several different considerations in determining the significance of a project’s energy impacts).) That the Legislature added the energy analysis requirement in CEQA at the same time that it created an Energy Commission authorized to impose building energy standards indicates that compliance with the building code is a necessary but not exclusive means of satisfying CEQA’s independent requirement to analyze energy impacts broadly.

The new subdivision (b) also provides a cross-reference to Appendix F. This cross-reference is necessary to direct lead agencies to the more detailed provisions contained in that appendix.

Finally, new subdivision (b) cautions that the analysis of energy impacts is subject to the rule of reason, and must focus on energy demand caused by the project. This sentence is necessary to place reasonable limits on the analysis. Specifically, it signals that a full “lifecycle” analysis that would account for energy used in building materials and consumer products will generally not

be required. (See also Cal. Natural Resources Agency, Final Statement of Reasons for Regulatory Action: Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97 (Dec. 2009) at pp. 71-72.)

### **Necessity**

The changes in subdivision (a) are necessary to assist lead agencies in applying the California Supreme Court's holding agencies subject to CEQA are generally are not required to analyze the impact of existing environmental conditions on a project's future users or residents unless the impacts of the project risk exacerbation of the impact. Further, the proposed changes will assist lead agencies in applying the principles identified by the California Supreme Court in the *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369 decision.

Additionally, it is necessary to add the language to the CEQA Guidelines regarding energy impact analyses because CEQA has long required energy impact analyses. However, the description of the required analysis is currently located in a stand-alone Appendix and goes largely unnoticed and implementation among lead agencies has not been consistent. Further, the proposed changes will assist lead agencies in applying the principles identified by courts in several recent cases, including *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256.

The additional language in both subdivisions will ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

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 case law, and the proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

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

##### **Specific Purposes of the Amendment**

When a lead agency identifies a potentially significant environmental impact, it must propose feasible mitigation measures in the environmental document for a project. (Pub. Resources Code, §§ 21002 (duty to mitigate), 21080(c)(2) (mitigated negative declaration), 21100(b)(3) (EIR must include mitigation measures).) The formulation of mitigation measures cannot be deferred until after project approval. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92 (“reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA’s goals of full disclosure and informed decisionmaking; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment”).)

Practical considerations, however, sometimes preclude development of detailed mitigation plans at the time of project consideration. In such cases, courts have permitted lead agencies to defer some of the *details* of mitigation measures provided that the agency commits itself to mitigation and analyzes the different mitigation alternatives that might ultimately be incorporated into the project. (See, e.g., *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028–1030.)

A line of recent cases developed more specific rules on what details may or may not be deferred. (See, e.g., *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 Dist.* (2012) 208 Cal.App.4th 362; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70; *Sheryl Gray v. County of Madera* (2008) 167 Cal.App.4th 1099; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261.)

In light of those cases, and stakeholder requests for clarification in the CEQA Guidelines, the Natural Resources Agency made several amendments to Section 15126.4.

First, the amendments clarify in section 15126.4, subdivision (a)(1)(B), that the lead agency “shall” not defer identification of mitigation measures. This binding requirement is clearly stated in a number of cases. (See, e.g., *Preserve Wild Santee, supra*, 210 Cal.App.4th 260; *Rialto Citizens for Responsible Growth, supra*, 208 Cal.App.4th 899; *City of Maywood, supra*, 208 Cal.App.4th 362; *CBE, supra*, 184 Cal.App.4th 70; *Gray v. County of Madera, supra*, 167 Cal.App.4th 1099; *San Joaquin Raptor Rescue Center, supra*, 149 Cal.App.4th 645; *Endangered Habitats League, supra*, 131 Cal.App.4th 777; *Defend the Bay, supra*, 119 Cal.App.4th 1261.) Therefore, replacing the word ‘should’ with ‘shall’ conforms the Guidelines to case law. (State CEQA Guidelines § 15005.)

Second, the amendments describe situations when deferral of the *specific details* of mitigation may be allowable under CEQA, including which commitments the agency should make in the environmental document. Specifically, the amendments 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. (See, e.g., *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884 (deferral of mitigation was proper where practical considerations prohibited devising mitigation measures early in the planning process, and the agency committed to performance criteria); *Defend the Bay, supra*, 119 Cal.App.4th 1261 (deferral of specifics of mitigation measures was permissible where practical considerations prohibited devising such measures for a general plan amendment and zoning change); and *Preserve Wild Santee, supra*, 210 Cal.App.4th 260 (deferral of mitigation details was improper where performance standards were not specified and lead agency did not provide an explanation for why such standards were impractical or infeasible to provide at the time of certification of the EIR).)

Further, these changes clarify that when deferring the specifics of mitigation, the lead agency should adopt specific performance standards and provide a list of the types of possible mitigation measures that would achieve the standard. This approach is summarized in *Defend the Bay v. City of Irvine, supra*. In that case, the court stated that deferral may be appropriate where the lead agency “lists the alternatives to be considered, analyzed and possibly incorporated into the mitigation plan.” (*Defend the Bay, supra*, at p. 1275; see also *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376; *Rialto Citizens for Responsible Growth, supra*, 208 Cal.App.4th 899; *Gray v. County of Madera, supra*, 167 Cal.App.4th 1099; *San Joaquin Raptor Rescue Center, supra*, 149 Cal.App.4th 645; *Endangered Habitats League, supra*, 131 Cal.App.4th 777.)

Adoption of performance standards in the environmental document is described by the court in *Rialto Citizens for Responsible Growth v. City of Rialto, supra*. There, the court ruled that where mitigation measures incorporated specific performance criteria and were not so open-ended that they allowed potential impacts to remain significant, deferral was proper. (*Rialto Citizens for Responsible Growth, supra*, 208 Cal.App.4th 899; see also *Laurel Heights, supra*, 47 Cal.3d 376; *Preserve Wild Santee, supra*, 210 Cal.App.4th 260; *City of Maywood, supra*, 208 Cal.App.4th 362; *CBE, supra*, 184 Cal.App.4th 70; *Gray v. County of Madera, supra*, 167 Cal.App.4th 1099; *San Joaquin Raptor Rescue Center, supra*, 149 Cal.App.4th 645; *Endangered Habitats League, supra*, 131 Cal.App.4th 777.)

Finally, the amendments 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 so long as the EIR included performance criteria and the lead agency committed itself to mitigation.” (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 237; see also *Oakland Heritage Alliance, supra*, 195 Cal.App.4th 884; *Defend the Bay, supra*, 119 Cal.App.4th 1261.)

## **Necessity**

The amendments are necessary to bring the current CEQA Guidelines in conformance to recent case law. The amendments will ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

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 case law. Additionally, the proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## **15152. TIERING**

### **Specific Purposes of the Amendment**

The tiering concept authorized in this section is designed to promote efficiency in the CEQA review process. This section recognizes that the approval of many projects will move 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. Tiering focuses environmental review on the environmental issues that are relevant to the approval being considered. At the same time, tiering requires the lead agency to analyze reasonably foreseeable significant effects and does not allow deferral of such analysis to a later tier document.

The Natural Resources Agency has updated CEQA Guidelines, Section 15152, subdivision (h). That section currently states that “[t]here are various types of EIRs that may be used in a tiering situation.” The Agency rewrote that section to clarify that tiering is only one of several streamlining mechanisms that can simplify the environmental review process. (See, e.g., CEQA Guidelines, § 15006 (lists methods to reduce or eliminate duplication in the CEQA process).) Tiering is one such efficiency measure. (See, e.g., Pub. Resources Code, § 21093 (states that

tiering may be appropriate “to exclude duplicative analysis” completed in previous EIRs), § 21094 (states that a lead agency may examine significant effects of a project by using a tiered EIR.) Public Resources Code Section 21094 is broadly worded to potentially be used for any number of programs, plans, policies, or ordinances, with a wide variety of content. (*Ibid.*) In adopting Section 21094, the legislature did not indicate that it intended to replace any other streamlining mechanisms. For example, the legislature did not override existing provisions including, but not limited to, Program EIRs (CEQA Guidelines, § 15168) and projects consistent with general plans (Pub. Resources Code, § 21083.3). In fact, the legislature created additional streamlining mechanisms after tiering was adopted. (See, e.g., Pub. Resources Code, § 21157 (Master EIR), § 21158 (Focused EIR).) Thus, this revision clarifies that tiering describes one mechanism for streamlining the environmental review process, but where other methods have more specific provisions, those provisions shall apply. The revision also adds infill streamlining to the list of specialized streamlining tools.

### **Necessity**

The amendments are necessary 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 amendments will ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

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 Public Resources Code as well as internally consistent with other sections of the CEQA Guidelines. The proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## 15155. CITY OR COUNTY CONSULTATION WITH WATER AGENCIES

### Specific Purposes of the Amendment

California recently experienced the worst water crisis in our state’s modern history over multiple consecutive years of extremely dry conditions. During that time, precipitation and snowpack were a small fraction of their normal averages, reservoirs were at extremely low levels, and rivers had severely diminished flows. In response to the growing crisis, Governor Brown proclaimed a [state of emergency](#) in January 2014 and called on all Californians to reduce their water consumption by 20 percent. In April 2014, the Department of Water Resources announced a five percent allocation of the State Water Project—the lowest ever. (DWR, [Water Conditions](#).) Allocations remained low in 2015. The State Water Resources Control Board began to notify water rights holders that they must curtail their diversions in certain watersheds. (See State Water Resources Control Board, “[Notices of Water Availability \(Curtailed and Emergency Regulations\)](#)”). In September 2014, Governor Brown signed into law the [Sustainable Groundwater Management Act](#), historic legislation to strengthen local management and monitoring of groundwater basins most critical to the state's water needs. Responding to continuing dry conditions, in April 2015, the Governor issued Executive Order B-29-15, calling on Californians to redouble their water conservation efforts. Specifically, urban water agencies are required to reduce water use by a combined 25 percent. After unprecedented water conservation efforts and high levels of winter water and snow, Governor Brown issued Executive Order B-40-17 in April 2017, lifting the drought emergency in all counties except Fresno, Kings, Tulare, and Tuolumne.

Even so, climate change is expected to increase long-term variability in California’s water supplies. (Esther Conrad, “[Preparing for New Risks: Addressing Climate Change in California’s Urban Water Management Plans](#)” (June 2013).)

The Department of Water Resources has identified several climate change effects that could affect water supplies, including:

- Water Demand — Hotter days and nights, as well as a longer irrigation season, will increase landscaping water needs, and power plants and industrial processes will have increased cooling water needs.
- Water Supply and Quality — Reduced snowpack, shifting spring runoff to earlier in the year ..., increased potential for algal bloom, and increased potential for seawater intrusion—each has the potential to impact water supply and water quality.
- Sea Level Rise — It is expected that sea level will continue to rise, resulting in near shore ocean changes such as stronger storm surges, more forceful wave energy, and more extreme tides. This will also affect levee stability in low-lying areas and increase flooding.
- Disaster — Disasters are expected to become more frequent as climate change brings increased climate variability, resulting in more extreme droughts and floods. This will challenge water supplier operations in several ways as wildfires are expected to become larger and hotter, droughts will become deeper and longer, and floods can become larger and more frequent.

(Department of Water Resources, "[Guidebook to Assist Urban Water Suppliers to Prepare a 2010 Urban Water Management Plan](#)," (March 2011), at G-3.) These risks are now being incorporated into long-term water supply planning.

California courts have long recognized CEQA's requirement to analyze the adequacy of water supplies needed to serve a proposed project. (See, e.g., *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818.) Accordingly, the sample initial study checklist in Appendix G asks whether the project would have "sufficient water supplies available to serve the project..." (CEQA Guidelines, App. G., § XVII(d).)

In recent years, the California Legislature added water supply assessment and verification requirements for certain types of projects. (See Wat. Code, §§ 10910 et seq. (water supply assessments); Gov. Code, § 66473.7 (water supply verifications).) Shortly after those statutory requirements were enacted, the California Supreme Court articulated several principles describing the content requirements for an adequate water supply evaluation in CEQA. (*Vineyard, supra*, 40 Cal.4th 412.) The Natural Resources Agency added section 15155 to the CEQA Guidelines to describe the consultation and documentation that must occur between water suppliers and lead agencies. (CEQA Guidelines, § 15155.) Because that section was developed before the Supreme Court's decision in *Vineyard*, it focuses on compliance with the consultation requirements in SB 610, and does not discuss the issue of adequacy of a water supply analysis in CEQA more broadly.

CEQA Guidelines section 15155 describes the process city or county lead agencies must follow with respect to the development of a water supply assessment for specified types of projects and required 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 Natural Resources Agency proposes to revise section 15155 to incorporate the adequacy principles described in the Supreme Court's decision in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412. Doing so should ensure that lead agencies consistently develop the information needed to evaluate the impacts associated with providing water to their projects.

#### **New Subdivision (f) – Water Supply Analysis and Degree of Specificity**

The Natural Resources Agency added a new subdivision (f) to section 15155 to set forth the content requirements for a water supply analysis in CEQA. While subdivision (f) describes these content requirements, it is important to note that the Agency is not creating new requirements. Rather, it is merely stating explicitly in the CEQA Guidelines the Supreme Court's holding in the *Vineyard* case. (See, Pub. Resources Code, § 21060.5 ("environment" defined as "the physical conditions that exist within the area which will be affected by a proposed project, including ... water ..."); *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 4th 412 (setting forth the required elements of a water supply analysis).)

The first two sentences in subdivision (f) state the rule that the level of certainty regarding water supplies will increase as the analysis moves from general to specific. (*Vineyard, supra*, 40 Cal. 4th at 434 (“we emphasize that the burden of identifying likely water sources for a project varies with the stage of project approval involved; the necessary degree of confidence involved for approval of a conceptual plan is much lower than for issuance of building permits”).) This rule is consistent with other portions of the CEQA Guidelines governing forecasting and the degree of specificity required in environmental documents. (CEQA Guidelines, §§ 15144 “[w]hile foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can”), 15146 (“degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR”).)

#### *Subdivision (f)(1) – Purpose*

Subdivision (f)(1) states the requirement that a water supply analysis provide enough information to the lead agency to evaluate the pros and cons of providing water to the project. (*Vineyard, supra*, 40 Cal. 4th at 431; *Santiago, supra*, 118 Cal. App. 3d at pp. 829-831.) This will necessarily require information regarding the project’s water demand as well as the quantity of water that is available to serve the project.

#### *Subdivision (f)(2) – Environmental Impacts of Supplying the Water*

Subdivision (f)(2) states the requirement to analyze the environmental effects of supplying water to the project. This sentence further specifies that the analysis must account for all phases of the project. (*Vineyard, supra*, 40 Cal. 4th at 431 (“an adequate environmental impact analysis for a large project, to be built and occupied over a number of years, cannot be limited to the water supply for the first stage or the first few years”).) This is an important clarification because the water supply assessment and verification statutes only require looking twenty years into the future. Some projects may have a lifespan of fifty or more years. In that circumstance, some degree of forecasting may be required. (CEQA Guidelines § 15144.) Pure speculation, however, is not required. (*Id.* at § 15145.)

Additionally, the focus of this subdivision should be on the environmental impacts associated with a particular water supply. (*Vineyard, supra*, 40 Cal. 4th at 434 (the “ultimate question under CEQA ... is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts of supplying water to the project”) (emphasis in original).) For example, after establishing the amount of water a project will need, the analysis might examine whether supplying that amount from groundwater might lead to subsidence or unsafe yield, or whether diverting that amount from surface flow might adversely affect fish and wildlife.

#### *Subdivision (f)(3) – Circumstances Affecting the Likelihood of Supplies*

Since water supply availability is variable in California, subdivision (f)(3) requires acknowledging any circumstances that might affect the availability of water supplies identified for a project. (*Vineyard, supra*, 40 Cal. 4th at 432 (an environmental document “must address the impacts of likely future water sources, and the EIR’s discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water’s availability”).) The magnitude of variability should also be disclosed. (*Id.* at p. 434 (“an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved”).) Subdivision (f)(3) also provides a list of circumstances that might potentially affect water supplies, including but not limited to: “drought, salt-water intrusion, regulatory or contractual curtailments, and other reasonably foreseeable demands on the water supply.”

#### *Subdivision (f)(4) – Alternatives and Mitigation*

Subdivision (f)(4) provides that when supplies for the project are not certain, the analysis should address alternatives. (*Vineyard, supra*, 40 Cal. 4th at 432.) Again, the focus of the analysis should be on the environmental impacts that would flow from using those alternative sources of supply. (*Ibid.*) However, the level of detail of that analysis need not be as great as that provided for the project itself. (See, CEQA Guidelines § 15126.6(d) (“If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed”).) Thus, subdivision (f)(4) states that the analysis of impacts from alternative sources should be stated “at least in general terms.” (*Napa Citizens for Honest Government v. Napa County Bd. of Sup.* (2001) 91 Cal. App. 4th 342, 373.) Further, subdivision (f)(4) provides that in addition to analyzing alternative water supplies when identified supplies are uncertain, a lead agency may also consider project alternatives that require less water. For example, if supplies are certain up to a certain amount, a lead agency should be able to consider alternative project designs that would use less water and that could be confidently served.

Finally, subdivision (f)(4) provides that if water supplies are not certain, and if the agency has fully analyzed water supply availability as described above, curtailing later project phases may be an appropriate mitigation measure.

#### **Necessity**

The additions are necessary to ensure that the CEQA Guidelines are consistent with current case law. The amendments will ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

#### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

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 the Public Resources Code as well as current case law. The proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

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

##### **Specific Purposes of the Amendment**

Administrative efficiency has long been an explicit policy in CEQA. (See Pub. Resources Code, § 21003(f) (statement of legislative intent that “[a]ll persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment”).) The CEQA Guidelines encourage efficiency in several ways, including the provisions regarding program EIRs.

Program EIRs can be used to evaluate a series of connected actions, such as adoption and implementation of regulations or land use plans, in one environmental document. Section 15168 of the CEQA Guidelines governs the preparation and later use of program EIRs. It suggests that program EIRs are particularly useful in addressing big picture alternatives and cumulative impacts. When a program EIR is sufficiently detailed, later activities may be approved on the basis of that document without conducting further environmental review. The key question in determining whether additional review is required is whether the later activity falls “within the scope” of the program analyzed in the EIR. (CEQA Guidelines, § 15168(c)(2).)

Courts have treated the determination of whether an activity is within the scope of a program EIR to be a question of fact to be resolved by the lead agency. Several organizations representing CEQA practitioners have suggested that additional guidance should be provided to help lead agencies make that determination. (See, “[Recommendations for Updating the State CEQA Guidelines](#),” American Planning Association, California Chapter; Association of Environmental Professionals; and Enhanced CEQA Action Team (August 30, 2013).)

In response to those cases, and suggestions from stakeholders, the Natural Resources Agency updated Section 15168 on Program EIRs.

First, the additions to subdivision (c)(2) clarify that the determination of whether a later activity falls within the scope of the program EIR is a question of fact to be resolved by the lead agency, and supported with substantial evidence in the record. This addition implements judicial opinions that have addressed the issue. (See, e.g., *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 610 (*CREED*) (“the fair argument standard does not apply to judicial review of an agency’s determination that a project is within the scope of a previously completed EIR”); *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1320-1321 (“evidence does not support a determination that [the] proposed site-specific project was either the same as or within the scope of the project, program, or plan described in the program EIR”).)

Second, the additions to subdivision (c)(2) provide a list of factors that may assist a lead agency in determining whether a later activity is within the scope of a program EIR. Again, those factors have been recognized in judicial opinions as being instructive. Those factors include:

- Consistency with allowable land uses included in the project description (*compare Sierra Club, supra*, 6 Cal.App.4th at pp. 1320-1321 (later activity could not have been within the scope of the prior EIR because it involved engaging “in terrace mining on land which was specifically designated in the Plan as an agricultural resource”) *with CREED, supra*, 134 Cal.App.4th at p. 616 (“the Community Plan designated the area where the hotel [project] is to be built as a “Commercial/Office District” in which “hotels and motels” would be emphasized as among the allowable land uses”));
- Consistency with densities and building intensities included in the project description (*see ibid* (the “MEIR forecast[ed] that a total of 5,880 additional hotel rooms would be constructed over a 35-year period within the Planning Area, and expressly contemplate[d] the completion of the Horton Plaza Redevelopment Project, which the hotel project will complete”));
- Being within the geographic area that the program EIR analyzed for potential impacts (see, e.g., *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 704 (the project “will use recycled water in the same way and in the same general location evaluated by the previous studies”));
- Being included in the infrastructure described in the program EIR (*see ibid*).

Notably, this list of factors is not intended to be exclusive.

Third, the Natural Resources Agency added a sentence to subdivision (c)(1) to clarify how to proceed with the analysis of a later activity that a lead agency determines is not “within the scope” of the program EIR. Specifically, the new sentence states that if additional analysis is needed, that analysis should follow the tiering process described in section 15152. This addition is necessary to clarify that even if a project is not “within the scope” of a program EIR, the lead agency might still streamline the

later analysis using the tiering process. This might allow a lead agency, for example, to focus the analysis of the later activity on effects that were not adequately analyzed in the program EIR. (See CEQA Guidelines, § 15152(d).) This addition promotes administrative efficiency. (Pub. Resources Code, § 21093(b) (“environmental impact reports shall be tiered whenever feasible”).) This addition also follows the analysis in the *Sierra Club* decision, which addressed the relationship between program EIRs and tiering. (*Sierra Club, supra*, 6 Cal.App.4th at pp. 1320-1321 (because the project was not within the scope of the program EIR, “section 21166 was inapplicable, and the [agency] was obligated by section 21094, subdivision (c), to consider whether [the] site- specific new project might cause significant effects on the environment that were not examined in the prior program EIR”).)

Fourth, in subdivision (c)(5), the Natural Resources Agency notes that program EIRs will be most useful for evaluating later activities when those activities have been included in the program EIR’s project description. (*CREED, supra*, 134 Cal.App.4th at p. 616.)

Finally, the Natural Resources Agency made minor word changes throughout this section to improve clarity.

### **Necessity**

This addition is necessary to clarify rules from case law governing whether a project is “within the scope” of a program EIR. These additions are also necessary to assist lead agencies in making the CEQA process as efficient as possible. Finally, these changes are necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

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 the Public Resources Code as well as current case law and to add clarity. The proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## 15182. RESIDENTIAL PROJECTS PURSUANT TO A SPECIFIC PLAN

### **Specific Purposes of the Amendment**

In 1978, Governor Brown adopted California's first Environmental Goals and Policy Report. Known as the Urban Strategy, it set forth key statewide environmental goals as well as an action plan to attain those goals. One of the recommendations in the action plan was to exempt certain types of projects that are consistent with a specific plan from further CEQA review. ([An Urban Strategy for California](#) (February 1978), at p. 14.) Shortly after adoption of the Urban Strategy, the legislature created an exemption, found in the Government Code, for residential projects that are consistent with a specific plan. (See Gov. Code, § 65453 (added in 1979, later renumbered to section 65457).) That exemption is described in existing section 15182 of the CEQA Guidelines.

The exemption in the Government Code was much more limited than the Urban Strategy's original recommendation. First, its provisions were difficult to apply in practice. For example, if changed circumstances occurred, the exemption could not be used until a supplemental EIR was prepared to cover the entire specific plan, even if the analysis remained valid for the individual project. Second, rather than exempting a variety of uses, section 65457 exempts only purely residential development. Commercial projects, or even projects that included a commercial component, could not use the exemption. In the decades since the exemption was first enacted, planners have recognized that promoting mixed use developments may reduce land consumption, air pollution, and other environmental ills.

In 2013, Governor Brown's administration proposed, and the Legislature enacted, a set of amendments to CEQA designed to better align the statute with other environmental goals, including the reduction of greenhouse gas emissions and promotion of infill development. ([Senate Bill 743, Steinberg 2013](#).) One of those amendments added section 21155.4 to the Public Resources Code. That section resembles Government Code section 65457, but extends beyond purely residential projects to include commercial and mixed-use projects as well. The trigger for requiring additional review also is more closely tied to the project under consideration, instead of to the entire specific plan area. This expanded exemption is available to projects that are located near transit and that are consistent with regional plans for reducing greenhouse gas emissions.

Section 15182 of the CEQA Guidelines discusses special provisions regarding specific plans. The Natural Resources Agency updated existing CEQA Guidelines section 15182 to reflect the new exemption in Public Resources Code section 21155.4 as well as the exemption in Government Code section 65457. The Agency included cross-references for further clarification to alert planners of the relevant statute of limitations. The specific amendments are explained in detail below.

#### *Subdivision (a)*

The Natural Resources Agency reorganized section 15182 to describe both the exemption in Public Resources Code section 21155.4 as well as the exemption in Government Code section 65457. As amended, subdivision (a) is a general section that points to the more specific provisions in subdivisions (b) and (c). Importantly, subdivision (a) clarifies that a specific plan is a plan that is adopted pursuant to the requirements set forth in Article 8, Chapter 3 of the Government Code. This clarification is necessary because cities and counties may give qualifying plans various titles, such as Master Plan or Downtown Plan. So long as the plan includes the contents described in the Government Code, it should enable use of the exemptions described in section 15182.

#### *Subdivision (b)*

As amended, subdivision (b) contains the provisions applicable to projects within transit priority areas.

Subdivision (b)(1) describes the eligibility criteria for use of the exemption. Those eligibility criteria are drawn directly from Section 21155.4(a). Notably, while section 21155.4 uses the term “employment center project,” proposed subdivision (b)(1) clarifies that term by referring to a commercial project with a floor area ratio of at least 0.75. (See Pub. Resources Code § 21099(a)(1) (defining “employment center project”).

Subdivision (b)(2) describes the limitation to the exemption. Specifically, it clarifies that additional review may be required if the project triggers one of the requirements for further review described in section 15162. New review may be required if, for example, the project requires changes in the specific plan that would result in new or worse significant impacts, or if circumstances have changed since adoption of the specific plan that would lead to new or worse significant impacts.

Subdivision (b)(3) includes a cross reference to the statute of limitation periods described in section 15112. This subdivision is necessary to alert planners that, unlike the exemption in section 65457 which provides for a 30 day statute of limitations regardless of whether a notice of exemption is filed, the exemption in section 21155.4 is subject to CEQA’s normal statute of limitations.

#### *Subdivision (c)*

As amended, subdivision (c) contains the provisions that apply to purely residential projects. The content in subdivision (c) largely mirrors the text in existing section 15182. The Natural Resources Agency made several clarifications, however. For example, section 15182 currently states that no further environmental impact report or negative declaration is required for residential projects that are consistent with a specific plan. Section 65457 actually states that such projects are exempt from any of CEQA requirements, not just preparation of a new environmental document. Therefore, the Agency clarified in subdivision (c) that such projects are exempt.

Also, the Natural Resources Agency pulled the existing description of the special statute of limitations into subdivision (c)(3).

#### *Subdivision (d)*

Subdivision (d) in existing section 15182 allows local governments to collect fees to cover the cost of preparing a specific plan. That authority is found in Government Code section 65456. Because fees may be collected to cover the preparation of specific plans, regardless of whether the plans cover residential, commercial or other uses, the Natural Resources Agency has left subdivision (d) as currently written.

### **Necessity**

This clarification is necessary to alert planners to the important differences between two similar statutory exemptions for projects that are consistent with a specific plan. Additionally, clarification is necessary to alert planners of the relevant statute of limitations. The amendments will ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

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 current law. The proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

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

### **Specific Purposes of the Amendment**

This section strongly encourages state and local agencies to work with the federal agency involved with the same projects.

The Natural Resources Agency amended CEQA Guidelines section 15222 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 White House Council on Environmental Quality and the California Governor's Office of Planning and Research (OPR) jointly prepared a handbook, "NEPA and CEQA: Integrating Federal and State Environmental

Reviews,” that included a sample Memorandum of Understanding to assist state and Federal agencies in this process. (Available online at [http://opr.ca.gov/docs/NEPA\\_CEQA\\_Handbook\\_Feb2014.pdf](http://opr.ca.gov/docs/NEPA_CEQA_Handbook_Feb2014.pdf).)

### **Necessity**

This amendment is necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

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 clarify current law. The proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## **15234. REMEDIES AND REMAND**

### **Specific Purposes of the Amendment**

CEQA is in most instances enforced through a form of judicial review known as a writ of mandate proceeding.<sup>5</sup> In reviewing a petition for writ of mandate, the court examines an agency’s administrative record to determine whether it properly implemented CEQA in connection with a project approval. If the court concludes that the agency did not comply with CEQA, it may order the agency to take further action before proceeding with the project. At that

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<sup>5</sup> Exceptions apply where challenges to certain types of agency actions specifically require a different procedure. For example, Government Code section 56103 requires that any challenge to any change of organization, reorganization, or sphere of influence determination approved by a local agency formation commission be accomplished through a validating action pursuant to Code of Civil Procedure section 860 et seq. (See *Protect Agricultural Land v. Stanislaus County Local Agency Formation Com.* (2014) 223 Cal.App.4th 550.)

point, questions may arise regarding what further environmental review is needed, and what project activities, if any, may continue while the agency takes further action. Proposed new section 15234 will assist agencies in complying with CEQA in response to a court's remand, and help the public and project proponents understand the effect of the remand on project implementation. Specifically, proposed new section 15234 reflects the language of the statutory provision governing remedies in CEQA cases, Public Resources Code section 21168.9, as well as case law interpreting that statute.

The Natural Resources Agency added a new section to the CEQA Guidelines, Section 15234, to codify the California Supreme Court's ruling in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439, among other cases interpreting Section 21168.9. The court in that case held that not every violation of CEQA will compel a court to set aside project approvals and further explained that the court may order the agency to set aside all or a portion of the project approvals, and may require the agency to conduct additional environmental review.

Subdivision (a) of new Section 15234 is necessary to explain to public agencies and the public how CEQA litigation may affect project implementation. First, it clarifies that not every violation of CEQA will compel a court to set aside project approvals. Public Resources Code Section 21005 provides that "courts shall continue to follow the established principle that there is no presumption that error is prejudicial." The California Supreme Court recently reiterated that "[i]nsubstantial or merely technical omissions[are not grounds for relief]." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal. 4th 439, 463.) In order to justify setting aside a project approval, a violation must "preclude relevant information from being presented to the public agency." (Pub. Resources Code, § 21005, subd. (a).)

Second, subdivision (a) states that, except as provided in Public Resources Code section 21168.9 itself, CEQA does not limit the traditional equitable powers of the judicial branch and that remedies may be tailored based on the circumstances of the project. It further explains that the court may order the agency to set aside all or a portion of the project approvals, and may require the agency to conduct additional environmental review.

Next, subdivision (b) clarifies that in certain circumstances, portions of the project approvals or the project itself may proceed while the agency conducts further review. Specifically, Section 21168.9 of the Public Resources Code provides that a court may allow certain project approvals or activities to proceed as long as continued implementation of the project would not prevent the agency from fully complying with CEQA. In 1993, the legislature amended that section "to expand the authority of courts to fashion a remedy that permits a part of the project to continue while the agency seeks to correct its CEQA violations." (*Poet, LLC v. State Air Resources Bd.* (2013) 218 Cal.App. 4th 681, 756.)

Next, subdivision (c) codifies the outcome in *Poet, LLC v. State Air Resources Bd.* (2013) 218 Cal. App. 4th 681, in which the Court of Appeal found that the California Air Resources Board had

failed to fully comply with CEQA in enacting Low Carbon Fuel Standards regulations, but nevertheless exercised its equitable discretion to leave the challenged regulations in place during the remand period. The court reasoned that a remedy that left the regulations in place would achieve a higher level of environmental protection than would a remedy that left them inoperative.

Finally, subdivision (d) addresses how an agency should proceed with additional environmental review if required by a court. Specifically, it indicates that where a court upholds portions of an 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 that results in new or worse environmental impacts. To illustrate, assume that a court concludes that an agency's analysis of noise impacts is inadequate, but that the remainder of its environmental impact report complies with CEQA. The agency may prepare a revised environmental impact report that focuses solely on noise. It would only need to revise the air quality analysis, for example, if the agency concluded that changes in the circumstances surrounding the project would result in substantially more severe air quality impacts.

### **Necessity**

The new CEQA Guidelines section is necessary to explain to public agencies how CEQA litigation may affect project implementation and to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

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 clarify existing case law. The proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## 15269. EMERGENCY PROJECTS.

### **Specific Purposes of the Amendment**

This section identifies the emergency exemptions from CEQA. The Natural Resources Agency amended subdivisions (b) and (c) of Section 15269. Currently, subdivisions (b) and (c) state that emergency repairs may be exempt under CEQA and that this exemption does not apply to long-term projects undertaken for the purpose of preventing or mitigating an emergency. The Agency added a sentence to subdivision (b) clarifying that emergency repairs may require planning and qualify under this exemption. Further, the Agency added two subsections under subdivision (c) clarifying how imminent an emergency must be to fall within the statutory exemption. (See *CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal.App.4th 529, 537 (emergency repairs need not be “unexpected” and “in order to design a project to prevent an emergency, the designer must anticipate the emergency”).

### **Necessity**

These additions are necessary to clarify the application of this emergency exemption and to maintain consistency with a Court of Appeal decision stating that an emergency repair may be anticipated and to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

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 clarify current case law. The proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## 15301. EXISTING FACILITIES

### Specific Purposes of the Amendment

Section 15301 of the CEQA Guidelines exempts ongoing 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 Natural Resources Agency made two changes to Section 15301.

The first change appears in the first sentence of the exemption. It deletes the phrase "beyond that existing at the time of the lead agency's determination." Stakeholders noted that this phrase could be interpreted to preclude use of the exemption if a facility were vacant "at the time of the lead agency's determination," even if it had a history of productive use, because compared to an empty building, *any* use would be an expansion of use. (See, [Comments of the Building Industry Association](#), August 30, 2013.) Such an interpretation is inconsistent with California's policy goals of promoting infill development.

It would also not reflect recent case law regarding "baseline." Those cases have found that a lead agency may look back to historic conditions to establish a baseline where existing conditions fluctuate, again provided that it can document such historic conditions with substantial evidence. (See *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327-328 ("Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods") (quoting *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125); see also *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.)

The phrase at issue was apparently added in response to *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307. The court in that case was asked to decide whether the fact that the facility in question had never undergone CEQA review triggered an exception to the exemption. In analyzing that question, the court in *Bloom* relied on the analysis of a prior Supreme Court decision. It explained:

Under *Wine Train's* analysis, the term "existing facility" in the class 1 exemption would mean a facility as it exists at the time of the agency's determination, *rather than a facility existing at the time CEQA was enacted*. For purposes of the exception to the categorical exemptions, "significant effect on the environment" would mean a change in the environment existing at the time of the agency's determination, rather than a change in the environment that existed when CEQA was enacted.

(*Id.* at p. 1315 (citing *Napa Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370, 378, fn. 12) (emphasis added).) Nothing in that decision indicates, however, that a lead agency could not consider actual historic use in deciding whether the project would expand beyond that use.

The second change appears in subdivision (c). The purpose of this change is to 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. This change is consistent with the Complete Streets Act of 2008, which requires cities and counties to plan for the needs of all users of their streets. In this regard, because such improvements involve operation of public rights of way, they may be similar to the imposition of water conservation requirements for existing water facilities (see, *Turlock Irrigation Dist. v. Zanker* (2006) 140 Cal. App. 4th 1047,1065), or the regulation of the right of way for parking (see, *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 793 (“it is clear that the Class 1 exemption applies to the legislation/project here[; it] involves adjusting the particular group of persons permitted to use ‘existing facilities,’ in other words, the existing, unmetered, curbside parking on residential streets”)). Improvements to the existing right of way have long been understood to fall within the category of activities in subdivision (c), provided that the activity does not involve roadway widening. (See, *Erven v. Board of Supervisors* (1975) 53 Cal. App. 3d 1004.)

### **Necessity**

These additions are necessary to maintain consistency between this CEQA Guideline section and current case law. These additions are also necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

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 clarify current case law. The proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## 15357. DISCRETIONARY PROJECT

### **Specific Purposes of the Amendment**

The Natural Resources Agency has amended 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 various cases distinguishing the term “discretionary” from the term “ministerial.” (See, e.g., *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 267 (“[T]he touchstone is whether the approval process involved allows the government to shape the project in any way that could respond to any of the concerns ... in an environmental impact report”).) The California Supreme Court and Fourth District Court of Appeal have consistently followed this interpretation. (See, e.g., *Mountain Lion Foundation v. Fish & Game Comm.* (1997) 16 Cal.4th 105, 177; *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 933; *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 299.) This clarification is necessary to maintain consistency in determining “discretionary” projects and to improve practitioners’ ability identify when a project is required to complete environmental review under CEQA.

The Natural Resources Agency also added the words “fixed standards” to the end of the first sentence in the definition to be consistent with the holding in *Health First v. March Joint Powers Authority* (2009) 174 Cal. App. 4th 1135. Notably, the definition of “discretionary” in these Guidelines should be read in context with other statutes. For example, Government Code sections 65583(a)(4) and 65583.2(h) require that local governments zone specified areas for specified uses for “use by right.” In those circumstances, local government review cannot be considered discretionary pursuant to CEQA.

### **Necessity**

This clarification is necessary to maintain consistency in determining “discretionary” projects and to improve practitioners’ ability identify when a project is required to complete environmental review under CEQA. This change is necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

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 clarify current case law as well as other statutory law. The proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## **15370. MITIGATION**

### **Specific Purposes of the Amendment**

The definition of the term “mitigation” in the CEQA Guidelines originally mirrored the definition contained in the federal NEPA regulations. The Natural Resources Agency revised Section 15370 of the CEQA Guidelines, however, to clarify in the CEQA Guidelines that permanent protection of off-site resources through conservation easements constitutes mitigation. The proposed changes incorporate the First District Court of Appeal holding in *Masonite Corporation v. County of Mendocino* (2013) 218 Cal.App.4th 230 wherein the court ruled that off-site agricultural conservation easements constitute a potential means to mitigate for direct, in addition to cumulative and indirect, impacts to farmland.

### **Necessity**

These additions are necessary to maintain consistency between this CEQA Guideline section and current case law. These additions are also necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

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 clarify current case law. The proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## APPENDIX G. ENVIRONMENTAL CHECKLIST FORM

### Specific Purposes of the Amendment

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. Appendix G's questions are not an exhaustive list of all potential impacts. (*Protect the Historic Amador Waterways, supra*, 116 Cal.App.4th at pp. 1109-1112 (seasonal reduction of surface flow in local streams may be an impact on the environment, even though that particular impact is not specifically listed in Appendix G).) For that reason, Appendix G advises that “[s]ubstantial evidence of potential impacts that are not listed on this form must also be considered.” Appendix G further advises that its environmental checklist is only a *sample* form that can be tailored to address local conditions and project characteristics.

When the checklist was originally developed, it contained only a handful of questions. Over time, the list of questions has grown in response to increasing awareness of the effects of development on the environment. Currently, the sample checklist contains 89 questions divided into 18 categories of potential impacts. Depending on the project's location and circumstances, the sample checklist questions may be both under- and over-inclusive. Because the purpose of an initial study is to provoke thought and investigation, and because the checklist cannot contain an exhaustive list, the sample in Appendix G should, in the Natural Resources Agency's view, contain questions that are (1) broadly worded, (2) highlight environmental issues *commonly* associated with *most* types of new development, and (3) alert lead agencies to environmental issues that might otherwise be overlooked in the project planning and approval process.

The Natural Resources Agency revised the sample environmental checklist in several ways. First, it reframed or deleted certain questions that should be addressed in the planning process to focus attention on those issues that must be addressed in the CEQA process. Second, it added questions that, although required by current law, tend to be overlooked in the environmental review process. Finally, it revised the questions related to transportation impacts, and wildfire risk as required by SB 743 and SB 1241, respectively, and relocated questions related to paleontological resources as required by AB 52 (Gatto, 2014).

While OPR originally proposed a far more streamlined and consolidated set of questions, stakeholders objected that confusion might ensue. The Natural Resources Agency agrees with OPR that further discussion of ways to streamline the checklist is appropriate. The changes in this package, however, are more narrowly tailored. A narrative description of the changes, and the intent behind those changes, is provided below.

#### *Deleted or Consolidated Questions*

The Natural Agency deleted or consolidated numerous questions from the Appendix G checklist. Those questions, and the reason that they were deleted, are discussed below.

Soils Incapable of Supporting Septic Systems: Regarding Geology and Soils, Appendix G currently asks whether a project would “[h]ave soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water.” According to the [U.S. Environmental Protection Agency](#), inappropriately placed or operated septic systems may be a source of significant groundwater contamination. The Agency revised the questions in Appendix G related to water quality. Specifically, among other revisions, the Agency clarified that the question asking whether a project would “substantially degrade water quality” refers to both surface and ground water quality. Thus, as revised, the broader question about groundwater quality would capture not just impacts from inappropriately placed septic tanks, but also any other possible sources of uncontrolled leachate.

Conflicts with a Habitat Conservation Plan: Existing Appendix G asks whether a project would conflict with a habitat conservation plan and other related plans in two separate sections: biological resources and land use planning. The Agency deleted the question from the land use planning section. The question in the biological resources section remains unchanged.

Wastewater Treatment Requirements: In the section on utilities, Appendix G currently asks whether a project would exceed wastewater treatment requirements of an applicable regional water quality control board. Similarly, in the water quality section, Appendix G asks whether a project would violate any waste discharge requirements. Since the question in the water quality section would encompass wastewater treatment requirements as well as other water quality standards, the Agency deleted the question from the utilities section.

#### *Updated Considerations*

As part of the reorganization of Appendix G, the Natural Resources Agency also updated some considerations or questions to the checklist. Those considerations, and the reason that they have been revised, are discussed below.

Aesthetics: Existing Appendix G asks whether a project would degrade the existing visual character of a site. Visual character is a particularly difficult issue to address in the context of environmental review, in large part because it calls for exceedingly subjective judgments. Both federal and state courts have struggled with the issue of precisely what questions related to aesthetics are relevant to an analysis of environmental impact. (See, e.g., *Maryland-National Cap. Pk. & Pl. Com'n. v. U.S. Postal Serv.* (D.C. Cir. 1973) 159 U.S. App. D.C. 158; see also *Bowman v. City of Berkeley* (2006) 122 Cal.App.4th 572.) As a practical matter, infill projects are often challenged on the grounds of aesthetics. (See, e.g., Pub. Resources Code, § 21099(d) (exempting certain types of infill projects from the requirement to analyze aesthetics).)

For these reasons, the Natural Resources Agency recast the existing question on “visual character” to ask whether the project is consistent with zoning or other regulations governing visual character. This

change is intended to align with the analysis of the aesthetics issue in the *Bowman* case, *supra*. The court in that case, which involved a challenge to a multifamily residential project in an urban area, noted:

Virtually every city in this state has enacted zoning ordinances for the purpose of improving the appearance of the urban environment” ..., and architectural or design review ordinances, adopted “solely to protect aesthetics,” are increasingly common.... While those local laws obviously do not preempt CEQA, we agree with the Developer and the amicus curiae brief of the Sierra Club in support of the Project that aesthetic issues like the one raised here are ordinarily the province of local design review, not CEQA.

(*Bowman, supra*, 122 Cal.App.4th at p. 593 (citations omitted).) This revision is also consistent with the proposed changes in sections 15064 and 15064.7 that recognize the appropriate role of environmental standards in a CEQA analysis.

Air Quality: Existing Appendix G asks whether the project would create objectionable odors. The Agency updated this question in several ways. First, the term “objectionable” is subjective. Sensitivities to odors may vary widely. Therefore, the Agency recast the question to focus on the project’s potential to cause adverse impacts to substantial numbers of people. (See *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 492–493 (“Under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons”); see also *Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 279.) Similarly, the Agency included odor as one of several examples of potential localized air quality impacts.

Biological Resources and State Wetlands: Appendix G currently asks whether a project would substantially adversely affect a federally protected wetland. California law protects all waters of the state, while the federal Clean Water Act governs only “navigable waters”. Because nothing in CEQA’s definition of environment limits consideration to federally regulated resources, the Agency clarified in Appendix G that lead agencies should consider impacts to wetlands that are protected by either the state or the federal government.

Cultural Resources: AB 52 required an update to Appendix G to separate the consideration of paleontological resources from tribal cultural resources and update the relevant sample questions, and to add consideration of tribal cultural resources with relevant sample questions. In September 2016, the Office of Administrative Law approved changes to Appendix G adding consideration of tribal cultural resources. This current package includes an amendment to Appendix G that separates the consideration of paleontological resources from cultural resources, and includes consideration of paleontological resources among the relevant sample questions related to geology and soils.

Energy: As explained in the discussion of proposed amendments to section 15126.2, CEQA has long required analysis of energy impacts. (Pub. Resources Code, § 21100(b)(3) (added in 1974, requiring EIRs to include measures to avoid wasteful and inefficient uses of energy); *California Clean Energy Com. v.*

*City of Woodland* (2014) 225 Cal.App.4th 173.) However, the description of the required analysis sits largely unnoticed in a stand-alone Appendix F. To better integrate the energy analysis with the rest of CEQA, the Agency replaced relevant questions regarding potential energy impacts to the sample environmental checklist that had been previously deleted from Appendix G.

Impervious Surfaces: Appendix G currently asks a series of questions about hydrology, one of which asks whether the project will alter the drainage patterns of the site through alteration of the course of a stream or river. Another relevant factor in determining the effect of a project on existing drainage systems, however, is how much impervious surfaces a project might add. (See State Water Resources Control Board, Non-Point Source Encyclopedia, § 3.1 ([Impervious Surfaces](#)).) OPR's Technical Advisory on "low impact design" identifies the development of new impervious surfaces as a contributor to non-point source pollution and hydromodification. (Office of Planning and Research, "[CEQA and Low Impact Development Stormwater Design: Preserving Stormwater Quality and Stream Integrity Through California Environmental Quality Act \(CEQA\) Review](#)" (August 2009).) Therefore, the Agency added "impervious surfaces" to the considerations in the hydrology portion of the checklist.

Notably, the proposed addition of impervious surfaces as a consideration is not intended to imply that *any* addition of impervious material will necessarily lead to a significant impact. Rather, the modified question asks whether the addition of impervious surface would lead to substantial erosion, exceed the capacity of stormwater drainage systems, etc. Also, some water quality permits do already address the addition of impervious surfaces, and, as provided in updated sections 15064 and 15064.7, a project's compliance with those requirements will be relevant in determining whether the added surfaces create a significant impact.

Geology and Soils: The Agency clarified questions in Appendix G related to geology and soils by suggesting that agencies consider direct and indirect impacts to those resources. This change is consistent with CEQA's general requirement that agencies consider the direct and indirect impacts caused by a proposed project. (See generally, Pub. Resources Code, §§ 21065 [definition of a "project"], 21065.3 [definition of a "project-specific effect"].) And as noted earlier, this package includes an amendment to Appendix G that separates the consideration of paleontological resources from cultural resources, and includes consideration of paleontological resources among the relevant sample questions related to geology and soils.

Groundwater: The Agency made two changes to the existing question in Appendix G asking about a project's impacts to groundwater. First, the existing question asks whether a project will "substantially *deplete*" groundwater supplies. The word "deplete" could be interpreted to mean "empty". Therefore, the Agency revised the question to ask whether the project would "substantially *decrease* groundwater supplies." Second, the existing question asks whether the project would lower the groundwater table level and provides the following example: "e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted." There are many other potential impacts that could result from lowering groundwater levels, including subsidence, altering surface stream hydrology, causing migration of contaminants, etc.

Therefore, the Agency deleted the example from the question. These changes are consistent with the new regime governing groundwater passed in 2014.

Land Use Plans: Appendix G currently asks whether a project conflicts with certain land use plans. The question largely mirrors section 15125(d), which requires an EIR to analyze any inconsistencies with any applicable plans. The Agency revised that question in two ways in order to better focus the analysis.

First, the Agency clarified that the focus of the analysis should not be on the “conflict” with the plan, but instead, on any adverse environmental impact that might result from a conflict. For example, destruction of habitat that results from development in conflict with a habitat conservation plan might lead to a significant environmental impact. The focus, however, should be on the impact on the environment, not on the conflict with the plan. (See, e.g., *Marin Mun. Water Dist. v. Kg Land Cal. Corp.* (1991) 235 Cal.App.3d 1652, 1668 (“A local agency engaged in EIR analysis may not ignore regional needs and the cumulative impacts of a proposed project. ... Thus the Guidelines require an EIR to discuss any inconsistencies between the proposed project and applicable general and regional plans”); see also Pub. Resources Code, § 21100(e) (“Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, *may be used in cumulative impact analysis*”) (emphasis added).) Application of a density bonus to exceed limits in a general plan or zoning, on the other hand, might not lead to any environmental impact. (See, e.g., *Wollmer v. City of Berkeley* (2009) 179 Cal.App.4th 933.)

Second, the Agency deleted the phrase “with jurisdiction over the project” from the question, again for the purpose of focusing the analysis on any *actual environmental impacts* that might result from the project. Finally, the Agency deleted the list of examples of plans from the question. Section 15125(d) contains numerous examples of potentially relevant land use plans, and so repetition in the question in Appendix G is not necessary.

Population Growth: Appendix G currently asks whether a project will cause substantial population growth. The Agency clarified that the question should focus on whether such growth is *unplanned*. Growth that is planned, and the environmental effects of which have been analyzed in connection with a land use plan or a regional plan, should not by itself be considered an impact.

Transportation: The Agency made several changes to the questions related to transportation in Appendix G. First, the Agency revised the questions related to “measures of effectiveness” so that the focus is more on the circulation element and other plans governing transportation. Second, the Agency deleted the second question related to level of service, and instead inserted a references to new Guideline section 16054.3, subdivisions (b), to focus on vehicle miles traveled where appropriate. Third, the Agency clarified the question related to design features.

Water Supply: Appendix G currently asks whether the project has adequate water supplies. The Agency updated the question to better reflect the factors identified by the Supreme Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, as well as the water supply assessment and verification statutes. (Wat. Code, § 10910; Gov. Code, § 66473.7.)

Wildfire: Senate Bill 1241 (Kehoe, 2012) required the Office of Planning and Research, the Natural Resources Agency, and CalFire to develop “amendments to the initial study checklist of the [CEQA Guidelines] for the inclusion of questions related to fire hazard impacts for projects located on lands classified as state responsibility areas, as defined in section 4102, and on lands classified as very high fire hazard severity zones, as defined in subdivision (i) of section 51177 of the Government Code.” (Pub. Resources Code, § 21083.01 (emphasis added).) The Agency added several questions addressing this issue. Notably, while SB 1241 required the questions to address specific locations, it did not necessarily limit the analysis to those locations, and so the Agency posed the questions for projects located within “or near” those zones. Lead agencies will be best placed to determine precisely where such analysis is needed outside of the specified zones.

#### *Corrected Typo*

Finally, the Agency corrected a typo in the Note following question 11 in Appendix G. The Note briefly describes the tribal consultation process. It contains a reference to Public Resources Code Section 21083.3.2. The correct citation is 21080.3.2. The Agency discovered the typo after circulating the changes for public review. However, because the correction is a change without regulatory effect, pursuant to section 100(a)(4) of the Office of Administrative Law’s regulations governing the rulemaking process, no public review is required. (Cal. Code Regs., tit. 1, § 100(a)(4).)

#### **Necessity**

These changes are necessary to make the process simpler for lead agencies. These additions are also necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

#### **Reasonable Alternatives to the Regulations, Including Alternatives that Would lessen Any Adverse Impact on Small Business, and the Resources Agency’s Reasons for Rejecting Those Alternatives**

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 clarify existing law. The proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

## **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action implements and clarifies existing law. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

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

### **Specific Purposes of the Amendment**

Appendix M in the CEQA Guidelines contains the performance standards that must be met for the streamlined environmental review process for infill projects under CEQA Guidelines section 15183.3. The Natural Resources Agency corrected typographical errors in Sections 4.A, 4.C, and 4.E of Appendix M to be consistent with the previously adopted regulatory text.

### **Necessity**

These changes are necessary to correct the typographical errors in Appendix M and thus to clarify the substantive requirements for performance standards applying to certain infill projects. These additions are also necessary to ensure that the CEQA Guidelines best serve their function of providing a comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

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 clarify existing law. The proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

## **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The proposed action clarifies existing law by correcting typographical errors. Because the proposed action does not add any substantive requirements, it will not result in an adverse impact on businesses in California.

## APPENDIX N. INFILL ENVIRONMENTAL CHECKLIST FORM

### **Specific Purposes of Amendment**

Existing Appendix N provides a sample checklist that is intended to assist lead agencies in assessing infill projects according to the procedures in Public Resources Code section 21094.5. The Agency added Appendix N in 2013 when it added section 15183.3. In creating Appendix N, the Agency patterned the sample checklist on Appendix G, which also provides a sample environmental checklist that may be used by lead agencies in determining whether a project may cause a significant impact on the environment. In this package, the Agency updated Appendix N to be consistent with the changes to Appendix G, described above.

### **Necessity**

These changes are necessary to make it simpler for lead agencies. These additions are also necessary to ensure that the CEQA Guidelines best serve their function of providing comprehensive, easily understood guide for the use of public agencies, project proponents, and other persons directly affected by CEQA.

### **Reasonable Alternatives to the Regulations, Including Alternatives that Would Lessen Any Adverse Impact on Small Business, and the Resources Agency's Reasons for Rejecting Those Alternatives**

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 clarify existing law. Additionally, the proposed action adds no new substantive requirements. 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 the change is a clarifying change only.

### **Evidence Supporting an Initial Determination That the Action Will Not Have a Significant Adverse Economic Impact on Business**

The action implements and clarifies existing law. Because the proposed action does not add substantive requirements, it will not result in an adverse impact on businesses in California. Appendix N, like Appendix G, advises that its environmental checklist is only a sample form that can be tailored to address local conditions and project characteristics.

## Determinations

### **C. No Imposition of a Mandate on Local Agencies and School Districts**

CEQA only applies to discretionary actions undertaken by public agencies, including school districts. Therefore, the proposed regulations do not impose any mandate on local agencies or school districts.

## D. Master Responses

Many comments submitted on the CEQA Guideline Update raised similar issues. The following are responses that address many of those commonly raised themes.

### 1. The New CEQA Guideline Regarding Transportation Squarely Reflects Legislative Direction in Senate Bill 743 (Steinberg, 2013).

Some comments suggested that the Legislature never intended to make changes outside of urban areas, and so the Agency has exceeded the scope of its authority. The Agency disagrees.

Senate Bill 743 stated the policy that CEQA analysis of transportation impacts needed to be updated to be consistent with California's climate objectives. (Senate Bill 743, Steinberg 2013, § 1(a)(1) (noting prior legislation in which "the Legislature signaled its commitment to encouraging land use and transportation planning decisions and investments that reduce vehicle miles traveled and contribute to the reductions in greenhouse gas emissions").) Specifically, the Legislature stated:

New methodologies under the California Environmental Quality Act are needed for evaluating transportation impacts that are better able to promote the state's goals of reducing greenhouse gas emissions and traffic-related air pollution, promoting the development of a multimodal transportation system, and providing clean, efficient access to destinations.

(*Id.* at subd. (a)(2).) To achieve that policy, the legislation required the Agency to adopt changes to the CEQA Guidelines "establishing criteria for determining the significance of transportation impacts of projects[.]" (Public Resources Code § 21099(b)(1).) While the statute required the change to be implemented within transit priority areas, it authorized the change to extend beyond those areas in the Agency's discretion. (*Id.* at subd. (c)(1).) Finally, the legislation suggested several potential metrics that could be used to measure transportation impacts, including "vehicle miles traveled, vehicle miles traveled per capita, automobile trip generation rates, or automobile trips generated." (*Id.* at subd. (b)(1).)

In sum, Senate Bill 743 required a change in the way that agencies evaluate transportation impacts, and left to the Agency to identify, following a public process, the metric to measure such impacts and the most appropriate geographic scope of the change. The Agency finds that proposed Section 15064.3 falls squarely within the authority provided in the Public Resources Code.

The Agency's reasons to identify vehicle miles traveled as the measure of transportation impact, and to apply the new rules statewide, are explained in greater detail below.

### 2. Vehicle Miles Traveled is the Most Appropriate Measure of Transportation Impacts.

Some comments argued that the CEQA Guidelines should either maintain the status quo, or that vehicle miles traveled was not the best measure of transportation impacts.

Shortly after SB 743 was enacted, the Governor’s Office of Planning and Research released its evaluation of various potential metrics, and invited public input on that evaluation. (See OPR, *Preliminary Evaluation of Alternative Methods of Transportation Analysis* (December 30, 2013).) The measures evaluated included:

- Vehicle miles traveled
- Automobile Trips Generated
- Multi-Modal Level of Service
- Fuel Use
- Motor Vehicle Hours Traveled

Having considered public input on the evaluation of these alternatives, OPR identified vehicle miles traveled as the most appropriate measure of transportation impacts. The Agency concurs with OPR’s recommendation, for several reasons.

First, as noted in OPR’s Preliminary Evaluation, the Legislature specifically recommended vehicle miles traveled. (Pub. Resources Code § 21099(b)(1) (OPR “shall recommend potential metrics to measure transportation impacts that may include ... vehicle miles traveled”); see also SB 743 (2013), § 1(a)(1) (noting Legislature’s “commitment to encouraging land use and transportation planning decisions and investments that reduce vehicle miles traveled”).)

Second, vehicle miles traveled achieves the purposes set forth in the statute. SB 743 required the new transportation metric to “promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses.” Vehicle miles traveled strongly correlates with greenhouse gas emissions. Thus, reducing vehicle miles traveled is likely to reduce greenhouse gas emissions. Further, since transit, bicycle and pedestrian projects reduce vehicle miles traveled, and this proposal presumes that such projects will result in a less than significant impact, measuring vehicle miles traveled promotes multimodal transportation networks. (See Handy, Susan, et al. “Impacts of Transit Service Strategies on Passenger Vehicle Use and Greenhouse Gas Emissions.” California Air Resources Board, Oct. 2013, [https://www.arb.ca.gov/cc/sb375/policies/transitservice/transit\\_brief.pdf](https://www.arb.ca.gov/cc/sb375/policies/transitservice/transit_brief.pdf) [discussing how improved transit service reduces VMT]; Handy, Susan, et al. “Impacts of Bicycling Strategies on Passenger Vehicle Use and Greenhouse Gas Emissions.” California Air Resources Board, Sept. 2014, [https://www.arb.ca.gov/cc/sb375/policies/bicycling/bicycling\\_brief.pdf](https://www.arb.ca.gov/cc/sb375/policies/bicycling/bicycling_brief.pdf) [concluding that better cycling facilities and infrastructure reduce VMT]; Handy, Susan, et al. “Impacts of Pedestrian Strategies on Passenger Vehicle Use and Greenhouse Gas Emissions,” California Air Resources Board, Sept. 2014, [https://www.arb.ca.gov/cc/sb375/policies/ped/walking\\_brief.pdf](https://www.arb.ca.gov/cc/sb375/policies/ped/walking_brief.pdf) [concluding that improved pedestrian facilities and infrastructure reduce VMT].) Finally, because mixed-use projects tend to reduce the need for driving, vehicle miles traveled is more likely to result in projects with a diversity of land uses. (Spears, Steven, et al. “Impacts of Land-Use Mix on Passenger Vehicle Use and Greenhouse Gas Emissions.” California Air Resources Board, Sept. 2014, [https://arb.ca.gov/cc/sb375/policies/mix/lu-mix\\_brief.pdf](https://arb.ca.gov/cc/sb375/policies/mix/lu-mix_brief.pdf).)

In addition to meeting the statutory objectives in SB 743, the Agency finds that lowering vehicle miles traveled may also result in numerous public and private benefits. As explained in the Agency's Standardized Regulatory Impact Assessment, focusing on vehicle miles traveled instead of congestion in a CEQA analysis is anticipated to result in significant cost savings. Those savings result because studies are quicker and easier to perform, which reduces both the cost of the study but also the time spent on environmental review. The SRIA also explained that lowering vehicle miles traveled would also

- Better health and avoided health care costs
- Reduction in transportation, building energy, and water costs
- Reduction in travel times to destinations
- Cleaner water

The Agency received comments supporting the proposal from a broad cross-section of stakeholders that included, among others, developers of infill housing, local governments, environmental and public health organizations, and social equity advocates. Key points included:

- “San Francisco took a leadership position when we became the first county in California to remove automobile delay and adopt Vehicle Miles Traveled (VMT) as a measurement of transportation impacts in CEQA. We recognized that the prior paradigm of automobile delay was not allowing for the development and maintenance of a high-quality environment now and in the future, a legislative intent of CEQA; and it conflicted with numerous state, regional, and local plans, ordinances, and policies. *Two years later, we are seeing the benefits of this change as numerous transportation projects and infill developments that previously would have gone through time-consuming, costly vehicular level of service analysis with no beneficial environmental outcomes, are on the ground, approved, or under construction.*” – City and County of San Francisco (emphasis added) (Comment 5.3)
- “The transition to using Vehicle Miles Traveled (VMT) for the analysis of transportation impacts, pursuant to Senate Bill (SB) 743, is an exciting and important change. This change gives cities and the State a new tool to address numerous mutual goals including achieving climate action targets, increasing livability and access, and relieving the affordable housing crisis. Our city leaders express support for this change as demonstrated in the attached letter to OPR last July. We recognize the responsibility of local jurisdictions to plan for future development in areas that will result in low VMT outcomes. The State's leadership in advancing to a VMT-based metric will help achieve this outcome.” – City of Long Beach, et al.
- “The replacement of LOS with VMT will improve transit service and walkability, benefiting low-income households who are more likely to take transit and walk. In addition, the proposed guidelines will help streamline the development process of housing in low-VMT and transit-oriented locations, thereby helping increase the supply of housing options in areas with low transportation costs.” – Climate Plan, et al.
- “Through its focus on infill development and greenhouse gas reduction, implementation of SB 743 will serve to facilitate achievement of many of the regional goals identified in our adopted 2016 RTP/SCS, specifically those pertaining to *regional sustainability, improving transportation*

*system efficiency, providing more and better mobility options including transit and active transportation, encouraging construction of more affordable housing, improved air quality, and promoting environmental preservation. These beneficial outcomes will improve economic, quality of life, and public health performance in the SCAG region and throughout the state while also supporting critical regional investments, particularly in active transportation and transit.” – Southern California Association of Governments (emphasis added)*

- “The proposed guideline to implement SB 743 is a crucial step toward realizing climate policy priorities shared by both the State and the City of Los Angeles. SB 743 has the potential to transform the way transportation and infrastructure projects are delivered. Until the guidelines are implemented, the state environmental process will remain disconnected from climate policy objectives.” – City of Los Angeles

Despite the anticipated benefits described above, the proposal to replace level of service with vehicle miles traveled as the primary measure of transportation impacts has been controversial. The Agency received comments from some business interests and some local governments expressing opposition to the proposal. Those opposing the proposal expressed fear that, among potential outcomes, mitigation costs and litigation may increase and, as a result, home building and business production may decrease. These are legitimate concerns; however, the Agency found those comments to be largely comprised of assumptions and opinion, but not evidence. (See, e.g., Comments of the Building Industry Association, et al.)

The Agency finds the comments of those agencies that have already switched to a vehicle miles traveled metric, including some of those quoted above, to be particularly persuasive because they are informed by real world experience. Notably, the Agency received no comments from any of the early adopters suggesting that the Agency should not proceed.

Finally, the Agency acknowledges those comments that expressed disappointment that their specific suggestion (largely, to maintain the status quo) was not adopted. In that regard, the Agency notes that the development of this rulemaking packages involved extensive stakeholder engagement over the course of several years. The proposal evolved substantially in response to that input. For example, much of the detail that OPR originally proposed to include in the new Guidelines section was moved to a purely advisory guidance document. OPR also refined its recommended thresholds of significance to provide more flexibility. Further, the proposal would enable many housing and infrastructure projects to be presumed, based on evidence in this rulemaking, to have a less than significant transportation impact. The proposal also includes an opt-in period allow those agencies that are ready to make the switch from level of service to vehicle miles traveled to do so, but gives time to other agencies that have indicated that they need more time to become acquainted with the new procedures. Finally, the proposal gives even greater discretion to agencies in how they evaluate roadway capacity projects. (Compare Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing Senate Bill 743 (2014), with Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA Implementing Senate Bill 743 (2016), and Proposed Updates to the CEQA Guidelines – Comprehensive Package (2017).)

In embarking on this update, the Agency and OPR announced their intention to develop a balanced package. Not every stakeholder will agree with the balance that has been struck. While the Agency acknowledges the disappointment expressed by some in the policy direction, the Agency the evolution of this proposal demonstrates that OPR and the Agency have indeed heard from stakeholders and responded as appropriate in light of statutory authority and policy objectives.

### **3. Vehicle Miles Traveled Should Be Analyzed Statewide, Not Just in Transit Priority Areas.**

Some comments noted that while SB 743 gave the Agency the discretion to require analysis of vehicle miles traveled statewide, it only mandated new transportation methodologies within transit priority areas. Because the Guidelines propose a significant shift in how transportation impacts are analyzed, some comments suggested that implementation should begin in a smaller geographic area. The Agency declines to adopt that approach because it would not advance the purposes of the statute, and would forego the cost savings and environmental benefits expected to result from this change.

OPR and the Agency conducted extensive outreach since 2013 to craft this proposal. During that outreach, OPR asked stakeholders in various regions of the state whether the status quo would do a better job promoting the purposes of the statute. No evidence demonstrated that the status quo, which focuses on traffic congestion, provides a more accurate analysis of the environmental effects of transportation than a methodology that focuses on vehicle miles traveled.

Conversely, outreach with the Institute for Transportation Engineers, transportation professionals, transportation agencies, local governments, and metropolitan planning organizations demonstrated that studying vehicle miles traveled is possible and mitigation is feasible when needed. The evidence, including the Standardized Regulatory Impact Assessment prepared for these Guidelines, further shows that studying vehicle miles traveled is cheaper and quicker than studies of traffic congestion. The City and County of San Francisco, which has already begun using vehicle miles traveled as its primary measure of transportation impacts in CEQA, has found that using vehicle miles traveled instead of level of service has allowed for bringing much needed housing and transportation projects online much quicker. (See Comments from City and County of San Francisco.)

This Agency has previously considered the many benefits that result from development with lower vehicle miles traveled. As we observed in the rulemaking instituting a streamlined CEQA process for infill developments, projects with lower vehicle miles traveled promote significantly improved health and safety outcomes, as well as air quality benefits. More specifically, low VMT projects encourage more reliance on neighborhood-oriented businesses, walking, cycling, and public transit. These activities indirectly reduce greenhouse gas emissions and other emissions that lead to smog and air and water quality issues because they result in less vehicle miles traveled by residents who would traditionally have to drive to obtain the same services and products. Taken together, these benefits create sustainable, vibrant, and economically viable neighborhoods. (See Initial Statement of Reasons (July 2012), at pp. 12-17.) As this Agency found then, the evidence continues to demonstrate the benefits of lowering vehicle miles traveled.

As a legal matter, limiting the application of the new transportation guideline may invite litigation that would counter the goals of the statute. Specifically, the definition of “transit priority areas” is not clear in the statute.<sup>6</sup> For example, the boundaries of a transit priority area may shift as bus routes and service frequencies change, and as plans for future transit investments change. Those changes may be made by multiple agencies, and no one agency is charged with maintaining current and accurate delineations of transit priority areas. As a result, applying one set of rules within transit priority areas and another outside would impose a significant burden on lead agencies to determine on a project by project basis which rules apply. As the City of Los Angeles noted in its comments, that uncertainty would impose a unique burden on infill projects, the very projects that the statute was designed to promote. (See Comments from the City of Los Angeles.) Such uncertainty could also encourage litigation.

Moreover, even if the Agency were to limit application of this Guideline to transit priority areas, ample evidence in this rulemaking record and elsewhere demonstrates the relationship between vehicle miles traveled and environmental impacts. (See, e.g., Master Response 2; OPR, Technical Advisory.) Vehicle miles traveled is also regularly analyzed as part of analyses of air pollutants, greenhouse gas emissions and energy, the analysis is reasonably feasible. Because CEQA requires environmental documents to “provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences,” and because courts look for “adequacy, completeness, and a good faith effort at full disclosure,” a prudent lead agency would analyze a project’s vehicle miles traveled regardless of whether the project is located near transit. (CEQA Guidelines § 15151.)

Thus, due to the substantial benefits of measuring vehicle miles traveled instead of level of service, and the serious potential for confusion and litigation risk of having two different measures of transportation impact, the Agency has determined that the new methodology should apply statewide.

The Agency recognizes that access to transit makes it easier to find that a project’s vehicle miles traveled are low. However, mixing uses, designing projects so that customers only need to park once, enhancing bicycle and pedestrian networks, and many other strategies also exist to reduce vehicle miles traveled. Further, OPR’s recommendations in its Technical Advisory recognize that rural areas are different, and so there, thresholds may be applied on a case by case basis that reflect local conditions.

#### **4. Evidence Demonstrates that Projects Located Near Transit Are Likely to Reduce Vehicle Miles Traveled; Therefore, Agencies Should Presume that the Transportation Impact of Such Projects Is Less Than Significant.**

A significant body of research indicates that projects located close to existing transit will enable lower vehicle use because of the availability of transit. (See, e.g., Cervero, R. (2002). *Built Environments and*

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<sup>6</sup> “Transit priority area” means “an area within one-half mile of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program adopted pursuant to Section 450.216 or 450.322 of Title 23 of the Code of Federal Regulations.” (Pub. Resources Code § 21099(a)(7).) A “Major transit stop” means “a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.” (Id. at § 21064.3.)

*Mode Choice: Toward a Normative Framework*. Elsevier Science Ltd.; Cervero, R. & Duncan, M. (2006). *Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing?* Journal of the American Planning Association; Cervero, R. (2006). *Transit Oriented Development's Ridership Bonus: A Product of Self-Selection and Public Policies*. University of California Transportation Center; Ewing, R. & Cervero, R. (2001). *Travel and the Built Environment: A Synthesis*. Transportation Research Record 1780 – Paper No. 01-3515; Ewing, R. & Cervero, R. (2010). *Travel and the Built Environment: A Meta-Analysis*. Journal of the American Planning Association; Handy, S., Cao, X. & Mokhtarian, P. (2005). *Correlation or causality between the built environment and travel behavior? Evidence from Northern California*. Elsevier Ltd.; Kolko, J., Meija, M., Reed, D., & Schiff, E. (2011). *Make the Most of Transit: Density, Employment Growth, and Ridership around New Stations*. Public Policy Institute of California; Lund, H., Cervero, R., & Willson, R. (2004). *Travel Characteristics of Transit-Oriented Development in California*. Funded by Caltrans Transportation Grant – “Statewide Planning Studies” – FTA Section 5313 (b); Ewing, R., K. Bartholomew, S. Winkelmann, J. Walters, and D. Chen, *Growing Cooler: The Evidence on Urban Development and Climate Change*, Washington, D.C.: Urban Land Institute, 2008 [see section 7.3.4, citing and discussing ample evidence of transit proximity reducing vehicle travel].) The California Air Pollution Control Officers Association’s report “*Quantifying Greenhouse Gas Mitigation Measures*” also cites several studies that quantify VMT reductions resulting from transit proximity. (Lee, Barbara, et al. “*Quantifying Greenhouse Gas Mitigation Measures*.” California Air Pollution Control Officers Association, Aug. 2010, pp. 171-174.) This reduction in vehicle miles traveled is most pronounced within one-half mile of transit. Notably, because many other programs and other statutory provisions focus on one-half mile surrounding transit, using that distance in the presumption promotes consistency with other policies. (See, e.g., Public Resources Code § 21155(b) (defining projects that may benefit from CEQA streamlining as those projects within one-half mile of transit); see also Strategic Growth Council, *Affordable Housing and Sustainable Communities Program Guidelines*.)

Some comments correctly noted that factors beyond transit proximity may affect vehicle miles traveled. The Agency does not disagree, and that is why the presumption is rebuttable. However, the body of evidence described above supports the Agency’s statement in the Guidelines that agencies should presume that projects that locate near transit will have a less than significant transportation impact. That body of evidence, together with the statement in the Guidelines, also gives lead agencies a basis to fill out the initial study checklist and at least initially determine that a project’s transportation impacts are less than significant.

##### **5. Transportation Impacts of Roadway Capacity Expansion Can Be Measured in Multiple Ways.**

Section 15064.3(b)(2) states that agencies analyzing roadway capacity projects have discretion to use a metric other than vehicle miles traveled. Allowing this discretion for such projects is appropriate at this time for several reasons. For example, many types of roadway capacity projects, such as the addition of new local streets or capacity on existing local streets, the addition of new collector streets or capacity on new collector streets, the addition of capacity in rural areas where there is not current or projected future congestion (i.e. solely to address safety issues), the addition of capacity on-ramps or off-ramps, methods may not yet exist or are still under development for assessing VMT impacts. Many capacity projects are also being conducted jointly with federal partners that may use other metrics. Therefore,

leaving the lead agency with the discretion to make this determination and tailor its metrics accordingly will be helpful to ensuring that impacts are adequately analyzed.

Meanwhile, where methods exist, measurement of induced travel needs to be undertaken in order to assess greenhouse gas emissions impacts, impacts from air pollutant emissions, energy impacts, and noise impacts, and transportation impacts described by any metric. In these cases, implementing vehicle miles traveled as the metric of transportation impact may assist the lead agency in addressing those other environmental impacts. Where vehicle miles traveled is already assessed as a step in analyzing other impacts, lead agencies would likely disclose the results of such analyses to promote informed public participation and decision-making. (See, Pub. Resources Code § 21099(b)(3) (“This subdivision does not relieve a public agency of the requirement to analyze a project’s potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation”); CEQA Guidelines § 15151 (“courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure”); see also proposed Section 15064.3(b)(2) (“For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements”) (emphasis added); California Department of Transportation, *Guidance for Preparers of Growth-related, Indirect Impact Analyses* (2006).)

## **6. Mitigation to Reduce Vehicle Miles Traveled is Feasible.**

CEQA requires mitigation of significant environmental impacts. Even independent of these Guidelines, some courts have found that this requirement includes consideration of measures to reduce the driving required by a project. (See, e.g., *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 17 Cal.App.5th 413; *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256; *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal. App. 4th 173.)

Some comments, however, questioned whether the vehicle miles traveled of certain suburban or rural projects could be feasibly mitigated. Many mitigation options exist. The California Air Pollution Control Officers Association, for example, developed a guide, supported with peer-reviewed research, that includes various measures to reduce vehicle miles traveled in a variety of geographic settings. (California Pollution Control Officers Association, *Quantifying Greenhouse Gas Mitigation Measures, A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures* (2010) at pp. 155-331.)<sup>7</sup> The determination of whether any particular measure is feasible in connection with a specific project is to be made by the lead agency.

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<sup>7</sup> The Agency finds the CAPCOA Guide to be a particularly credible source of information because it was prepared by expert air quality agencies, with the assistance of highly regarded consultants in air quality and transportation planning, and is supported by peer-reviewed research. Additionally, U.C. Berkeley’s Center for Law, Energy & the Environment recently published a paper discussing the use of VMT banks and exchanges as possible mitigation options. (Elkind, et al. “Implementing SB 743: An Analysis of Vehicle Miles Traveled Banking and Exchange Frameworks,” Oct. 2018, <https://www.law.berkeley.edu/wp-content/uploads/2018/09/Implementing-SB-743-October-2018.pdf>.) While the Agency has not relied on that document in developing this rulemaking, it is sharing this citation for informational purposes.

Notably, OPR's Technical Advisory explains that because such impacts of vehicle miles traveled are largely regional in nature, mitigation may also be regional in scope. Thus, regional mitigation programs to reduce vehicle miles traveled may be an effective way to reduce such impacts.

#### **7. A Phase-In Period Will Allow Agencies Time to Update Their Own Procedures.**

The Agency's current proposal states that the new rules for VMT analysis will become mandatory beginning on July 1, 2020. (July 2018 Proposed 15-Day Revisions, p. 11.) The regulatory text posted in January 2018 included a typographical error in Guidelines section 15064.3(c). In response, some comments expressed concerns about the proposed phase-in date of July 1, 2019, for lead agencies to apply the VMT metric in transportation analyses. The Agency corrected the error to July 1, 2020, in the 15-day revisions, which the Agency posted in July 2018. This correction aligns with the Initial Statement of Reasons, which states that "jurisdictions will have approximately two years to switch to VMT if they so choose." (Initial Statement of Reasons, p. 16.)

This phase-in period provides sufficient time for lead agencies to update their procedures. The Agency notes that typically, agencies must update their procedures within 120 days of revisions to the CEQA Guidelines. (See CEQA Guidelines, § 15007(d).) Although lead agencies would have a phase-in period, those who are ready to begin evaluating vehicle miles traveled may use the new transportation metric immediately upon the effectiveness of the Guidelines. In fact, some cities (namely, San Francisco, Oakland, Pasadena, and San Jose) have already updated their own procedures to analyze VMT. Those cities that have already updated their procedures to include vehicle miles traveled can serve as a model for other agencies. The Agency notes there are compelling reasons for other agencies to move forward as well.

First, the proposed vehicle miles traveled metric has been circulating in OPR's discussions with the public since 2013 when OPR began its process to comprehensively update the Guidelines. Notably, the proposed changes to section 15064.3 have been circulating in substantially similar form since 2014. Also, since the release of the preliminary discussion draft in August 2014, the Agency, OPR, or both engaged in nearly two hundred meetings, presentations, and conferences. (Initial Statement of Reasons, p. 46.) The Agency and OPR have also conducted extensive training and outreach to educate lead agencies on the proposed requirements. In short, the Agency believes that over the past four to five years, the public and lead agencies have had sufficient time to learn about the proposed changes in transportation impact metric.

Second, vehicle miles traveled is relatively simple to calculate compared to level of service, and the analysis is generally less costly and time consuming. That is because, unlike level of service, vehicle miles traveled does not require counting existing trips, estimating project trip distribution, or traffic microsimulation for determining congestion. (Standardized Regulatory Impact Assessment, pp. 8-12, 38.) Assessing vehicle miles traveled requires estimates of trip generation rates and trip length, and can be readily modeled using readily available and existing tools such as CalEEMod or URBEMIS. (Standardized Regulatory Impact Assessment, pp. 8, 16.) Because vehicle miles traveled analysis is much simpler and faster to do, the Standardized Regulatory Impact Assessment explained that while an

congestion-based study may cost approximately \$25,000 on average, a study of vehicle miles traveled may be approximately \$5,000. (Standardized Regulatory Impact Assessment, p. 16.)

Third, vehicle miles traveled is currently used to analyze a project's environmental impacts to other resources, including air quality, GHG emissions, and energy resources. More to the point, making a reasonably accurate estimate of transportation projects' effects on vehicle travel is important to making reasonably accurate estimates of GHG emissions, air quality emissions, energy impacts, and noise impacts. Additionally, two appellate courts have recently determined that the lead agency's failure to discuss the transportation energy impacts of a project in an EIR was a prejudicial abuse of discretion under CEQA. (*California Clean Energy Com. v. City of Woodland* (2014) 225 Cal.App.4th 173, 210 [EIR failed to consider project's transportation energy impacts]; *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 266.) An analysis of transportation energy impacts generally includes assessing trip length and the number of trips, which is precisely the calculation for VMT. Lead agencies can streamline their environmental analyses by using VMT to measure a number of impacts, including transportation, air quality, greenhouse gas, noise, and energy impacts.

Finally, many professional organizations, such as the Association of Environmental Professionals and American Planning Association, have hosted continuing education seminars on this topic, and the Agency anticipates more once this rulemaking is complete. Thus, because the analysis is relatively simple to conduct, and in fact is being studied in connection with other impacts, and the opportunities for training are many, delaying full implementation until July 2020 is a reasonable phase-in period.

#### **8. Analyzing Vehicle Miles Traveled, Instead of Congestion, Should Benefit Housing Production, Including Affordable Housing**

The proposed shift to VMT analysis will benefit low-income earners in at least three ways.

First, it streamlines transit and active transit modes, which a disproportionate number of low income residents rely upon for transportation. Providing greater transportation choices, such as transit and active transit modes, can save low-income residents money. (See Fang, K. and Volker, J. "Cutting Greenhouse Gas Emissions Is Only the Beginning: A Literature Review of the Co-Benefits of Reducing Vehicle Miles Traveled," National Center for Sustainable Transportation, March 2017, pp. 12-13; see also California Department of Housing and Community Development, "California's Housing Future: Challenges and Opportunities," Feb. 2018, p. 3 ["In California's rural areas, high transportation costs often negate the relatively more affordable housing prices."], 50 ["The proximity of jobs and services, density, and the availability of public transportation are among the factors that can affect the need for automobile travel and thus transportation costs."; "When households move further from job- and transit-rich areas to find more affordable homes, they encounter consequences in the form of higher transportation costs and commute times."].)

Second, because low-income earners generate less household VMT, affordable housing is more likely to be found to have a less than significant transportation impact with VMT analysis. (See, e.g., Lee, Barbara, et al. "Quantifying Greenhouse Gas Mitigation Measures." California Air Pollution Control Officers Association, Aug. 2010, pp. 160-161, 176 ["Income has a statistically significant effect on the

probability that a commuter will take transit or walk to work. [Below market rate] housing provides greater opportunity for lower income families to live closer to jobs centers and achieve jobs/housing match near transit. . . Lower income families tend to have lower levels of auto ownership, allowing buildings to be designed with less parking . . . ”], 178 [“[R]egardless of distance from BART, lower income households generate at least 50% higher BART use for school trips than higher income households.”].) This is particularly noteworthy because opponents to affordable housing often cite increased traffic congestion as a reason to oppose such projects.

Third, the shift to VMT analysis would lead to more infill and transit-oriented development, and such development often allows lower living costs when transportation and housing costs are both taken into account. (See Center for Neighborhood Technology, *Losing Ground* (2012) [available at [https://www.cnt.org/sites/default/files/publications/CNT\\_LosingGround.pdf](https://www.cnt.org/sites/default/files/publications/CNT_LosingGround.pdf)]; Center for Neighborhood Technology, *Penny Wise, Pound Foolish* (2010) [available at [https://www.cnt.org/sites/default/files/publications/CNT\\_pwof.pdf](https://www.cnt.org/sites/default/files/publications/CNT_pwof.pdf)].) Relatedly, encouraging infill development is strongly correlated to economic mobility and thus infill would benefit low-income communities in urban areas. (See Fang, et al., *supra*, pp. 12-13 [discussing the direct financial impacts on households in reducing vehicle miles traveled]; see also Center for Neighborhood Technology, “Penny Wise, Pound Foolish,” March 2010, pp. 7-8 [concluding that location efficiency reduces transportation costs].)

Comments submitted by a coalition of equity advocates similarly suggest that focusing on vehicle miles traveled instead of congestion should benefit lower-income Californians by providing greater transportation options and access to housing. While recommending that further work be done to discourage displacement effects, the group explained:

The replacement of LOS with VMT will improve transit service and walkability, benefiting low-income households who are more likely to take transit and walk. In addition, the proposed guidelines will help streamline the development process of housing in low-VMT and transit-oriented locations, thereby helping increase the supply of housing options in areas with low transportation costs.

(See, Comments Submitted by Climate Plan, et al.)

The Agency acknowledges comments to the contrary. Primarily submitted by proponents of the building industry, some comments assert that analyzing vehicle miles traveled will hinder the production of affordable housing. Some even argue that the change will disproportionately impact affordable housing.

No one disputes that far fewer homes are currently being built than are needed; however, the Agency does not find arguments that the CEQA Guidelines will worsen housing affordability to be persuasive for several reasons. First, the comments are unsupported with evidence. Instead, they consist largely of fear, speculation and unsubstantiated opinion. Second, while the Agency shares the concern about housing affordability, myriad factors affect housing production and pricing. They include, among others, availability and costs of skilled labor, availability and costs of buildable land, costs of materials (which

are now being affected by global markets and federal trade policy), building regulations, entitlement processes and profit expectations. While some comments referred to a study that described these factors,<sup>8</sup> neither the building industry nor those that represent them acknowledge these other factors in their comments on the Guidelines, nor did they offer any explanation of the complex interactions between those factors. Third, even focusing on the potential effect of environmental mitigation on ultimate housing costs, the comments fail to acknowledge that lead agencies today require applicants to study and mitigate congestion impacts. They offer no evidence to suggest that mitigation to reduce vehicle miles traveled would be any more expensive than mitigation of congestion.

For the reasons stated above, this Agency has little, if any, ability to affect housing affordability. However, within the scope of this rulemaking, the Agency has implemented the changes required by statute in a way that is expected to lower the costs of environmental study and to remove barriers to infill development. Evidence based on the experience of those agencies that have already implemented such changes on the local level indicates that housing approvals will happen quicker and with fewer costs under this proposal.

Some comments suggested that the proposed changes would make infill projects more difficult. Again, the evidence suggests otherwise. For example, the SRIA included a reference to an op-ed penned by the president of the Council of Infill Builders and advocate for infill development, urging completion of these changes. “As leading developers and advocates of infill projects throughout California, we recognize that this proposed reform will remove one of the most common roadblocks used to stop smart city-centered development[.]” (See “‘Driving Miles’ is best measure of new development,” San Francisco Chronicle, Opinion by Curt Johansen and Jeremy Madsen (Nov. 19, 2014), available online at <http://www.sfgate.com/opinion/openforum/article/Driving-miles-is-best-measure-of-new-5904868.php>.) Similarly, as noted above, cities that have already made a similar change at the local level have observed that the change actually facilitates infill development. (See, e.g., Comments of the City and County of San Francisco (“Two years later, we are seeing the benefits of this change as numerous transportation projects and infill developments that previously would have gone through time-consuming, costly vehicular level of service analysis with no beneficial environmental outcomes, are on the ground, approved, or under construction”).) Faced with conflicting assertions regarding the impact on housing, the Agency finds the assertions of the industry association that is focused on infill development, and the observations of local governments that approve infill developments, to be more credible than the unbacked assertions of the comments to the contrary.

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<sup>8</sup> The study referenced is “California’s High Housing Costs: Causes and Consequences,” Legislative Analyst’s Office (2015). The study noted, for example, that one way to reduce costs associated with high land values is to build more units per acre of land. (See *id.* at 13.) CEQA’s current focus on congestion makes it more difficult to build more densely. That same report notes that traffic is a frequently raised concern and that developer responses usually include reducing the project’s size and scope. (See *id.* at 18.) By focusing on vehicle miles traveled instead of congestion, this update to the CEQA Guidelines will remove an existing impediment to building more densely, which will enable lower housing costs. Other sources cited in the Standardized Regulatory Impact Assessment describe other reasons this Agency expects a positive impact on housing prices. The Agency discusses the LAO study only for the purpose of responding to the comments suggesting that it is relevant.

## **9. Local Governments that Wish to Address Congestion May Do So Through Their Planning Processes.**

Some comments submitted by local governments objected to analyzing vehicle miles traveled in CEQA because they asserted that their community places a high value on avoiding traffic congestion. Others asserted that their communities also valued a suburban lifestyle. Studying vehicle miles traveled in CEQA will not prevent either objective. SB 743 states expressly that it “does not preclude the application of local general plan policies, zoning codes, conditions of approval, thresholds, or any other planning requirements pursuant to the police power or any other authority.” (Pub. Resources Code § 21099(b)(4).) Thus, cities and counties can still plan for new development that is consistent with their community’s values. Moreover, to the extent that cities and counties have already adopted fee programs to fund roadway infrastructure, nothing in the CEQA Guidelines will prevent them from continuing those programs.

## **10. The CEQA Guidelines Appropriately Leave Analysis of Transportation Safety to the Discretion of Lead Agencies.**

Some comments suggested that the transportation guideline should specifically address transportation safety. The Agency declines to do so. In an initial draft of the transportation Guideline, OPR included a subdivision devoted to transportation-related safety. Many comments objected to that subdivision, however, indicating that the evaluation of safety is far more nuanced than any general statement in the Guidelines would allow. Therefore, OPR explained in a revised draft that “[w]hile safety is a proper consideration under CEQA, the precise nature of that analysis is best left to individual lead agencies to account for project-specific and location-specific factors.” (Governor’s Office of Planning and Research, “Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA, at p. 5.) Instead, OPR added a discussion of safety considerations to its Technical Advisory. The Agency concurs with OPR, and so declines the comment’s suggestion to add a separate requirement to analyze safety in the transportation section.

## **11. OPR’s Technical Advisory Provides Non-Binding Technical Assistance, and Is Not a Part of This Rulemaking Package.**

Several comments addressed recommendations contained in the Governor’s Office of Planning and Research’s Technical Advisory on Evaluating Transportation Impacts in CEQA (“Technical Advisory”). That document explains its purpose as follows:

This technical advisory is one in a series of advisories provided by the Governor’s Office of Planning and Research (OPR) as a service to professional planners, land use officials, and CEQA practitioners. OPR issues technical assistance on issues that broadly affect the practice of land use planning and the California Environmental Quality Act (CEQA) (Pub.

Resources Code, § 21000 et seq.). (Gov. Code, § 65040, subds. (g), (l), (m).) The purpose of this document is to provide advice and recommendations, which agencies and other entities may use at their discretion. This document does not alter lead agency discretion in preparing environmental documents subject to CEQA. This document should not be construed as legal advice.

...

This advisory contains technical recommendations regarding assessment of VMT, thresholds of significance, and mitigation measures. Again, OPR provides this Technical Advisory as a resource for the public to use at their discretion. OPR is not enforcing or attempting to enforce any part of the recommendations contained herein. (Gov. Code, § 65035 [“It is not the intent of the Legislature to vest in the Office of Planning and Research any direct operating or regulatory powers over land use, public works, or other state, regional, or local projects or programs.”].)

This April 2018 technical advisory is an update to the advisory it published in November 2017. OPR will continue to monitor implementation of these new provisions and may update or supplement this advisory in response to new information and advancements in modeling and methods.

(Technical Advisory, April 2018, at p. 1.) As the Technical Advisory explained, it offers non-binding technical assistance, and will be updated from time to time as the state of the art improves. That document is separate from this CEQA Guidelines rulemaking, and was developed pursuant to OPR’s technical assistance function. (Gov. Code, § 65040, subds. (g), (l), (m).)

Where comments addressed matters that were involved in this rulemaking, the Agency responded in detail in the responses to comments. Where comments addressed the recommendations in OPR’s Technical Advisory, the Agency has forwarded such comments to OPR for its consideration in a future update of that advisory document.

## **12. CEQA Requires Analysis of the Potential Impacts Associated with Wildfire.**

Some comments suggested that the Agency should not include questions in Appendix G related to wildfire. In part, those comments suggested that the California Supreme Court’s decision in *CBIA v. BAAQMD* (2015) 62 Cal.4<sup>th</sup> 369 precludes the analysis of such hazards on proposed projects. The Agency disagrees. In that decision, the Court held that “agencies subject to CEQA *generally* are not required to analyze the impact of existing environmental conditions on a project’s future users or residents.” (*Id.* at p. 377 (emphasis added).) The Court’s opinion also included a significant caveat: “[w]hen a proposed project risks exacerbating those environmental hazards or conditions that already exist an agency must analyze the potential impact of such hazards on future residents or users.” (*Id.*, at p. 377.) In this

context, an effect that a project “risks exacerbating” is similar to an “indirect” effect. Describing “indirect effects,” the CEQA Guidelines state: “If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment.” (CEQA Guidelines, § 15064, (d)(2).) Just as with indirect effects, a lead agency should confine its analysis of exacerbating effects to those that are reasonably foreseeable. (*Id.* at subdivision (d)(3).)

In the context of wildfire, it is clear that development may exacerbate wildfire risks. OPR’s General Plan Guidelines, for example, includes an extensive discussion of the interaction between development and wildfire risk areas, including the “wildland-urban interface.” While wildfire risk already exists in such areas, bringing development to those areas makes the risk worse, and not just for fire risk. Recent research explains:

The close proximity of houses and wildland vegetation does more than increase fire risk. As houses are built in the WUI, native vegetation is lost and fragmented; landscaping introduces nonnative species and soils are disturbed, causing nonnatives to spread; pets kill large quantities of wildlife; and zoonotic disease, such as Lyme disease, are transmitted.

(Radeloff, et al., “Rapid growth of the US wildland-urban interface raises wildfire risk,” *PROC NATL ACAD SCI USA* (March 27, 2018) 115 (13) 3314-3319 [citations omitted].) Not all development types are likely to create the same risks, however:

The recognition that homes are vulnerable to wildfire in the wildland-urban interface (WUI) has been established for decades... Analysis of hundreds of homes that burned in southern California the last decade showed that housing arrangement and location strongly influence fire risk, particularly through housing density and spacing, location along the perimeter of development, slope, and fire history. Although high-density structure-to-structure loss can occur, structures in areas with low- to intermediate-housing density were most likely to burn, potentially due to intermingling with wildland vegetation or difficulty of firefighter access. Fire frequency also tends to be highest at low to intermediate housing density, at least in regions where humans are the primary cause of ignitions.

(Syphard AD, Bar Massada A, Butsic V, Keeley JE (2013) “Land Use Planning and Wildfire: Development Policies Influence Future Probability of Housing Loss.” *PLoS ONE* 8(8): e71708.

<https://doi.org/10.1371/journal.pone.0071708> [citations omitted].) In other words, low-density, leapfrog development may create higher fire risk than high-density, infill development.

Notably, Senate Bill 1241 (Kehoe, 2012) specifically required the Agency to update Appendix G with questions related to wildfire risk. One could view wildfire as a specific legislatively-created exception to the general rule the Court described in the *CBIA* decision, though the Court did not specifically analyze its provisions. In any event, the Agency drafted the questions in the new wildfire section to focus on the effects of new projects in creating or exacerbating wildfire risks.

### **13. The CEQA Guidelines Appropriately Include a Discussion of Remand Following Judicial Review.**

Some comments objected to the addition of a guideline addressing remand following a court challenge. As the Agency explained in the Initial Statement of Reasons, “questions may arise regarding what further environmental review is needed, and what project activities, if any, may continue while the agency takes further action. Proposed new section 15234 will assist agencies in complying with CEQA in response to a court’s remand, and help the public and project proponents understand the effect of the remand on project implementation.” The Agency does not intrude on the judicial branch in doing so. The new section states at the outset: “Courts may fashion equitable remedies in CEQA litigation.” The new section does not limit a courts exercise of discretion in any way; rather, it explains to lead agencies and the public what a court may do, and what a lead agency’s obligations may be, once a project has been challenged based on CEQA compliance. This explanation is necessary because some participants in the CEQA process continue to assert that a defect in an environmental document requires complete decertification. (See, e.g., *Center for Biological Diversity v. Department of Fish & Wildlife* (2017) 17 Cal.App.5th 1245.)

### **14. The Baseline is Normally Existing Conditions, But Some Circumstances May Justify Consideration of an Alternative Baseline.**

CEQA Guidelines section 15125 requires an EIR to describe the environmental setting of the project so that the changes can be seen in context. Section 15125 describes the general rule for the environmental setting: “normally,” the baseline consists of physical environmental conditions “as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced.”

Recently, the California appellate courts have focused on exceptions to the general rule, particularly related to the use of a historic or future conditions baseline. In the January 2018 rulemaking package, the Agency proposed to add regulatory text to reflect those appellate decisions. In response to comments on the proposal, the Agency revised the proposed regulatory text in July 2018. As discussed below, the current proposal clarifies in Guidelines section 15125(a)(2) 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.

Lead agencies have discretion to determine the appropriate environmental setting pursuant to Guidelines section 15125. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 328 [“an agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence.”].) The “existing” conditions may be represented by historic or future conditions, as reflected in the Agency’s proposed addition of the following sentence to Guidelines section 15125(a)(1):

Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project’s impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions

expected when the project becomes operational, or both, that are supported with substantial evidence.

A lead agency may consider the historical conditions as the “existing conditions” against which to assess environmental impacts. That determination must be based on substantial evidence. (*North County Advocates v. City of Carlsbad* (2015) 241 Cal.App.4th 94, 105-106 [traffic baseline of unoccupied retail project was “based on the actual historical operation of the space at full occupancy for more than 30 years”; *San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 218 [lead agency “did not abuse its discretion by adopting a baseline that accounted for mining conditions during the five-year period prior to the filing of the” notice of preparation].)

Additionally, a lead agency has the discretion, under appropriate factual circumstances, to use a future baseline that is based on substantial evidence. The California Supreme Court’s discussion in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 453-454, explains:

Is it ever appropriate for an EIR’s significant impacts analysis to use conditions predicted to prevail in the more distant future, well beyond the date the project is expected to begin operation, to the exclusion of an existing conditions baseline? We conclude agencies do have such discretion. The key, again, is the EIR’s role as an informational document. To the extent a departure from the “norm[]” of an existing conditions baseline (Guidelines, § 15125(a)) promotes public participation and more informed decisionmaking by providing a more accurate picture of a proposed project’s likely impacts, CEQA permits the departure. Thus an agency may forgo analysis of a project’s impacts on existing environmental conditions if such an analysis would be uninformative or misleading to decision makers and the public.

Parenthetically, we stress that the burden of justification articulated above applies when an agency *substitutes* a future conditions analysis for one based on existing conditions, omitting the latter, and not to an agency’s decision to examine project impacts on *both* existing and future conditions.

(*Ibid*, italics in original.)

Further, the Court stated that “nothing in CEQA law precludes an agency, as well, from considering both types of baseline—existing and future conditions—in its primary analysis of the project’s significant adverse effects.” (*Id.* at p. 454.)

Some comments expressed that the originally proposed Guidelines section 15125(a)(2) incorrectly applied the heightened need for justification when an agency uses an historical baseline. In the 15-day revisions, the Agency omitted reference to a “historic conditions baseline” in the current proposed text of section 15125(a)(2). The Agency believes that the current text now accurately reflects the California Supreme Court’s direction governing the appropriateness of the use of a future conditions baseline.

## **15. While Deferral of Some Details of Mitigation Measures is Permissible, Agencies Must Still Have Substantial Evidence Demonstrating Feasibility.**

The Agency updated Section 15126.4 to describe the circumstances in which courts have upheld a lead agency's deferral of mitigation details. In doing so, the Agency examined the decisions in those cases to identify principles supporting the courts' analyses that can guide future agency decision-making. The Agency found that the cases articulated several common factors.

Some comments expressed a different view of the cases, however, or at least how they were described in the Initial Statement of Reasons. Those comments suggested that an agency should be able to defer details if it either adopts a performance standard, or it lists possible measures, but should not be required to do both. Those comments further suggest that the Initial Statement of Reasons appears to support an either/or approach. Comments submitted on the initially proposed language persuade the Agency that both the text of the guideline and the Final Statement of Reasons should be updated to better capture the common principles described in the case law.

As revised, the guideline on mitigation states: "The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review, provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure."

Some comments on the 15-Day changes suggested that the guideline should not require all three factors to be present. Specifically, those comments relied primarily on *Defend the Bay* and *Rialto* to argue that a simple list of potential measures might be sufficient. Neither case supports that view, however. While there is a line in that case suggesting that a simple list will suffice, the analysis in the *Defend the Bay* case finds the measures were adequate because they specified performance standards and listed the potential actions that would ultimately mitigate the impacts. (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4<sup>th</sup> 1261, 1276 ("The EIR was prepared at the beginning of the planning process, for a General Plan amendment and zoning change, the City has committed to mitigation, and it has specified the criteria to be met").) The court in the *Rialto* case summarized these requirements and the policy as follows:

In sum, "it is sufficient to articulate specific performance criteria and make further [project] approvals contingent on finding a way to meet them." [Citation.] Essentially, the rule prohibiting deferred mitigation prohibits loose or open-ended performance criteria. Deferred mitigation measures must ensure that the applicant will be required to find some way to reduce impacts to less than significant levels. If the measures are loose or open-ended, such that they afford the applicant a means of avoiding mitigation during project implementation, it would be unreasonable to conclude that implementing the measures will reduce impacts to less than significant levels.

Each of the criteria identified in the guideline support such a finding. The first, that the agency commit to implementing the measure, is essential to support a finding that project impacts have, in fact, been mitigated. The second, that the agency identify performance standards, is a key feature found in all of

the cases allowing deferral of mitigation details. It is also necessary to supply substantial evidence that impacts will in fact be reduced to a less than significant level. The third, identification of the types of measures that could achieve the standard, goes to the requirement that measures must be feasible. The case in *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, illustrates the need for this criterion. In that case, the City committed to eliminating all new greenhouse gas emissions, essentially a net-zero standard. However, the court found the measure to be inadequate because there was no discussion of what measures could feasible attain that net-zero standard.

Other comments also opposed the statement in the guideline that deferral of mitigation details may be permissible when developing such details at the time of review is “impractical.” Those comments that “impractical” was too lenient of a standard. The Agency notes, however, that is the standard described in the cases. It is also consistent with CEQA’s policy favoring efficiency in the environmental review process. (See Pub. Resources Code § 21003(f) (“All persons and public agencies involved in the environmental review process be responsible for carrying out the process in the most efficient, expeditious manner in order to conserve the available financial, governmental, physical, and social resources with the objective that those resources may be better applied toward the mitigation of actual significant effects on the environment”).)

#### **16. The Existing Facilities Exemption Appropriately Covers New Uses That Do Not Exceed the Intensity of Either Existing or Former Uses of a Facility.**

Some comments objected to the clarification that the Categorical Exemption for Existing Facilities applies when the activity would not expand upon an existing, *or former*, use. Such comments suggested that a use that has been abandoned for a long time, but is later restarted, is in effect a new use. Other comments suggested it would not be appropriate to reauthorize highly polluting uses without additional CEQA review.

As explained in the Initial Statement of Reasons, the phrase “beyond that existing at the time of the lead agency’s determination,” could be interpreted to preclude use of this exemption if a facility were vacant “at the time of the lead agency’s determination,” even if it had a history of productive use, because any use would be an expansion of use compared to an empty building. (See, Comments of the Building Industry Association, August 30, 2013.) The ISOR further noted that considering former uses in determining the applicability of the exemption is consistent with the reasoning in cases addressing the environmental baseline. (See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327-328 (“Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods”); *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316.)

Some comments argued that the caselaw on baseline is not instructive here. The Agency disagrees. The purpose of the requirement to identify a baseline is to allow an agency to determine the degree, and therefore, significance of a change in the environment. Projects that result in only a negligible increase in the use of existing facilities are appropriately exempt because they are likely to result in little change to the environment. If an agency may appropriately look back in time to set the yardstick for analysis of

impacts, it should also be able to look back in time to determine whether a project would intensify uses of existing facilities.

Not only is this interpretation consistent with the cases interpreting baseline, it is also consistent with state policy. The State's planning priorities, for example, emphasize the importance of infill development, reuse and revitalization before expanding beyond the existing urban fabric. (See, e.g., Gov. Code § 65041.1 ("The state planning priorities, which are intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety in the state, including in urban, suburban, and rural communities, shall be ... [t]o promote infill development and equity by rehabilitating, maintaining, and improving existing infrastructure that supports infill development and appropriate reuse and redevelopment of previously developed, underutilized land that is presently served by transit, streets, water, sewer, and other essential services, particularly in underserved areas, and to preserving cultural and historic resources".)) Doing so preserves important environmental values such as agricultural and forested lands, biological habitat and open space. These planning priorities have been part of the state's discourse for many years, and were first discussed in California's 1978 Urban Strategy:

Californians can no longer avoid city problems by moving farther and farther from the central cities. . . . ¶ The result is waste: waste of land, particularly valuable agricultural land; waste of older cities and suburbs; waste of air, water and other natural resources; waste of energy; waste of time spent in commuting; and, in the long, a vast waste of money. ¶ Future urban development should be determined with purpose, not solely by chance. Cities and suburbs should provide a productive and human environment for all: for the poor, the old and the disadvantaged, as well as those better able to protect their own interests.

(*Id.*, pp. 7-8, [http://opr.ca.gov/docs/urban\\_strategy.pdf](http://opr.ca.gov/docs/urban_strategy.pdf).)

The Agency is sympathetic to concerns about potential misuse of the exemption. Note, however, that categorical exemptions are subject to exceptions. Those exceptions, which include cumulative impacts and significant impacts due to unusual circumstances, will continue to provide a check on potential abuses. (See Public Resources Code, § 21084; CEQA Guidelines, §§ 15300, 15300.2.)

### **17. Conservation Easements May Be Appropriate Mitigation.**

The Agency proposes to revise the definition of "mitigation" in CEQA Guidelines section 15370 to clarify in the CEQA Guidelines that permanent protection of off-site resources through conservation easements constitutes mitigation. Some comments stated that conservation easements should not be considered appropriate mitigation to compensate the loss of agricultural land and other resources. As described below, the Agency believes that the proposed revision to section 15370 is appropriate and consistent with case law.

The Agency proposes to revise CEQA Guidelines section 15370 to incorporate the First District Court of Appeal holding in *Masonite Corporation v. County of Mendocino* (2013) 218 Cal.App.4th 230. In that case, the court ruled that off-site agricultural conservation easements constitute a potential means to

mitigate for direct, in addition to cumulative and indirect, impacts to farmland. The court stated that although such easements do not replace lost onsite resources, they “may appropriately mitigate for the direct loss of farmland when a project converts agricultural land to a nonagricultural use...” (*Id.* at p. 238.) Furthermore, the court stated that this preservation of substitute resources fits within the definition of mitigation in section 15370, subdivision (e), of the Guidelines. (*Ibid.* [“By thus preserving substitute resources, [agricultural conservation easements] compensate for the loss of farmland within the Guidelines’ definition of mitigation.”, citing CEQA Guidelines, § 15370, subd. (e).])

The Agency further points out that conservation easements are commonly used to mitigate and address adverse environmental impacts. (See *Masonite Corporation, supra*, 218 Cal.App.4th at p. 236 [California Department of Conservation’s (DOC’s) commenting that agricultural conservation easements are a “common and appropriate means of mitigating the loss of prime farmland”], 241 [“The DOC described [agricultural conservation easements] in its comments as ‘accept[ed] and use[d] by lead agencies as an appropriate mitigation measure under CEQA,’ and the administrative record includes evidence that [easements] are so employed by a number of cities and counties.”].) Moreover, off-site conservation easements are used in a variety of contexts to mitigate for a number of resources such as agricultural land, biological resources, and wetlands. (*Masonite Corporation v. County of Mendocino* (2013) 218 Cal.App.4th 230, 238-239 [“[t]here is no good reason to distinguish the use of offsite [agricultural conservation easements] to mitigate the loss of agricultural lands from the offsite preservation of habitats for endangered species, an accepted means of mitigating impacts on biological resources”], citing *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 278 [habitat loss was appropriately mitigated by conservation of other habitat at a one-to-one ratio]; *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 610–611, 614–626 [mitigation by offsite preservation of existing habitat or creation of new habitat]; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794 [mitigation by “off-site preservation of similar habitat”]; *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1038 [purchase of habitat reserves for every acre of development].)

Some comments also suggested that the reference to “permanent easements” should be modified to include temporary easements. The Agency notes that conservation easements generally conserve land in perpetuity. (See Gov. Code, § 65966, subd. (a); Civ. Code, § 815.2, subd. (b) [“A conservation easement shall be perpetual in duration.”]; Pub. Resources Code, § 10211 [“shall be granted in perpetuity as the equivalent of covenants running with the land”]; Gov. Code, § 65966, subd. (a) [“conservation easement[s] created as a component of satisfying a local or state mitigation requirement shall be perpetual in duration . . . .”]; *Building Industry Assn. of Central California v. County of Stanislaus* (2010) 190 Cal.App.4th 582, 594 [“A conservation easement is a voluntarily created interest in real property that is freely transferable in whole or in part and is perpetual in duration. (§ 815.2, subs. (a) and (b).)”.]) Thus, the Agency finds it appropriate to refer to easements as “permanent” in the definition of “mitigation.” The Agency acknowledges, however, that some dedications of land for conservation purposes may be of limited duration (such as a 30-year dedication). The proposed text does not preclude lead agencies from adopting temporary easements as mitigation measures, provided

that the lead agency has substantial evidence to support a finding that adopting such a temporary measure actually mitigates the impact of the project.

### **18. Appendix G is a Sample Form That Lead Agencies May Tailor As Appropriate.**

Changes to Appendix G, which contains the sample checklist that agencies use to prepare an initial study, prompted more comments than perhaps any other change in this update to the CEQA Guidelines. As OPR explained in its submission to the Agency, it had originally recommended a major reorganization of the checklist to consolidate categories and remove redundant questions, but stakeholders strenuously objected.

OPR continues to see value in rethinking Appendix G, and notes that Appendix G is just a sample format, not a binding mandate. Nevertheless, one of the purposes of this update is to make the process simpler for lead agencies, not more difficult. Therefore, OPR will not recommend a major reorganization of Appendix G at this time.

(OPR, Thematic Responses to Comments, November 2017.)

Thus, the changes the Agency proposes in this update represent a balance of removing redundant questions while keeping the overall format intact. Still, many comments objected, or suggested improvements, to the questions in Appendix G. Of those comments, many indicated that differently worded questions would better account for particular locations, agency activities, or unique circumstances. Again, the Agency reiterates that Appendix G is only a sample form. As explained in a recent case:

“[T]he Guidelines make clear that the checklist form in appendix G is ‘only suggested, and public agencies are free to devise their own format for an initial study.’ (Guidelines, § 15063, subd. (f).) Furthermore, ‘CEQA grants agencies discretion to develop their own thresholds of significance (CEQA Guidelines, § 15064, subd. (d)).’ [Citation] ‘To require any deviation from [the standards of significance in appendix G] to be documented and justified ... is to elevate Appendix G from a suggested threshold to the presumptive threshold. This flatly contradicts both CEQA’s description of Appendix G as only suggested and CEQA’s mandate that agencies have the power to devise their own thresholds.’ [Citation.]”

(*San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 227 (quoting *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690).)

Note, none of the changes proposed in Appendix G are intended to limit the scope of analysis that CEQA might otherwise require.

### **19. Consistency with Plans May Be Relevant to a CEQA Analysis, but Only to the Extent that Inconsistency May Lead to a Significant Environmental Impact.**

Comments raised multiple variations of the following question: is inconsistency with a plan an environmental impact? Variations include: does it matter if that plan is “applicable” (i.e., legally binding, advisory, draft, etc.), and, even more specifically, what if a plan requires a certain roadway level of service, but the CEQA Guidelines state that automobile delay is not an environmental impact? Because those issues were raised repeatedly, the Agency addresses those themes below.

*Consistency with plan is similar to compliance with a regulation.*

Initially, the Agency notes that the question of consistency with a plan is similar to issues involving compliance with environmental regulations. Compliance or non-compliance does not conclusively indicate an impact or lack of impact, but it can be a starting point for a lead agency’s analysis. For example, compliance with a plan that has been adopted to address a cumulative environmental problem can be evidence that the project’s incremental contribution is not cumulatively considerable. (CEQA Guidelines § 15064(h)(3).) Additionally, the focus in the Guidelines has historically been, and continues to be, whether a project’s inconsistency with a plan will result in a significant environmental impact. (*Id.* § 15125(d).) Courts have confirmed this approach. (See, e.g., *The Highway 68 Coalition v. County of Monterey* (2017) 14 Cal.App.5th 883, 893; *Wollmer v. City of Berkeley* (2009) 179 Cal.App.4th 933 (application of a density bonus to exceed limits in a general plan or zoning not necessarily an environmental impact); *Marin Mun. Water Dist. v. Kg Land Cal. Corp.* (1991) 235 Cal.App.3d 1652, 1668 (“A local agency engaged in EIR analysis may not ignore regional needs and the cumulative impacts of a proposed project. ... Thus the Guidelines require an EIR to discuss any inconsistencies between the proposed project and applicable general and regional plans”); see also Pub. Resources Code, § 21100(e) (“Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, *may be used in cumulative impact analysis*”) (emphasis added).)

*Because the focus of the analysis should be on environmental impacts, whether the plan is “applicable” as a legal matter is not relevant to the environmental analysis.*

Under CEQA, the focus of the analysis is generally on the project’s impacts on the environment. When determining consistency with plans and policy documents, there are often questions asking whether the plan is “applicable,” and if so, whether the project is inconsistent with the applicable plan. Both of these are legal determinations. Thus, it is only those plans and regulations that are enforceable against a particular project than a lead agency should consider. A project’s inconsistency with an applicable plan may be relevant to analysis if the inconsistency supports whether a project may cause a significant effect. (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1207 (“an inconsistency between a project and other land use controls does not in itself mandate a finding of significance. (Citations.) It is merely a factor to be considered in determining whether a particular project may cause a significant environmental effect.”).)

*Automobile delay, even in conflict with a plan, is not an environmental impact.*

Because Public Resources Code section 21099 preserves local government authority to make planning decisions, congestion can still be measured for planning purposes. In fact, many general plans and zoning codes contain standards related to congestion. Some comments pointed to such standards to

argue that the Guidelines will still require level of service analysis. Those comments misapprehend the law. Public Resources Code section 21099 expressly states that upon the Agency Secretary's certification of the Guidelines, automobile delay is generally no longer a significant environmental impact. Because the statute states that delay is not an environmental impact, conflict with a plan's congestion standards is not relevant to a CEQA analysis.

## **20. The CEQA Guidelines Can Only Implement the Statute; Broad Changes in CEQA Practice Require Legislative Changes.**

CEQA requires the Agency to adopt administrative regulations to guide the implementation of the statute. As recently explained by the California Supreme Court,

Section 21083 provides the Guidelines "shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with [CEQA]." (§ 21083, subd. (a).) The Guidelines therefore serve to make the CEQA process tractable for those who must administer it, those who must comply with it, and ultimately, those members of the public who must live with its consequences.

[¶]

Through these Guidelines, the Resources Agency gives public agencies a more concrete indication of how to comply with CEQA—including whether such agencies must determine the impact of existing environmental conditions on a proposed project's residents and users. The Guidelines also prove consequential given that under section 21082, CEQA requires agencies subject to its provisions ... to adopt "objectives, criteria and procedures" for evaluating projects and preparing environmental documents. These agencies may, in turn, adopt the Guidelines by reference to fulfill their statutory responsibilities. (§ 21082; see Guidelines, § 15022, subds. (a), (d).) The Guidelines, in effect, enable the Resources Agency to promote consistency in the evaluation process that constitutes the core of CEQA. And because these Guidelines allow the Resources Agency to affect how agencies comply with CEQA, they are central to the statutory scheme.

(*CBIA v. BAAQMD* (2015) 62 Cal.4th 369, 384-385.) While the Agency plays a key role in CEQA's statutory scheme, it is nevertheless constrained by the statute. It cannot adopt a guideline that "alters or amends the governing statute or case law, or enlarges or impairs its scope." (*CBE v. Resources Agency* (2002) 103 Cal.App.4th 98, 108.) In other words, the Agency cannot create a requirement that does not exist in the statute, nor can it relieve agencies of requirements that are provided in the statute.

As explained in more detail in the individual responses to comments, the Agency had to reject suggestions for changes to the Guidelines that it simply is not authorized to make. For example, the Agency noticed that some comments expressed dire concern about the requirement to study and mitigate impacts and the potential effect of such studies and mitigation requirements on the ability to

carry out projects. On the other hand, some comments suggested that the Agency require more notice of projects, or additional opportunities to comment. While the Agency is sympathetic to economic concerns, and appreciates the value of public participation, the Agency cannot re-write CEQA. That is the province of the legislature.

Similarly, some comments expressed concern that the Guidelines would enable litigation or give opponents of projects a tool to create delay. Litigation risk and the potential for project delays exist with or without these Guidelines, and with or without CEQA. Our state's constitution defers most land use approvals to local governments, many of which require applicants to go through one or more discretionary project reviews. Moreover, our system of laws provide for judicial review of administrative decisions. Again, the Agency is mindful of those concerns, and where possible, has written the Guidelines to avoid those outcomes. The Agency simply does not have the power to remove development uncertainty completely.

## E. Summary and Response to Comments

See Appendix A.

## F. Statement of Availability

In issuing its 15-day notice to make modifications to the original proposal, the California Natural Resources Agency (Agency) complied with the requirements of Title 1, section 44. The Agency began the available period for comment to the proposed modifications on July 2, 2018 and closed the official comment period at 5:00 p.m., July 20, 2018. It mailed the notice and the proposed modifications to all persons specified in 1 CCR 44 (a)(1)(4). That same day, it also emailed the notice and proposed modifications to its official list serve for electronic notification. Finally, it made the modifications and changes available on its website along with the official notice on July 2, 2018.

## G. ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

No alternatives were proposed to the Agency that would lessen any adverse economic impact on small business. Some commenters proposed limiting the analysis of vehicle miles traveled to transit priority areas, as that phrase is defined by Public Resource Code section 21099, instead of applying the measure statewide. While not expressly advocated, arguably a reduction in the scope of the application of the Guideline would reduce the negligible impact to impacted small-business consultants who are presently hired to analyze congestion. However, as has been described above, the Agency has determined this would not meet the objectives of the Legislature relative to lead agency consideration of impacts from transportation on the environment in a consistent or accurate way, nor would it result in more cost-savings, or efficiency, since vehicle miles traveled is a more affordable analysis that is already performed when greenhouse gas emissions are being analyzed. Accordingly, the Agency declines to adopt this

alternative. (See also Standardized Regulatory Impact Analysis, at pp. 24-27.) No other amendments or additions created any impacts to small business.

## H. ALTERNATIVES DETERMINATION

The Agency has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, 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 amendments adopted by the Agency, by and through the Secretary are the only regulatory provisions identified by the Agency that accomplish the goal of providing accurate and efficient environmental metrics for public agencies legally tasked with applying CEQA.

Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the Agency's attention.

## **EXHIBIT E**

### **Transportation Assessment Guidelines Fact Sheet**

# Transportation Assessment Guidelines Update

## Purpose

LADOT is updating the Transportation Assessment Guidelines (TAG) to provide direction on how to analyze transportation impacts using vehicle miles traveled (VMT) in the City of Los Angeles. This update is required to adapt to Senate Bill 743 (described below) that shifts the focus of transportation impact studies from vehicular delay and level of service to VMT when complying with the California Environmental Quality Act (CEQA). By measuring VMT, LADOT can assess the effects of land use proposals on the transportation system and impose mitigations that can result in better access to jobs and services, that enable more travel options and that promote safer and multimodal streets. However, the TAG will continue to require land use proposals to conduct local operational analyses to evaluate how projects affect the access, circulation and safety of all users of the transportation system.

## Senate Bill 743

On September 27, 2013, Governor Jerry Brown signed Senate Bill (SB) 743 and initiated a process to change transportation impact analyses as part of CEQA compliance. SB 743 directed the California Office of Planning and Research (OPR) to establish new CEQA guidance for California jurisdictions that removes automobile vehicle delay and other similar measures of vehicular capacity or traffic congestion from CEQA transportation analysis. The bill suggested that vehicle-miles traveled (VMT), or other measures that “promote the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses,” be used as a basis for determining significant transportation impacts in California. The intent of the change is to appropriately balance the needs of congestion management with state goals related to infill development, the reduction of greenhouse gas emissions, efficient access to destinations, and the promotion of public health through active transportation.

## Comparison of Analyses Required Under the Current and Updated TAG Guidelines

### CURRENT ASSESSMENT PROCEDURES

#### CEQA Impacts



Level of Service (LOS) Analysis  
*Section 2.1*



Residential Street Cut-Through  
*Section 2.3*



Congestion Management Program  
*Section 2.5*



Freeway Impact Analysis  
*Section 2.6*

### UPDATED ASSESSMENT PROCEDURES (CEQA and NON-CEQA Analyses)

#### CEQA Impacts



Conflicts with a Program, Plan, Ordinance or Policy  
*Section 2.1*



Vehicle Miles Traveled Analysis  
*Section 2.2*



Induced Additional Automobile Travel  
*Section 2.3*



Geometric Design Hazards  
*Section 2.4*

#### Non-CEQA Transportation Analysis



Pedestrian, Bicycle and Transit Facilities



Project Access and Circulation



Project Construction



Residential Street Cut-Through

**EXHIBIT F**

**Transportation Assessment Guidelines Chapter 2**

## **2 CEQA ANALYSIS OF TRANSPORTATION IMPACTS**

### **2.1 CONFLICTING WITH PLANS, PROGRAMS, ORDINANCES, OR POLICIES (THRESHOLD T-1)**

#### **2.1.1 Introduction**

The City of Los Angeles aims to achieve an accessible and sustainable transportation system that meets the needs of all users. The City's adopted transportation-related plans and policies affirm that streets should be safe and convenient for all users of the transportation system, including pedestrians, bicyclists, motorists, public transit riders, disabled persons, senior citizens, children, and movers of commercial goods. Therefore, the transportation requirements and mitigations for proposed developments should be consistent with the City's transportation goals and policies.

Specifically, proposed projects shall be analyzed to identify potential conflicts with adopted City plans and policies and, if there is a conflict, improvements that prioritize access for and improve comfort of people walking, bicycling, and riding transit in order to provide safe and convenient streets for all users should be identified. Projects designed to encourage sustainable travel help to reduce vehicle miles traveled. This section provides project criteria to identify which projects must check for consistency with major City plans and policies, and provides updated references that should be consulted to evaluate how proposed projects and plans relate to adopted City projects and plans.

#### **2.1.2 Screening Criteria**

If the project requires a discretionary action, and the answer is yes to any of the following questions, further analysis will be required to assess whether the proposed project would negatively affect existing pedestrian, bicycle, or transit facilities:

- Would the project generate a net increase of 250 or more daily vehicle trips?
- Is the project proposing to, or required to make any voluntary or required, modifications to the public right-of-way (i.e., street dedications, reconfigurations of curb line, etc.)?
- Is the project on a lot that is 0.5-acre or more in total gross area, or is the project's frontage along a street classified as an Avenue or Boulevard (as designated in the City's General Plan), 250 linear feet or more, or is the project's building frontage encompassing an entire block along a street classified as an Avenue or Boulevard by the City's General Plan?

For the purpose of screening for daily vehicle trips, a proposed project's daily vehicle trips should be estimated using the VMT Calculator tool or the most recent edition of the ITE *Trip Generation* Manual, as described in Section 2.2. A user's guide for the VMT Calculator can be found [here](#). TDM strategies should not be considered for the purpose of screening. If existing land uses are present on the project site or there were previously terminated land uses that meet the criteria for trip credits described in the trip generation methodology discussion in Section 3.3, the daily vehicle trips generated by the existing or qualified terminated land uses can be estimated using the VMT Calculator tool and subtracted from the Project's daily vehicle trips to determine the increase in daily vehicle trips.

For the purpose of the screening for projects that are making physical changes to the public right-of-way, determine the street designation and improvement standard for the project frontage along streets classified as an Avenue or Boulevard (as designated in the City's General Plan) using the Mobility Plan

2035, or NavigateLA. If any street fronting the project site is an Avenue or Boulevard and it is determined that additional dedication, or physical modifications to the public right-of-way are proposed or required, the answer to this question is yes. For projects not subject to dedication and improvement requirements under the Los Angeles Municipal Code, though the project does propose dedications or physical modifications to the public right-of-way, the answer to this question is yes.

### **2.1.3 Impact Criteria**

**Threshold T-1:** Would the project conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadways, bicycle, and pedestrian facilities?

The City of Los Angeles has adopted programs, plans, ordinances and policies that establish the transportation planning framework for all travel modes. The overall goals of these policies are to achieve a safe, accessible and sustainable transportation system for all users. The Transportation Element of the City's General Plan, the "Mobility Plan 2035," offers a comprehensive vision and set of policies and programs the City aims to achieve to provide streets that are safe and convenient for all users. Vision Zero Los Angeles aims to reduce transportation fatalities to zero by using extensive crash data analysis to identify priority corridors and intersections and applying safety countermeasures.

The titles of key City plans and policies, and their web links, that shall be reviewed are listed in **Table 2.1-1**. These documents are subject to revision over time, and new plans may be adopted that are relevant to this threshold. The Los Angeles Department of City Planning (LADCP) will periodically review and revise this list to ensure that it reflects the City's current priorities on the safety and performance of the transportation system. This list should be consulted in order to identify potential conflicts with projects and plans in the CEQA review process.

The threshold test is to assess whether a project would conflict with an adopted program, policy, plan, or ordinance that is adopted to protect the environment. In general, transportation policies or standards adopted to protect the environment are those that support multimodal transportation options and a reduction in VMT. Conversely, a project would not be shown to result in an impact merely based on whether a project would not implement a particular program, plan, policy, or ordinance. Many of these programs must be implemented by the City itself over time, and over a broad area, and it is the intention of this threshold test to ensure that proposed development projects and plans do not preclude the City from implementing adopted programs, plans and policies. This determination may require consultation with LADCP and LADOT.

## 2.1.4 Methodology

### *Project Impacts*

- A project that generally conforms with, and does not obstruct the City's development policies and standards will generally be considered to be consistent. The Project Applicant should review the documents and ordinances listed in **Table 2.1-1** for City plans, policies, programs, ordinances and standards relevant to determining project consistency. [Table 2.1-2](#) lists questions that shall be answered in order to help guide whether the project conflicts with City circulation system policies. A 'yes' or 'no' answer to these questions does not determine a conflict. Rather, as indicated in [Table 2.1-2](#), the Project Applicant shall review relevant policies and programs corresponding to the questions to assess whether the proposed project precludes the City's implementation of any adopted policy and/or program.
- If vacation of a public right-of-way, or relief from a required street dedication is sought as part of a proposed project, an assessment should be made as to whether the right-of-way in question is necessary to serve a long-term mobility need, as defined in the Mobility Plan 2035, transportation specific plan, or other planned improvement in the future.

**Table 2.1-1: City Documents that Establish the Regulatory Framework<sup>1</sup>**

<u>Plan or Policy</u>	<u>Web Link</u>
1. <u>Los Angeles Mobility Plan 2035</u>	<a href="https://planning.lacity.org/documents/policy/mobilityplnmemo.pdf">https://planning.lacity.org/documents/policy/mobilityplnmemo.pdf</a>
2. <u>Plan for Healthy LA</u>	<a href="https://planning.lacity.org/cwd/gnlpln/PlanforHealthyLA.pdf">https://planning.lacity.org/cwd/gnlpln/PlanforHealthyLA.pdf</a>
3. <u>Land Use Element of the General Plan (35 Community Plans)</u>	<a href="http://cityplanning.lacity.org/">http://cityplanning.lacity.org/</a>
4. <u>Specific Plans</u>	<a href="http://cityplanning.lacity.org/">http://cityplanning.lacity.org/</a>
5. <u>LAMC Section 12.21 A.16 (Bicycle Parking)</u>	

<sup>1</sup> For description of the relevant planning documents, see Attachment \_\_\_\_.

6. <u>LAMC Section 12.26J (TDM Ordinance)</u>	<a href="http://library.amlegal.com/nxt/gateway.dll/California/lapz/municipalcodechapteriplanningandzoningco/chapterigeneralprovisionsandzoning/article2specificplanning-zoningcomprehen?f=templates\$fn=default.htm\$3.0\$vid=amlegal:lapz_ca\$anc=">http://library.amlegal.com/nxt/gateway.dll/California/lapz/municipalcodechapteriplanningandzoningco/chapterigeneralprovisionsandzoning/article2specificplanning-zoningcomprehen?f=templates\$fn=default.htm\$3.0\$vid=amlegal:lapz_ca\$anc=</a>
7. <u>LAMC Section 12.37 (Waivers of Dedications and Improvement)</u>	<a href="http://library.amlegal.com/nxt/gateway.dll/California/lapz/municipalcodechapteriplanningandzoningco/chapterigeneralprovisionsandzoning/article2specificplanning-zoningcomprehen?f=templates\$fn=default.htm\$3.0\$vid=amlegal:lapz_ca\$anc=">http://library.amlegal.com/nxt/gateway.dll/California/lapz/municipalcodechapteriplanningandzoningco/chapterigeneralprovisionsandzoning/article2specificplanning-zoningcomprehen?f=templates\$fn=default.htm\$3.0\$vid=amlegal:lapz_ca\$anc=</a>
8. <u>Vision Zero Action Plan</u>	<a href="http://visionzero.lacity.org/">http://visionzero.lacity.org/</a>
9. <u>Vision Zero Corridor Plans</u>	<a href="http://visionzero.lacity.org/">http://visionzero.lacity.org/</a>
10. <u>Pedestrian Safety Action Plan (pending)</u>	
11. <u>Streetscape Plans</u>	<p><b>List of relevant Streetscape Plans (this list may not be all inclusive):</b></p> <p><a href="https://planning.lacity.org/complan/gen_plan/avail_other.htm">https://planning.lacity.org/complan/gen_plan/avail_other.htm</a></p>
12. <u>Citywide Design Guidelines for Residential, Commercial and Industrial Development</u>	<a href="http://planning.lacity.org/urbandesign/resources/index.php">http://planning.lacity.org/urbandesign/resources/index.php</a>
13. <u>Walkability Checklist</u>	<p><a href="http://urbandesignla.com/resources/LAWalkabilityChecklist.php">http://urbandesignla.com/resources/LAWalkabilityChecklist.php</a></p> <p><u>Currently being updated</u></p>
14. <u>LADOT Transportation Technology Strategy – Urban Mobility in a Digital Age</u>	<a href="http://www.urbanmobilityla.com/strategy/">http://www.urbanmobilityla.com/strategy/</a>
15. <u>Mobility Hubs Reader’s Guide</u>	<a href="http://www.urbandesignla.com/resources/MobilityHubsReadersGuide.php">http://www.urbandesignla.com/resources/MobilityHubsReadersGuide.php</a>
16. <u>LADOT Manual of Policies and Procedures (Design Standards)</u>	<a href="http://ladot.lacity.org/what-we-do/plan-review/reference-library">http://ladot.lacity.org/what-we-do/plan-review/reference-library</a>

### ***Cumulative Impacts***

The analysis of cumulative impacts may be quantitative or qualitative. Each of the plans, ordinances and policies reviewed to assess potential conflicts with proposed projects should be reviewed to assess cumulative impacts that may result from the proposed project in combination with other development projects in the study area.

Related projects considered in the cumulative analysis should include known development projects within a one-quarter mile (1,320 foot) radius of the project site. Consultation with LADCP and LADOT may be required to compile the related projects list. The City's ZIMAS database can be used to assist in identifying development projects that have submitted applications to the City of Los Angeles. In consultation with LADOT, the analysis should also consider planned transportation system improvements within the study area.

Consider whether there would be a significant impact to which both the proposed project and other projects contribute. For instance, a cumulative impact could occur if the project as well as other future development projects located on the same block were to preclude the City's ability to serve transportation user needs as defined by the City's transportation policy framework.

#### **2.1.5 Mitigation**

Identify changes to the proposed project as mitigation measures that could reduce or eliminate any inconsistencies with applicable programs, plans, ordinances, and policies and determine level of significance after mitigation.

**Table 2.1-2: Questions to Determine Project Applicability to Plans, Policies and Programs**

#	Guiding Questions	Relevant Plans, Policies, and Programs	Supporting/Complementary City Plans, Policies, and Programs to consult
<b>EXISTING PLAN APPLICABILITY</b>			
1	Does the project include additions or new construction along a street designated as a Boulevard I, and II, and/or Avenue I, II, or III on property zoned for R3 or less restrictive zone? (screening question)	LAMC Section 12.37	
2	Is project site along any network identified in the City's Mobility Plan?	MP 2.3 through 2.7	
3	Are dedications or improvements needed to serve long-term mobility needs identified in the Mobility Plan 2035?	MP - Street Classifications; MP - Street Designations and Standard Roadway Dimensions	MP - 2.17 Street Widening
4	Does the project require placement of transit furniture in accordance with City's Coordinated Street Furniture and Bus Bench Program?		
5	Is project site in an identified Transit Oriented Community (TOC)?	MP - TEN; MP - PED; MP - BEN; TOC Guidelines	
6	Is project site on a roadway identified in City's High Injury Network?	Vision Zero	Mobility Plan 2035
7	Does project propose repurposing existing curb space? (Bike corral, car-sharing, parklet, electric vehicle charging, loading zone, curb extension, etc.)	MP - 2.1 Adaptive Reuse of Streets; MP - 2.10 Loading Areas; MP - 3.5 Multi-Modal Features; MP - 3.8 Bicycle Parking; MP - 4.13 Parking and Land Use Management; MP - 5.4 Clean Fuels and Vehicles	MP - 2.3 Pedestrian Infrastructure; MP - 2.4 Neighborhood Enhanced Network; MP - 3.2 People with Disabilities; MP - 4.1 New Technologies; MP 5.1 Sustainable Transportation; MP - 5.5 Green Streets
8	Does project propose narrowing or shifting existing sidewalk placement?	MP 2.3 Pedestrian Infrastructure; MP 3.1 - Access for All; MP -PED; MP - ENG 19; MP 2.17 Street Widening	Healthy LA; Vision Zero; Sustainability pLAN
9	Does project propose paving, narrowing, shifting or removing an existing parkway?	MP - 5.5 Green Streets; Sustainability pLAN	
10	Does project propose modifying, removing or otherwise affect existing bicycle infrastructure? (ex: driveway proposed along street with bicycle facility)	MP - BEN; MP - 4.15 Public Hearing Process	Vision Zero

11	Is project site adjacent to an alley? If yes, will project make use of, modify, or restrict alley access?	MP - 3.9 Increased Network Access; MP - ENG.9; MP - PL.1; MP - PL.13; MP - PS.3	
12	Does project create a cul-de-sac or is project site located adjacent to existing cul-de-sac? If yes, is cul-de-sac consistent with design goal in Mobility Plan 2035 (maintain through bicycle and pedestrian access)?	MP - 3.10 Cul-de-sacs	
<b>ACCESS: DRIVEWAYS AND LOADING</b>			
13	Does project site introduce a new driveway or loading access along an arterial (Avenue or Boulevard)?	MP - PL.1; MP - PK.10, CDG 4.1.02	Vision Zero
14	If yes to 13, Is a non-arterial frontage or alley access available to serve the driveway or loading access needs?	MP - PL.1; MPP 321	Vision Zero
15	Does project site include a corner lot? (avoid driveways too close to intersections)	CDG 4.1.01	
16	Does project propose driveway width in excess of City standard?	MPP Sec. 321	Vision Zero, Sustainability pLAn, MP PED, MP - BEN CDG 4.1.04
17	Does project propose more driveways than required by City maximum standard?	MPP - Sec No. 321 Driveway Design	Vision Zero, MP, Healthy LA
18	Are loading zones proposed as a part of the project?	MP - 2.10 Loading Areas; MP - PK.1; MP - PK.7; MP - PK.8; MPP 321	
19	Does project include "drop-off" zones or areas? If yes, are such areas located to the side or rear of the building?	MP - 2.10 Loading Areas	
20	Does project propose modifying, limiting/restricting, or removing public access to a public right-of-way (e.g., vacating public right-of-way?)	MP - 2.3 Pedestrian Infrastructure; MP - 3.9 Increased Network Access	

## 2.2 CAUSING SUBSTANTIAL VEHICLE MILES TRAVELED (THRESHOLD T-2.1)

### 2.2.1 Introduction

The Los Angeles *Mobility Plan 2035* sets forth the following objective regarding vehicle miles traveled (VMT):

- Decrease VMT per capita by 5% every five years [from 2015 baseline conditions], to 20% by 2035.<sup>2</sup>

Associated policies relate to land use objectives aimed at shortening the distance between housing, jobs, and services, increasing the availability of affordable housing options with proximity to transit, offering more attractive non-vehicle alternatives, implementing transportation demand management (TDM) programs to encourage ridesharing and reduce vehicular trip making, congestion or cordon pricing mechanisms to encourage alternatives to driving alone, and providing community assets (e.g., locally-serving land uses) adjacent to residential areas to promote local walking and biking trips that reduce VMT. The *Mobility Plan 2035* also suggests that pursuing a specific vehicle level of service (LOS) standard can lead to wider roads resulting in adverse environmental, public health, and fiscal impacts.

The Governor's Office of Planning and Research (OPR) issued proposed updates to the CEQA guidelines in November 2017<sup>3</sup> and an accompanying technical advisory guidance in April 2018<sup>4</sup> ("OPR Technical Advisory") that amends the Appendix G question for transportation impacts to delete reference to vehicle delay and level of service and instead refer to Section 15064.3, subdivision (b)(1) of the CEQA Guidelines asking if the project will result in a substantial increase in VMT. The California Natural Resources Agency certified and adopted the CEQA Guidelines in December of 2018, and are now in effect.<sup>5</sup>

Accordingly, the City of Los Angeles recognizes the need to set new significance criteria for transportation impacts based on VMT for land use projects and plans in accordance with the amended Appendix G question:

**Threshold T-2.1:** For a land use project, would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(1)?

For land use projects, the intent of this threshold is to assess whether a land use project or plan causes substantial vehicle miles traveled. The City has developed the following screening and impact criteria to address this question. The criteria below is based on the OPR technical advisory but reflects local considerations.

## 2.2.2 Screening Criteria

If the project requires a discretionary action, and the answer is no to any of the following questions, further analysis will not be required for Threshold T-2.1, and a "no impact" determination can be made for that threshold:

- T-2.1-1: Would the land use project<sup>6</sup> generate a net increase of 250 or more daily vehicle trips?

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<sup>2</sup> City of Los Angeles, *Mobility Plan 2035, An Element of the General Plan*, adopted September 7, 2016, page 124.

<sup>3</sup> State of California, Governor's Office of Planning and Research, *Proposed Updates to the CEQA Guidelines, Final*, November 2017.

<sup>4</sup> State of California, Governor's Office of Planning and Research, *Technical Advisory on Evaluating Transportation Impacts in CEQA*, April 2018.

<sup>5</sup> State of California, Natural Resources Agency, Final Adopted Text, December 2018. <http://resources.ca.gov/ceqa/>

<sup>6</sup> Land use projects include any discretionary action that changes development capacity (such as a zone change or redesignation of a general plan land use) or results in new construction, additions or change of use. Projects that require only ministerial approvals, such as building, use and demolition permits shall not be subject to Section 2 of the Transportation Assessment

For the purpose of screening for daily vehicle trips, a proposed project's daily vehicle trips should be estimated using the VMT Calculator tool or the most recent edition of the ITE *Trip Generation* Manual. A user's guide for the VMT Calculator can be found [here](#).<sup>7</sup> TDM strategies should not be considered for the purpose of screening. If existing land uses are present on the project site or there were previously terminated land uses that meet the criteria for trip credits described in the trip generation methodology discussion in Section 3.3, the daily vehicle trips generated by the existing or qualified terminated land uses can be estimated using the VMT Calculator tool and subtracted from the Project's daily vehicle trips to determine the increase in daily vehicle trips.

- T-2.1-2: Would the Project or Plan located within a one-half mile of a fixed-rail transit station replace an existing number of residential units with a smaller number of residential units?

For the purpose of screening for proposed change in housing units located near fixed rail transit for development projects, the total number of housing units that exist on the project site should be counted and compared to the total number of housing units as proposed by the project to determine if the project would result in a net decrease in housing units. For the purposes of screening for proposed change in housing units that are in proximity to transit for land use plans, the total number of existing housing units within a one-half mile of a fixed-rail transit station that fall within the land use plan area should be counted and compared to the total housing capacity within the same area that could be built as a result of the land use plan to determine if the plan could result in a net decrease in housing.

- T-2.1-3: Would the project generate a net increase in daily VMT?

For the purpose of screening for VMT, a project's daily VMT should be estimated using the VMT Calculator tool or the City's Travel Demand Forecasting (TDF) model. A user's guide for the VMT Calculator can be found [here](#).<sup>8</sup> TDM strategies should not be considered for the purpose of screening. If existing land uses are present on the project site or there were previously terminated land uses that meet the criteria for trip credits described in the trip generation methodology discussion in Section 3.3, the daily VMT generated by the existing or qualified terminated land uses can be estimated using the VMT Calculator tool and subtracted from the Project's daily VMT to determine the increase in daily VMT.

In addition to the above screening criteria, the portion of, or the entirety of a project that contains small-scale or local serving retail uses<sup>9</sup> are assumed to have less than significant VMT impacts. If the answer to the following question is no, then that portion of the project meets the screening criteria and a no impact determination can be made for the portion of the project that contains retail uses. However, if the retail project is part of a larger mixed-use project, then the remaining portion of the project may be subject to further analysis in accordance with the above screening criteria. Projects that include retail uses in excess of the screening criteria would need to evaluate the entirety of the project's vehicle miles traveled, as specified in Section 2.2.4.

- If the project includes retail uses, does the portion of the project that contain retail uses exceed a net 50,000 square feet?

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Guidelines (TAG). See Section 1.6 of these Guidelines for additional background on what projects are subject to review of the TAG.

<sup>7</sup> [LADOT Website](#).

<https://ladot.lacity.org/what-we-do/planning-development-review/transportation-planning-policy/modernizing-transportation-analysis>

<sup>8</sup> See footnote 11

<sup>9</sup> The definition of retail for this purpose includes restaurant.

### 2.2.3 Impact Criteria

#### ***Development Projects***

The development project will have a potential impact if the project meets the following:

- For residential projects, the project would generate household VMT per capita exceeding 15% below the existing average household VMT per capita for the Area Planning Commission (APC) area in which the project is located. (see Table 2.2-1)
- For office projects, the project would generate work VMT per employee exceeding 15% below the existing average work VMT per employee for the APC in which the project is located. (see Table 2.2-1)
- For retail projects, the project would result in a net increase in VMT.
- For other land use types, measure VMT impacts for the work trip element using the criteria for office projects above. (see Table 2.2-1)

**Table 2.2-1: VMT Impact Criteria (15% Below APC Average)**

<b>Area Planning Commission</b>	<b>Daily Household VMT per Capita</b>	<b>Daily Work VMT per Employee</b>
Central	6.0	7.6
East LA	7.2	12.7
Harbor	9.2	12.3
North Valley	9.2	15.0
South LA	6.0	11.6
South Valley	9.4	11.6
West LA	7.4	11.1

Cumulative impact criteria for development projects:

- Consistency with the Southern California Association of Governments (SCAG) Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS).

#### ***Land Use Plans***

The land use plan will have a potential impact if:

- The land use growth anticipated under the plan in conjunction with transportation system improvements included in the plan would result in average household VMT per capita exceeding the average household VMT per capita projected for the plan area in accordance with the SCAG RTP/SCS cumulative year land use forecast and transportation system improvements and policies.

- The land use growth anticipated under the plan in conjunction with transportation system improvements included in the plan would result in average work VMT per employee exceeding the average work VMT per employee projected for the plan area in accordance with the SCAG RTP/SCS cumulative year land use forecast and transportation system improvements and policies.

## 2.2.4 Methodology

### *Development Projects*

The screening and impact evaluation should be conducted for the following types of development projects:

- Residential – Single-family housing, multi-family housing, and affordable housing.
- Office – General office and medical office. Light industrial, manufacturing, warehousing/ self-storage, K-12 schools, college/university, and hotel/motel land uses should be treated as office for screening and analysis.
- Retail – General retail, furniture store, pharmacy/drugstore, supermarket, bank, health club, restaurant, auto repair, home improvement superstore, discount store, and movie theater.

The following identifies screening criteria and thresholds of significance used to determine if other types of land uses occasionally reviewed by LADOT would result in significant impacts as it relates to VMT:

- Public Services – Public services (e.g., police, fire stations, public utilities) do not generally generate substantial VMT. Instead, these land uses are often built in response to development from other land uses (e.g., office and residential). Therefore, these land uses can be presumed to have less-than-significant impacts on VMT.
- Event Centers and Regional-Serving Entertainment Venues – Trips associated with these land uses are typically discretionary trips made by individuals, which may be substitute or new trips. For these land uses, a detailed customized VMT analysis would most likely be required. Therefore, no screening criterion is provided. The specific threshold should be developed in consultation with LADOT and LADCP staff at the outset of the study.

The land uses described above are not intended to be inclusive of every land use reviewed by LADOT for projects subject to CEQA. For other land uses, the analysis should be consistent with one of the screening criteria and thresholds of significance described above.

### *Impact Methodology*

Residential Projects. Daily vehicle trips, daily VMT, and daily household VMT per capita for residential projects should be estimated using the VMT Calculator tool. A guide to using the tool can be found [here](#). Transportation demand management strategies to be included as project design features should be considered in the estimation of a project’s daily vehicle trips and VMT.

Redevelopment Projects Near Transit that Reduce Total Housing Supply. For projects that are located within a one-half mile of a fixed-rail transit station and result in a net decrease of housing units, the project should be evaluated to determine if aggregate VMT impacts may result from existing residents that are displaced to higher VMT areas. While conclusive findings of displacement impacts on VMT is uncertain, methodologies will continue to evolve. The analysis should indicate if there is available housing supply near the project to meet the needs of existing residents. If replacement housing is shown to be not

available within the project area, the VMT analysis should include the additional average daily VMT of the existing residents that would be expected to be displaced in the numerator of the total VMT per capita assessed for the project.

Office Projects. Daily vehicle trips, daily VMT, and daily work VMT per employee for office projects should be estimated using the VMT Calculator tool. A guide to using the tool can be found [here](#). Transportation demand management strategies to be included as project design features should be considered in the estimation of a project's daily vehicle trips and VMT.

Regional Serving Retail Projects<sup>10</sup>. Retail projects should be evaluated to determine whether the project would result in a net increase in total VMT. Local-serving retail<sup>11</sup> development tends to shorten trips and reduce VMT whereas regional-serving retail development can lead to substitution of longer trips for shorter ones and could increase VMT. One of the following methods would be necessary for retail projects subject to analysis:

- Preparation of a market-study-based transportation analysis submitted by the Project Applicant that demonstrates to LADOT staff that the project area is underserved for the proposed retail use and that the project will shorten existing shopping trips by creating an intervening location between trip origins and current retail destinations.
- Run the City's Travel Demand Forecasting model with and without the project. Since the overall number of trips in the model is based on home-based trips and is balanced to home-trip productions, the total number of trips will not be influenced materially by the introduction of the additional retail space but rather the model will redistribute home-shopping trips from other retail destinations to the proposed retail destination.
  - If the project is entirely retail, this entails the following steps:
    - Determine the traffic analysis zone (TAZ) in which the project is located.
    - Convert the project retail land uses into the appropriate employment categories utilized in the model. Adjust the socioeconomic parameters in the TAZ appropriately to reflect removal of the existing land uses and addition of the project.
    - Run the four-step model process for the model existing base year for the four time periods in the model (AM peak period, midday period, PM peak period, nighttime period) for the base ("no project") scenario and for the "plus project" scenario.
    - Calculate total VMT on the model network for each time period and sum to determine daily VMT for each scenario. Subtract the daily VMT for the base scenario from the daily VMT for the "plus project" scenario to determine the net change in daily VMT.
  - If the proposed project is a mixed-use development including more than 50,000 square feet of retail, conduct steps similar to those described above. However, first create a "without retail" model scenario that includes the rest of the project's proposed land uses and then create and run the four-step model for this "with retail" scenario. Subtract the

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<sup>10</sup> Regional Serving Retail Projects are generally defined as retail projects that exceed 50,000 square feet in floor area. Retail projects that fall under 50,000 square feet are considered local serving.

<sup>11</sup> See footnote 10 on definition of local serving retail.

daily VMT for the “without retail” scenario from the daily VMT for the “with retail” scenario to determine the net change in daily VMT.

Mixed-Use Projects. The project VMT impact should be considered significant if any one (or all) of the project land uses exceed the impact criteria for that particular land use, taking credit for internal capture. In such cases, mitigation options could be considered that reduce the VMT generated by any or all of the land uses.

### ***Cumulative Impacts***

Analyses should consider both short- and long-term project effects on VMT. Short-term effects will be evaluated in the detailed project-level VMT analysis described above. Long-term, or cumulative, effects will be determined through a consistency check with the SCAG RTP/SCS. The RTP/SCS is the regional plan that demonstrates compliance with air quality conformity requirements and GHG reduction targets. As such, projects that are consistent with this plan in terms of development location, density, and intensity, are part of the regional solution for meeting air pollution and GHG goals. Projects that are deemed to be consistent would have a less than significant cumulative impact on VMT. Development in a location where the RTP/SCS does not specify any development may indicate a significant impact on transportation. However, for projects that do not demonstrate a project impact by applying an efficiency-based impact threshold (i.e. VMT per capita or VMT per employee) in the project impact analysis, a less than significant project impact conclusion is sufficient in demonstrating there is no cumulative VMT impact. Projects that fall under the City’s efficiency-based impact thresholds are already shown to align with the long-term VMT and greenhouse gas reduction goals of SCAG’s RTP/SCS.

Projects that both demonstrate a project impact by applying an efficiency-based VMT threshold and that are not deemed to be consistent with the the SCAG RTP/SCS could have a significant cumulative impact on VMT. Further evaluation would be necessary to determine whether such a project’s cumulative impact on VMT is significant. This analysis could be conducted by running the City’s Travel Demand Forecasting model with the cumulative “no project” scenario representing the adopted RTP/SCS cumulative year conditions (as incorporated into the City’s model) and the cumulative “plus project” scenario representing the reallocation of the population and/or employment growth based on the land supply changes associated with the proposed project. Citywide VMT, household VMT per capita, or work VMT per employee (depending on project type) would be calculated for both scenarios, and any increase in VMT, household VMT per capita, or work VMT per employee (depending on project type) above that which was forecast in the adopted RTP/SCS would constitute a significant impact because it could jeopardize regional air quality conformity or GHG reduction findings.

When specifically evaluating the VMT impacts of regional-serving retail projects, the cumulative analysis would include additional steps to that described above under the Project Impact methodology to compare a cumulative “plus project” scenario with the cumulative “no project” scenario representing the adopted RTP/SCS cumulative year conditions (as incorporated into the City’s model). This would involve the additional steps:

- Convert the project retail land uses into the appropriate employment categories utilized in the adopted RTP/SCS horizon year model. Adjust the socioeconomic parameters in the TAZ appropriately to reflect removal of the existing land uses and addition of the project.

- Run the four-step model process for the model cumulative “no project” for the four time periods in the model (AM peak period, midday period, PM peak period, nighttime period) for the base cumulative “no project” scenario and for the cumulative “plus project” scenario.
- Calculate total VMT on the model network for each time period and sum to determine daily VMT for each scenario. Subtract the daily VMT for the base cumulative “no project” scenario from the daily VMT for the cumulative “plus project” scenario to determine the net change in daily VMT.

**Land Use Plans**

To determine whether the land use changes and transportation system measures that are included in a proposed land use plan would have an impact on VMT, run the City’s travel demand forecasting model for both a cumulative “no project” scenario and a cumulative “plus project” scenario. The cumulative “no project” scenario should represent the adopted RTP/SCS cumulative year conditions as incorporated into the City’s model (SCAG 2040 socioeconomic forecast for the plan area and the remainder of the City and base transportation networks not including the Mobility Plan 2035). The cumulative “plus project” scenario should represent the reallocation of the population and/or employment growth based on the land supply changes associated with the proposed plan and the transportation system measures included in the proposed plan (including transportation system measures included in the Mobility Plan 2035 within the plan area and incorporated into the plan).

Household VMT per capita and work VMT per employee would be calculated for both scenarios for all household VMT and work VMT generated by land use within the plan area. Household VMT per capita or work VMT per employee exceeding the household VMT per capita or work VMT per employee in the no project scenario representing the adopted RTP/SCS conditions would constitute a significant impact because it could jeopardize regional air quality conformity or GHG reduction findings. The assessment should cover the full area in which the plan may substantially affect travel patterns.

**2.2.5 Mitigation**

**Development Projects**

Potential mitigation measures for development project VMT impacts can include:

- Transportation demand management strategies beyond those required by the City’s TDM Ordinance and/or beyond those to be included as project design features that have been demonstrated to reduce VMT. TDM strategies that have been shown to reduce VMT include, but are not limited to, the following described in **Table 2.2-2** below.

**Table 2.2-2: TDM Strategies**

Category	Measure
Parking	<ul style="list-style-type: none"> <li>● Reduce parking supply</li> <li>● Unbundle parking</li> <li>● Parking cash-out</li> <li>● Price workplace parking</li> </ul>
Transit	<ul style="list-style-type: none"> <li>● Reduce transit headways</li> <li>● Implement neighborhood shuttle</li> </ul>

	<ul style="list-style-type: none"> <li>● Transit subsidies</li> </ul>
Education & encouragement	<ul style="list-style-type: none"> <li>● Voluntary travel behavior change program</li> <li>● Promotions and marketing</li> </ul>
Commute trip reductions	<ul style="list-style-type: none"> <li>● Required commute trip reduction program</li> <li>● Employer or association-sponsored vanpool, circulator or shuttle</li> <li>● Rideshare program</li> </ul>
Shared mobility	<ul style="list-style-type: none"> <li>● Car share</li> <li>● Bike share</li> <li>● Other shared mobility devices</li> <li>● School carpool program</li> </ul>
Bicycle infrastructure	<ul style="list-style-type: none"> <li>● Implement/improve on-street bicycle facility</li> <li>● Include outdoor bike parking</li> <li>● Include secure bike parking and showers</li> </ul>
Neighborhood enhancement	<ul style="list-style-type: none"> <li>● Traffic calming improvements</li> <li>● Pedestrian network improvements</li> <li>● Shared use paths, paseos</li> </ul>

Further details regarding the definitions, benefits and applicability of the TDM measures listed above are provided in **Attachment D**.

- Additional TDM measures beyond those listed above. If additional TDM measure(s) beyond those listed above are used to quantitatively reduce a project's VMT estimate, substantial evidence should be provided to LADOT to support the claimed effectiveness of the measure(s).
- Enhancements to the public transit system.
- For a single-use project, introducing compatible additional land uses to allow for internalization of trips.
- For a mixed-use project, modifying the project's land use mix to increase internalization of trips, reduce external trip generation, and serve the local community.

**Land Use Plans**

Potential mitigation measures for land use plan VMT impacts can include:

- Reallocation of future land use development to increase density in transportation-efficient locations (e.g., proximity to transit, proximity to services).
- Measures to enhance the public transit system and/or connections to the system including active transportation mode improvements, such as infrastructure improvements, programs, or education and marketing.
- Measures to encourage reduced reliance on automobile trips and encourage transit and active transportation modes.

## 2.3 SUBSTANTIALLY INDUCING ADDITIONAL AUTOMOBILE TRAVEL (THRESHOLD T-2.2)

### 2.3.1 Introduction

Transportation projects that increase vehicular capacity can lead to additional travel on the roadway network, which can include induced vehicle travel due to factors such as increased speeds and induced growth. The Governor's Office of Planning and Research (OPR) issued proposed updates to the CEQA guidelines in November 2017<sup>12</sup> and an accompanying technical advisory in April 2018<sup>13</sup> ("OPR Technical Advisory") that amends the Appendix G questions to refer to Section 15064.3, subdivision (b)(2) of the CEQA Guidelines, which give discretion to agencies to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements. The California Natural Resources Agency certified and adopted the CEQA Guidelines in December of 2018, and are now in effect.<sup>14</sup> To provide consistency across projects and achieve the City's sustainability policies, the City of Los Angeles has acted to consider the potential for transportation projects to increase VMT, and disclosing such impacts is subject to CEQA.

Accordingly, the City of Los Angeles recognizes the need to set new significance criteria for transportation impacts based on VMT for transportation projects in accordance with the amended Appendix G question:

**Threshold T-2.2:** For a transportation project, would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)(2)?

For transportation projects, the intent of this threshold is to assess whether a transportation project induces substantial additional VMT. The City has developed the following screening and impact criteria to answer this question. The criteria are supported by the OPR technical advisory.

### 2.3.2 Screening Criteria

If the answer is no to the following question, further analysis will not be required for Threshold T-2.2, and a no impact determination can be made for that threshold:

- **T-2.2:** Would the project include the addition of through traffic lanes on existing or new highways, including general purpose lanes, high-occupancy vehicle (HOV) lanes, peak period lanes, auxiliary lanes, and lanes through grade-separated interchanges (except managed lanes, transit lanes, and auxiliary lanes of less than one mile in length designed to improve roadway safety)?

Transit and active transportation projects and projects that reduce roadway capacity generally reduce VMT and, therefore, are presumed to cause a less-than-significant impact. Transportation projects that are not likely to lead to a substantial or measurable increase in vehicle travel and would, therefore, not be required to prepare an induced travel analysis, are listed in **Table 2.3-1**.

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<sup>12</sup> State of California, Governor's Office of Planning and Research, *Proposed Updates to the CEQA Guidelines, Final*, November 2017.

<sup>13</sup> State of California, Governor's Office of Planning and Research, *Technical Advisory on Evaluating Transportation Impacts in CEQA*, April 2018.

<sup>14</sup> State of California, Natural Resources Agency, *Final Adopted Text*, December 2018.

<http://resources.ca.gov/ceqa/>

**Table 2.3-1: Transportation Projects Not Likely to Lead to Substantial or Measurable Increase in Vehicle Travel**

- Rehabilitation, maintenance, replacement, safety, and repair projects designed to improve the condition of existing transportation assets (e.g., highways; roadways; bridges; culverts; Transportation Management System field elements such as cameras, message signs, detection, or signals; tunnels; transit systems; and assets that serve bicycle and pedestrian facilities) and that do not add additional motor vehicle capacity
- Roadside safety devices or hardware installation such as median barriers and guardrails
- Roadway shoulder enhancements to provide "breakdown space" - dedicated space for use only by transit vehicles, to provide bicycle access, or to otherwise improve safety, but which will not be used as automobile vehicle travel lanes
- Addition of an auxiliary lane of less than one mile in length designed to improve roadway safety
- Installation, removal, or reconfiguration of traffic lanes that are not for through traffic, such as left, right, and U-turn pockets, two-way left turn lanes, or emergency breakdown lanes that are not utilized as through lanes
- Addition of roadway capacity on local or collector streets provided the project also substantially improves conditions for pedestrians, cyclists, and, if applicable, transit
- Conversion of existing general purpose lanes (including ramps) to managed lanes or transit lanes, or changing lane management in a manner that would not substantially increase vehicle travel
- Addition of a new lane that is permanently restricted to use only by transit vehicles
- Reduction in number of through lanes
- Grade separation to separate vehicles from rail, transit, pedestrians or bicycles, or to replace a lane in order to separate preferential vehicles (e.g., high-occupancy vehicles [HOV], high-occupancy toll [HOT], or trucks) from general vehicles
- Installation, removal, or reconfiguration of traffic control devices, including Transit Signal Priority (TSP) features
- Installation of traffic metering systems, detection systems, cameras, changeable message signs and other electronics designed to optimize vehicle, bicycle, or pedestrian flow
- Timing of signals to optimize vehicle, bicycle or pedestrian flow
- Installation of roundabouts or traffic circles
- Installation or reconfiguration of traffic calming devices
- Adoption of or increase in tolls
- Addition of tolled lanes, where tolls are sufficient to mitigate VMT increase
- Initiation of new transit service
- Conversion of streets from one-way to two-way operation with no net increase in number of traffic lanes
- Removal or relocation of off-street or on-street parking spaces
- Adoption or modification of on-street parking or loading restrictions (including meters, time limits, accessible spaces, and preferential/reserved parking permit programs)

- Addition of traffic wayfinding signage
- Rehabilitation and maintenance projects that do not add motor vehicle capacity
- Addition of new or enhanced bike or pedestrian facilities on existing streets/highways or within existing public rights-of-way
- Addition of Class I bike paths, trails, multi-use paths, or other off-road facilities that serve non-motorized travel
- Installation of publicly available alternative fuel/charging infrastructure
- Adding of passing lanes, truck climbing lanes, or truck brake-check lanes in rural areas that do not increase overall vehicle capacity along the corridor

### 2.3.3 Impact Criteria

The transportation project will have a potential impact if:

- The project will increase the project area<sup>15</sup> VMT as measurable by the City's base year Travel Demand Forecasting model plus an induced travel elasticity factor per lane mile.

### 2.3.4 Methodology

#### *Project Impacts*

The City of Los Angeles has developed a citywide Travel Demand Forecasting (TDF) model that is suitable for assessing change in VMT due to a given roadway project in its land use/transportation context. This tool should be used to calculate the change in VMT from transportation projects that, by definition, are considered to have the potential for inducing automobile travel.

For the direct measurement of project impacts, the TDF model's base year<sup>16</sup> network should be modified to reflect the vehicle capacity-enhancements that would result from the proposed transportation project. The base year model should be run with and without the proposed transportation project, without adjusting the model's land use inputs, in order to isolate the potential change in network VMT with the project as compared to the baseline. The assessment should cover the full area in which driving patterns are expected to change, and include supporting evidence for why such area was selected.

The City's TDF model is capable of adjusting trip lengths, mode split, and route choice in response to network changes. However, the model does not include the ability to modify land use in response to changes to the transportation system and will not increase trips to reflect latent demand. Therefore, such induced travel should be estimated by applying an induced demand elasticity factor available from

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<sup>15</sup> The project area, for the purposes of a VMT analysis of transportation projects will be defined on a project by project basis. The area shall include the transportation analysis zones that contain a non-significant amount of vehicles traveling somewhere along their journey and also along the project corridor segment.

<sup>16</sup> The base year shall reflect the environmental setting closest to when the project analysis was initiated, such as the release of a Notice of Preparation.

appropriate academic literature. According to the OPR Technical Advisory<sup>17</sup>, the most recent major study as of this writing<sup>18</sup> finds the elasticity of vehicle travel by lane miles added to be 1.0, meaning that every percent increase in lane miles results in a 1.0 percent increase in vehicle travel.

Accordingly, the VMT impact of a transportation project shall be calculated as the direct change in VMT as estimated by the City's TDF model with and without the project plus a factor for induced demand calculated as follows:

- Using the TDF model, determine the total modeled lane-miles over the project area<sup>19</sup> that fully captures travel behavior changes resulting from the project.
- Determine the percent change in total lane miles that will result from the project.
- Using the TDF model, determine the total existing VMT over that same area.
- Multiply the percent increase in lane miles by the existing VMT and then multiply that by the elasticity factor of 1.0.

### **Cumulative Impacts**

Analyses should consider both short- and long-term project effects on VMT. Short-term effects will be evaluated in the project-level VMT analysis described above. Long-term, or cumulative, effects will be determined through a consistency check with the SCAG RTP/SCS. The RTP/SCS is the regional plan that demonstrates compliance with air quality conformity requirements and greenhouse gas (GHG) reduction targets. As such, transportation projects that are included in this plan are part of the regional solution for meeting air pollution and GHG reduction goals. Transportation projects that are deemed to be consistent would have a less than significant cumulative impact on VMT.

Transportation projects that are not deemed to be consistent could have a significant cumulative impact on VMT. Further evaluation would be necessary to determine whether such a project's cumulative impact on VMT is significant. This analysis would be conducted by running the City's TDF model with the cumulative "no project" scenario representing the adopted RTP/SCS cumulative year conditions (as incorporated into the City's model) and the cumulative "plus project" scenario incorporating the network changes due to the proposed transportation project. An induced demand elasticity factor should be applied to any increase in VMT thus determined, and any increase in VMT would constitute a significant impact because it could jeopardize regional air quality conformity or GHG reduction findings.

### **2.3.5 Mitigation**

Mitigation measures that could reduce the amount of increased vehicle travel induced by capacity increases could include, but not be limited to, the following measures:

- Tolling new lanes to encourage carpools and fund transit improvements.

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<sup>17</sup> State of California, Governor's Office of Planning and Research, *Technical Advisory on Evaluating Transportation Impacts in CEQA*, April 2018.

<sup>18</sup> Duranton and Turner. *The Fundamental Law of Road Congestion, Evidence from US Cities*, 2011.

<sup>19</sup> See footnote 11 for the definition of Project Area for transportation projects.

- Converting existing general purpose lanes to HOV lanes, high occupancy toll (HOT) lanes, or bus lanes.
- Cordon or congestion pricing to encourage sustainable travel behavior and fund district-wide mobility improvements.
- Implementing or funding off-site mobility improvements, including the initiation of transportation management organizations (TMOs).
- Implementing intelligent transportation systems (ITS) strategies to improve passenger throughput on existing lanes.

## **2.4 SUBSTANTIALLY INCREASING HAZARDS DUE TO A GEOMETRIC DESIGN FEATURE OR INCOMPATIBLE USE (THRESHOLD T-3)**

### **2.4.1 Introduction**

Impacts regarding the potential increase of hazards due to a geometric design feature generally relate to the design of access points to and from the project site, and may include safety, operational, or capacity impacts. Impacts can be related to vehicle/vehicle, vehicle/bicycle, or vehicle/pedestrian conflicts as well as to operational delays caused by vehicles slowing and/or queuing to access a project site. These conflicts may be created by the driveway configuration or through the placement of project driveway(s) in areas of inadequate visibility, adjacent to bicycle or pedestrian facilities, or too close to busy or congested intersections. Evaluation of access impacts require details relative to project land use, size, design, location of access points, etc. These impacts are typically evaluated for permanent conditions after project completion, but can also be evaluated for temporary conditions during project construction.

Project access can be analyzed in qualitative and/or quantitative terms, and in conjunction with the review of internal site circulation and access to parking areas. All proposed site access points should be evaluated.

### **2.4.2 Screening Criteria**

If the project requires a discretionary action, and the answer is “yes” to either of the following questions, further analysis will be required to assess whether the project would result in impacts due to geometric design hazards or incompatible uses:

- Is the project proposing new driveways, or introducing new vehicle access to the property from the public right-of-way?
- Is the project proposing to, or required to make any voluntary or required, modifications to the public right-of-way (i.e., street dedications, reconfigurations of curb line, etc.)?

For the purpose of the screening for projects that are making physical changes to the public right-of-way, determine the street designation and improvement standard for any project frontage along streets classified as an Avenue or Boulevard (as designated in the City’s General Plan) using the Mobility Plan 2035, or NavigateLA. If any street fronting the project site is an Avenue or Boulevard and it is determined that additional dedication, or physical modifications to the public right-of-way are proposed or required, the answer to this question is yes. For projects not subject to dedication and improvement requirements

under the Los Angeles Municipal Code, though the project does propose dedications or physical modifications to the public right-of-way, the answer to this question is yes.

### 2.4.3 Impact Criteria

**Threshold T-3:** Would the project substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

Preliminary project access plans are to be reviewed in light of commonly-accepted traffic engineering design standards<sup>20</sup> to ascertain whether any deficiencies are apparent in the site access plans which would be considered significant. The determination of significance shall be on a case-by-case basis, considering the following factors:

- The relative amount of pedestrian activity at project access points.
- Design features/physical configurations that affect the visibility of pedestrians and bicyclists to drivers entering and exiting the site, and the visibility of cars to pedestrians and bicyclists.
- The type of bicycle facilities the project driveway(s) crosses and the relative level of utilization.
- The physical conditions of the site and surrounding area, such as curves, slopes, walks, landscaping or other barriers, that could result in vehicle/pedestrian, vehicle/bicycle, or vehicle/vehicle impacts.
- The project location, or project-related changes to the public right-of-way, relative to proximity to the High Injury Network or a Safe Routes to School program area.
- Any other conditions, including the approximate location of incompatible uses that would substantially increase a transportation hazard.

### 2.4.4 Methodology

#### ***Project Impacts***

For vehicle, bicycle and pedestrian safety impacts, review all project access points, internal circulation, and parking access from an operational and safety perspective (for example, turning radii, driveway queuing, line of sight for turns into and out of project driveway[s]). Where project driveways would cross pedestrian facilities or bicycle facilities (bike lanes or bike paths), consider operational and safety issues related to the potential for vehicle/pedestrian and vehicle/bicycle conflicts and the severity of consequences that could result. In areas with moderate to high levels of pedestrian or bicycle activity, the collection of pedestrian or bicycle count data may be required.

#### ***Cumulative Impacts***

Review project site access plans for related projects with access points proposed along the same block(s) as the proposed project. Determine the combined impact and the project's contribution.

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<sup>20</sup> One example of traffic engineering design standards includes, but is not limited to Section 321 of LADOT's Manual of Policies and Procedures, which provides guidance on driveway design.

## 2.4.5 Mitigation

Potential mitigation measures for project impacts due to geometric design hazards can include:

- Installation of a traffic signal, stop signs or electronic warning devices at site access points
- Redesign and/or relocation of project access points
- Redesign of the internal (on-site) circulation system
- Installation of stop-signs and pavement markings internal to the site
- Restricting or prohibiting turns at site access points
- Pavement markings that highlight potential conflict points including marking/stripping through bike lane
- Widened sidewalk and/or curb extensions
- Augment driver/pedestrian sight lines
- Manage vehicle/parking demand

## ***ATTACHMENT: CITY PLAN, POLICIES AND GUIDELINES***

The Transportation Element of the City's General Plan, Mobility Plan 2035, established the "Complete Streets Design Guide" as the City's document to guide the operations and design of streets and other public rights-of-way. It lays out a vision for designing safer, more vibrant streets that are accessible to people, no matter what their mode choice. As a living document, it is intended to be frequently updated as City departments identify and implement street standards and experiment with different configurations to promote complete streets. The guide is meant to be a toolkit that provides numerous examples of what is possible in the public right-of-way and provide guidance on context-sensitive design.

The Plan for A Healthy Los Angeles (March 2015) includes policies directing several City departments to develop plans that promote active transportation and safety.

The City of Los Angeles Community Plans, which make up the Land Use Element of the City's General Plan, guide the physical development of neighborhoods by establishing the goals and policies for land use. The 35 Community Plans provide specific, neighborhood-level detail for land uses and the transportation network, relevant policies, and implementation strategies necessary to achieve General Plan and community-specific objectives.

The stated goal of Vision Zero is to eliminate traffic-related deaths in Los Angeles by 2025 through a number of strategies, including modifying the design of streets to increase the safety of vulnerable road users. Extensive crash data analysis is conducted on an ongoing basis to prioritize intersections and corridors for implementation of projects that will have the greatest effect on overall fatality reduction. The City designs and deploys Vision Zero Corridor Plans as part of the implementation of Vision Zero. If a project is proposed whose site lies on the High Injury Network (HIN), the applicant should consult with LADOT to inform the project's site plan and to determine appropriate improvements, whether by funding their implementation in full or by making a contribution toward their implementation.

The Citywide Design Guidelines for Residential, Commercial and Industrial Development (November 1, 2016) includes sections relevant to development projects where improvements are proposed within the public realm. Specifically, Section 3 addresses sidewalks, crosswalks, and on-street parking and Section 4 addresses off-street parking, driveways and loading facilities. That section of the checklist(s) for specific types of development should be reviewed by LADOT and LADCP to assess the consistency of a proposed project with those plans.

The Walkability Checklist: Guidance for Entitlement Review (November 2008) provides a list of recommended strategies that projects should employ to improve the pedestrian environment in the public right-of-way and on private property. Specific topics covered in the Walkability Checklist include sidewalks, crosswalks, on-street parking, and off-street parking. Each of the implementation strategies on the Checklist should be considered in a proposed project, although not all will be appropriate in every proposed project. LADCP staff will use the Checklist in evaluating entitlement applications. In making a finding of conformance with the policies and objectives of the General Plan, LADCP staff weighs the project's walkability against the adopted objectives listed in the Appendix to this Checklist and additional objectives and policies contained in Community Plans.

The City's Transportation Demand Management (TDM) Ordinance (LA Municipal Code 12.26.J) requires certain projects to incorporate strategies that reduce drive-alone vehicle trips and improve access to

destinations and services. The ordinance is revised and updated periodically, and should be reviewed for application to specific projects as they are reviewed.

The City's LAMC Section 12.37 (Waivers of Dedication and Improvement) requires certain projects to dedicate and/or implement improvements within the public right-of-way to meet the street designation standards of the Mobility Plan 2035.

**EXHIBIT G**

**VMT Calculator User Guide**

# City of Los Angeles VMT Calculator User Guide

Los Angeles Department of Transportation (LADOT) and  
Los Angeles Department of City Planning (DCP)



December 2018



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## APPENDICES

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Appendix A: VMT CALCULATOR DASHBOARD

Appendix B: VMT CALCULATOR SAMPLE REPORTS

Appendix C: VMT CALCULATOR USER AGREEMENT



# 1 User Guide Overview

This User Guide provides a step by step approach to using the City of Los Angeles VMT Calculator (VMT Calculator). With the tool you can enter various mixes and intensities of land use; select transportation demand management (TDM) strategies and mitigations; and review the resulting vehicle trips and vehicle miles traveled (VMT) generated by the project. The VMT Calculator also displays the relationship of the project's estimated VMT to local significance criteria.

An image of the VMT Calculator dashboard is included in **Appendix A. Section 2** of this guide explains how to enter details of your project's location and land use characteristics. **Section 3** documents how to include TDM strategies as part of your project or as mitigation. **Section 4** and **Appendix B** provide examples of the tool's reporting capabilities. These reports can be submitted to the Los Angeles Department of Transportation (LADOT) as part of the transportation analysis for your project. The User Agreement, which should be printed, signed, and submitted to LADOT along with a transportation analysis memorandum of understanding (MOU), is presented in **Section 5** and **Appendix C**.

The VMT Calculator can be accessed/downloaded at the following link:  
<http://ladot.lacity.org/what-we-do/planning-development-review/transportation-planning-policy>

## 1.1 Purpose

The VMT Calculator tool is specifically designed and intended to be used to develop project-specific daily household VMT per capita and daily work VMT per employee for land use development projects in the City of Los Angeles. It implements the methodologies and significance thresholds described in Section 2.2 of LADOT's *Transportation Assessment Guidelines* for residential and employment projects. A proposed project's daily trips should be estimated using the VMT Calculator tool or the most recent version of the ITE Trip Generation Manual as described in the Section 2.2.4 of the *Transportation Assessment Guidelines*. TDM strategies should not be considered for the purpose of screening.

Although the tool may be useful for other purposes, it is not specifically designed for the following:



- Calculate peak hour or peak period vehicle trips or VMT.
- Calculate person trips.
- Calculate truck trips.
- Distribute or assign trips.
- Estimate net changes in area VMT due to implementation of a retail project.
- Evaluate VMT impacts of land use plans (e.g., general plans, community plans, and specific plans).
- Evaluate VMT impacts of transportation improvement projects.

## 1.2 System Requirements

The VMT Calculator tool has been tested to run in Excel 2016 in Windows 7 or Windows 10.



## 2 Project Information

Project name, location, and land use characteristics should be added under 'Project Information'. This section is divided into three parts.

1. Project Description
2. Project Address
3. Land Use Information

### 2.1 Project Description

The Project Information section begins with a description of the project name and scenario. Use the boxes outlined in green below to enter your project name and the scenario you are testing.

<b>Project Information</b>	
<b>Project:</b>	Los Angeles City Hall
<b>Scenario:</b>	Example
<b>Address:</b>	200 N SPRING ST, 90012

WWW 

### 2.2 Project Address

Enter project address and click on the search icon in the box outlined in green below. The City, State, and Zip are not needed, since this tool is intended for projects solely within the City of Los Angeles boundaries. If the location is not found, try adding or removing geographic designations. For example, if your address is 12101 W Olympic Boulevard, but the search returns nothing, try removing 'W' and enter 12101 Olympic Boulevard. Note, the street type is required (i.e. Boulevard or Blvd, Avenue or Ave, Road or Rd).

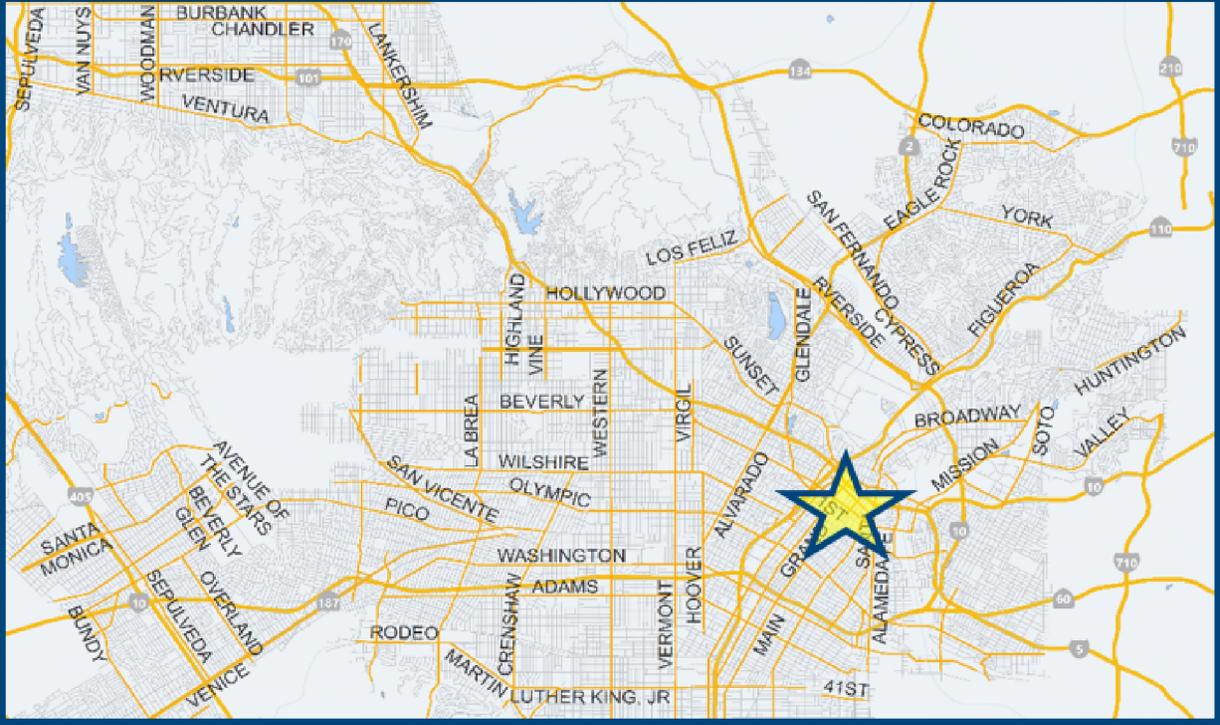


# Project Information

**Project:**

**Scenario:**  [WWW](#)

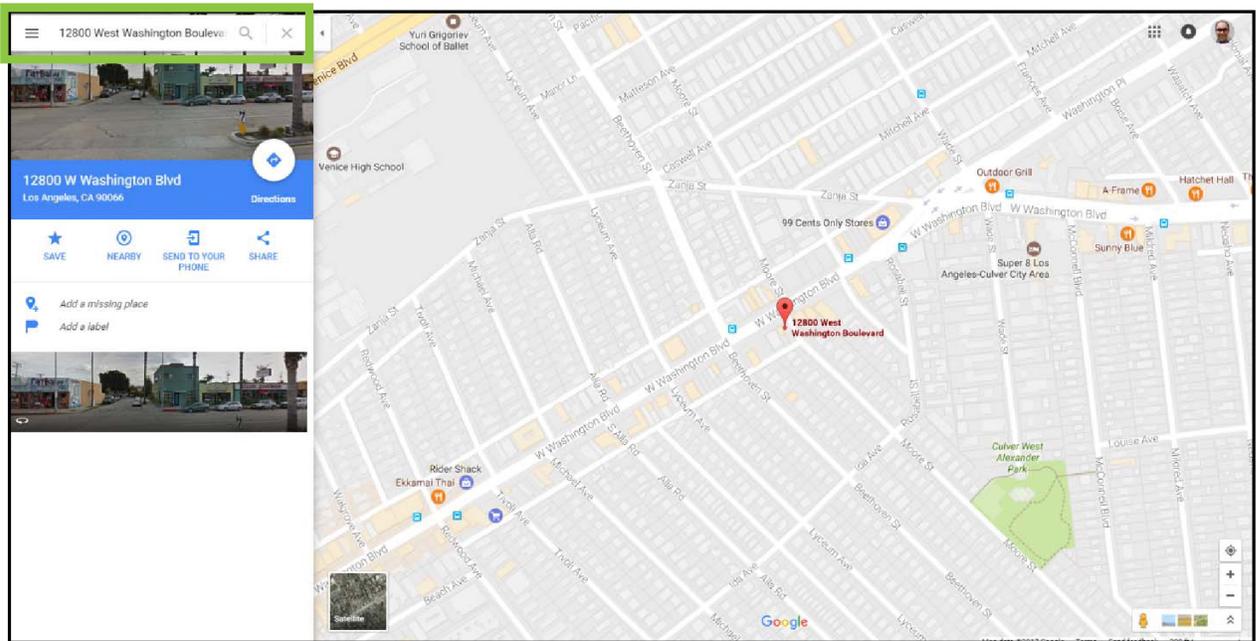
**Address:**  



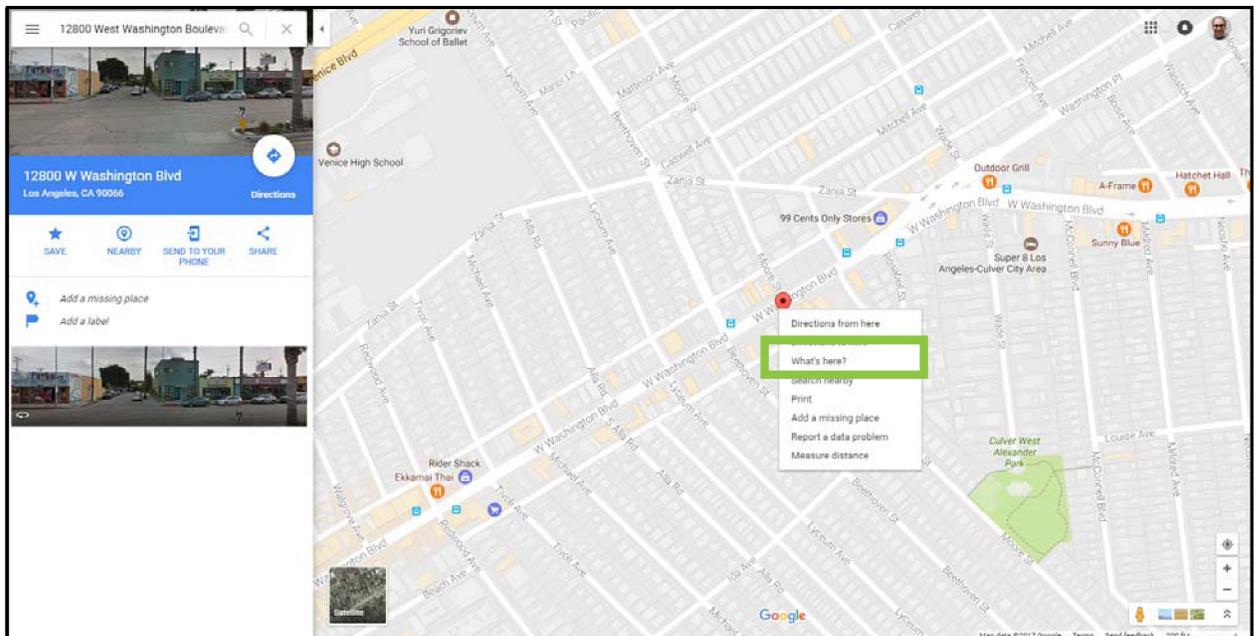
You may also use latitude and longitude if the address is not found or the pinned location is different from your development parcel. You can find these coordinates and enter them into the VMT calculator by following these three steps.

1. Navigate to [Google maps](#) and enter the address you would like to find as shown in the green box below.

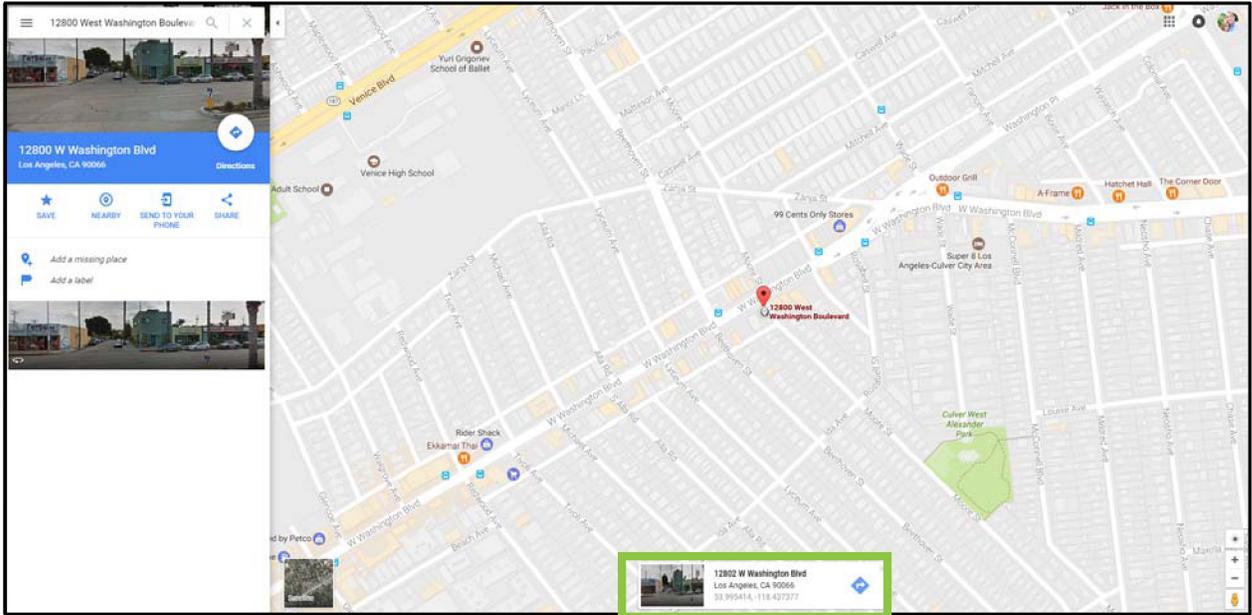




2. Right click on the red pin and select 'What's here?' as shown in the green box below.



3. You will see an information box appear at the bottom of the screen, with the address and an image (if street view is available). Under the address will be approximate latitude and longitude coordinates. The first is latitude, the second is longitude. Enter these coordinates as <Latitude, Longitude> into the location dialog in the VMT project evaluation model.



The VMT Calculator requires internet access to display the mapped location. If internet access is unavailable, you can still use the calculator in offline mode and use the latitude, longitude method for analysis. To access the offline mode, click on the 'www' icon located in the green box below.



## Project Information

<b>Project:</b>	Los Angeles City Hall
<b>Scenario:</b>	Example
<b>Address:</b>	34.053737, -118.242775



The tool is currently in offline mode.

Please use the <Latitude, Longitude> address method to indicate your project site location. eg.) 34.053755, -118.2432042

Remember to click on the search magnifier icon after entering the latitude and longitude.

## 2.3 Land Use Information

The VMT Calculator has several predefined land uses that can be used to create your project land use scenario. To add a land use, follow these three steps:

1. Select the land use type from the 'Land Use Type' drop down menu.
2. Enter the land use quantity in the 'Value Box' using the units that appear to the right of the drop down menu.
3. Click the + button to add the land use to your project.
4. If a land use in your project is not predefined in the tool, you may select the box at the bottom to enter a custom land use.



Land Use Type	Value	Unit	
1 Office   General Office	2 856	ksf	3 +
Office   General Office	856	ksf	
4 <input type="checkbox"/> Click here to add a single custom land use type (will be included in the above list)			

You may enter a custom land use by checking the box outlined in green, numbered 4 above. Once selected, the pop-up below should appear. To include a custom land use, follow the steps below and outlined in the image below.

1. Enter the custom land use name.
2. Select if the land use is retail or non-retail.
3. Enter the number of residents and employees the expected land use will contain.
4. Enter the total number of vehicle trips the land use is expected to generate.
5. Enter the trip purpose splits for the land use. The sum of all trip purpose splits must total 100%. Trip purpose splits for land uses provided in the tool can be found in the *City of Los Angeles VMT Calculator Documentation*.



To remove a land use from your project, select the land use and click the red X as shown in the green box below.



### 3 TDM Strategies

There are a variety of transportation demand management (TDM) strategies included in the VMT Calculator. These strategies may be applied as part of the project or as mitigation. There are three general steps to add TDM strategies to your project as listed below.

1. The first step is to select a strategy to be part of your project. Click on the appropriate parent strategy to expand the corresponding TDM strategies that are part of the parent strategy. The parent strategies are identified as A-G as follows:
  - A. Parking
  - B. Transit
  - C. Education & Encouragement
  - D. Commute Trip Reductions
  - E. Shared Mobility
  - F. Bicycle Infrastructure
  - G. Neighborhood Enhancement
2. The second step is to select if the desired TDM strategy is part of your project or is a mitigation strategy. This can be identified by selecting the corresponding box for the TDM strategy. If the strategy is selected as part of the project, it will be carried over in the mitigation calculations and will not be able to be selected twice.
3. The third step to apply a TDM strategy is to enter the quantity and intensity of the TDM strategy. More information on how the TDM strategies work can be found in the *City of Los Angeles VMT Calculator Documentation*. Users may also view the report tabs at the bottom of the tool to see all of the TDM strategies selected for the project (Report 2), and to understand how VMT reductions are assigned by trip purpose to the project's TDM strategies.



### 3.1 Reporting Metrics

The VMT Calculator analyzes proposed projects dynamically within the tool. The resulting reporting provides details on the proposed project under the following two scenarios:

1. Proposed project **without** mitigation strategies
2. Proposed project **with** mitigation strategies

Key project metrics of interest to LADOT are reported for both scenarios. These metrics include the following:

- Daily Vehicle Trips
- Daily VMT
- Household VMT per Capita: This is the total Home-Based VMT productions divided by the population of the project
- Work VMT per Employee: This is the total Home-Based Work Attractions divided by the employment of the project
- Household Significance Threshold: The Household VMT per Capita is measured against threshold for the Area Planning Commission (APC) in which the project is located to determine if the project has a significant Household Impact
- Work Significance Threshold: The Work VMT per Employee is measured against the APC threshold to determine if the project has a significant Work Impact



## 3.2 Reporting Tabs

In addition to the live reporting, the VMT Calculator also provides a series of print ready reports. These reports, accessed using the tabs at the bottom of the tool window, allow the user to review the major project inputs and outputs. Additionally, the reports provide detailed information on the TDM mitigation strategies and mixed-use (MXD) trip adjustments.



Examples of these reports are provided in **Appendix B**. The four reports are:

1. **Overview:** Documents the inputs and outputs of the tool for the specified project. This includes the project land use(s), the total employees and population of the project, and the summary statistics mentioned above.
2. **TDM Inputs:** Provides a detailed breakdown of the TDM strategies that were selected for the project. The user interface for the tool does not allow for the user to see all options at once. This report provides a complete summary of the TDM inputs for the project. These inputs are tabulated for both the proposed project and proposed project with mitigations.
3. **TDM Outputs:** Reports the VMT reductions associated with the TDM strategies selected. These reductions are documented for both the proposed project and proposed project with mitigations. The VMT reductions are also reported by trip purpose. The individual TDM reductions are combined and capped for the maximum TDM effect associated with the project site land use context (e.g. urban, suburban).
4. **MXD:** Reports the VMT reductions associated with the mix of land uses in the project as well as the demographics and built form of the surrounding area. The MXD tab reports the VMT reductions by trip purpose for both the proposed project and proposed project with mitigations.



## 4 User Agreement

The VMT Calculator User Agreement is included in a tab within the Calculator. The User Agreement should be printed, signed, and submitted to LADOT along with the draft transportation memorandum of understanding (MOU). A copy of the User Agreement is included in **Appendix C**.



## Chapter 5. Reporting

The VMT Calculator reports daily vehicle trips, daily VMT, daily household VMT per capita, and daily work VMT per employee. The trips and VMT are reported for the proposed project (including any TDM strategies selected as project design features) and for the project with TDM strategies selected as mitigation measures. Both the proposed project and the project with mitigation measures use the methodology explained in Chapter 3 and Chapter 4. These methodologies are combined to produce the final results. Below is a summary of how these outputs are calculated:

- **Daily Vehicle Trips:** Trip generation for home based work (HBW), home based other (HBO), and non-home based (NHB) productions and attractions to the project. These trips take into account reductions from the MXD model as well as reductions from selected TDM measures. The MXD and TDM reductions are sensitive to trip purposes and trip productions and attractions.
- **Daily Vehicle Miles Travel:** The daily trip generation described above is multiplied by the corresponding trip length for HBW, HBO, and NHB productions and attractions to the project derived from the TDF model by TAZ.
- **Daily Household VMT per Capita:** The daily household VMT per capita is the home based production VMT from the MXD model combined with selected TDM strategies that reduce home based production VMT. This VMT is then divided by the number of people living within the project.
- **Daily Work VMT per Employee:** The daily work VMT per employee is the HBW attraction VMT from the MXD model combined with selected TDM strategies that reduce HBW attraction VMT. This VMT is then divided by the number of people working within the project.
- **Significant VMT Impact:** The daily household VMT per capita and daily work VMT per employee are compared with the City of Los Angeles VMT impact criteria by APC. These targets are 15% below the APC average daily household VMT per capita and average daily work VMT per employee shown in the City of Los Angeles *Transportation Assessment Guidelines*. The project is then flagged if it has a significant VMT impact, both without and with the selected TDM mitigation measures.

In addition to the summary reporting mentioned above, the VMT Calculator also provides the following four detailed reports:

1. **Overview:** Documents the inputs and outputs of the tool for the specified project. This includes the project land use, the total employees and population of the project, and the summary statistics mentioned above.
2. **TDM Inputs:** Provides a detailed breakdown of the TDM measures that were selected for the project. The user interface for the tool doesn't allow for the user to see all options at once. This

report provides a complete summary of the TDM inputs for the project. These inputs are tabulated for both the proposed project and proposed project with mitigations.

3. **TDM Outputs:** Reports the VMT reductions associated with the TDM measures selected. These reductions are documented for both the proposed project and proposed project with mitigations. The VMT reductions are also reported by trip purpose. The individual TDM reductions are combined and capped for the maximum TDM effect associated with the project's place type.
4. **MXD:** Reports the VMT reductions associated with the mix of land uses in the project and the demographics and built form of the surrounding area. The MXD tab reports the VMT reductions by trip purpose for both the proposed project and the project with mitigation measure.

**Attachment 2**

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
\_\_\_\_\_, CALIFORNIA, ELECTING TO BE EXEMPT FROM  
THE CONGESTION MANAGEMENT PROGRAM

**WHEREAS**, in 1990, the voters of California passed Proposition 111 and the requirement that urbanized counties develop and implement a Congestion Management Program (CMP); and

**WHEREAS**, the legislature and governor established the specific requirements of the Congestion Management Program by passage of legislation which was a companion to Proposition 111 and is encoded in California Government Code Section 65088 to 65089.10; and

**WHEREAS**, the Los Angeles County Metropolitan Transportation Authority (Metro) has been designated as the Congestion Management Agency responsible for Los Angeles County's Congestion Management Program; and

**WHEREAS**, California Government Code Section 65089.3 allows urbanized counties to be exempt from the Congestion Management Program based on resolutions passed by local jurisdictions representing a majority of a county's jurisdictions with a majority of the county's population; and

**WHEREAS**, the Congestion Management Program is outdated and increasingly out of step with current regional, State, and federal planning processes and requirements, including new State requirements for transportation performance measures related to greenhouse gas reduction; and

**WHEREAS**, the adoption of vehicle miles traveled as the City's performance metric pursuant to the California Environmental Quality Act (CEQA) will provide a more comprehensive evaluation framework of the transportation system, and will better integrate land use and transportation decisions than as provided under the Congestion Management Program; and

**WHEREAS**, the Mobility Plan 2035 encourages the evaluation of a range of transportation metrics in evaluating the efficiency of the transportation system including supporting land use decision that reduce vehicle miles traveled, and

**WHEREAS**, the adoption of VMT will allow LADOT to more closely monitor the transportation demand of development projects that are subject to the CEQA process; and

**WHEREAS**, the evaluation of VMT allows the City to focus on transportation demand management (TDM) strategies that improve choice and lead to more efficient transportation outcomes; and

**Attachment 2**

**WHEREAS**, on June 28th, 2018 the Metro Board of Directors took action to direct Metro staff to work with local jurisdictions to prepare the necessary resolutions to exempt Los Angeles County from the Congestion Management Program.

NOW, THEREFORE, BE IT RESOLVED BY THE City Council of the City of Los Angeles, California, as follows:

1. That the above recitations are true and correct.
2. That the City of Los Angeles hereby elects to be exempt from the Congestion Management Program as described in California Government Code Section 65088 to 65089.10.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_ by the following vote, to wit:

**Board Report**

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**File #:** 2018-0122, **File Type:** Program**Agenda Number:** 22.

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**PLANNING AND PROGRAMMING COMMITTEE  
JUNE 20, 2018****SUBJECT: CONGESTION MANAGEMENT PROGRAM OPT-OUT****ACTION: APPROVE RECOMMENDATION****RECOMMENDATION**

APPROVE initiating the process for Metro and all Los Angeles County local jurisdictions to opt out of the California Congestion Management Program (CMP), in accordance with State CMP statute.

**ISSUE**

Metro is required by state law to prepare and update on a biennial basis a Congestion Management Program (CMP) for the County of Los Angeles. The CMP process was established as part of a 1990 legislative package to implement Proposition 111, which increased the state gas tax from 9 to 18 cents. The intent of the CMP was to tie the appropriation of new gas tax revenues to congestion reduction efforts by improving land use/transportation coordination.

While the CMP requirement was one of the pioneering efforts to conduct performance-based planning, the approach has become antiquated and expensive. CMP primarily uses a level of service (LOS) performance metric which is a measurement of vehicle delay that is inconsistent with new state-designated performance measures, such as vehicle miles travelled (VMT), enacted by SB 743 for California Environmental Quality Act (CEQA) transportation analysis.

Pursuant to California Government Code §65088.3 (Attachment A, C.G.C. §65000 et seq.), jurisdictions within a county may opt out of the CMP requirement without penalty, if a majority of local jurisdictions representing a majority of the county's population formally adopt resolutions requesting to opt out of the program. Given that the CMP has become increasingly out of step with regional, state, and federal planning processes and requirements, staff recommends that Metro initiate the process to gauge the interest of local jurisdictions and other stakeholders in opting out of State CMP requirements.

**DISCUSSION**

Under the CMP, the 88 incorporated cities plus the County of Los Angeles share various statutory responsibilities, including monitoring traffic count locations on select arterials, implementing transportation improvements, adoption of travel demand management and land use ordinances, and mitigating congestion impacts.

The framework for the CMP is firmly grounded in the idea that congestion can be mitigated by continuing to add capacity to roadways. This is evidenced by the primary metric that drives the program which is LOS. Recent state laws and rulemaking, namely AB 32 (California Global Warming Solutions Act of 2006), SB 375 (Sustainable Communities and Climate Protection Act of 2008), SB 743 (Environmental quality: transit oriented infill projects, judicial review streamlining for environmental leadership development projects) and SB 32 (California Global Warming Solutions Act of 2006), all move away from LOS directly or indirectly. Therefore, the CMP contradicts these key state policies and Metro's own efforts to promote a more sustainable and equitable region.

A number of counties have elected to opt out of the CMP over the years including San Diego, Fresno, Santa Cruz and San Luis Obispo counties. The reasons for doing so are varied but generally concern redundant, expensive, administrative processes that come with great expense, little to no congestion benefit and continue to mandate the use of LOS to determine roadway deficiencies.

The passage of Measure M and the update of the Long Range Transportation Plan present Metro with an opportunity to consider new ways to measure transportation system performance, measures that complement efforts to combat climate change, support sustainable, vibrant communities and improve mobility. For Metro and cities alike, the continued administration of the CMP is a distraction at best or an impediment at worst to improving our transportation system.

Over the last several years, the CMP has become increasingly outdated in relation to the direction of Metro's planning process and regional, state, and federal transportation planning requirements. Additional reasons to opt out of the CMP include:

- Relieves Metro and local jurisdictions of a mandate to use a single measure (LOS) to determine roadway deficiencies.
- Eliminates the risk to local jurisdictions of losing their state gas tax funds or being ineligible to receive state and federal Transportation Improvement Program funds, as a result of not being in compliance with CMP requirements or performance standards.
- Eliminates the administrative and financial burden to cities associated with the preparation of documents to demonstrate conformance with the CMP.

## **ALTERNATIVES CONSIDERED**

Metro could continue to implement the CMP as adopted by the Board or look to update the program. We do not recommend this as we have examined multiple ways to adapt state legislative requirements, but we have been unable to fit Los Angeles county mobility complexities to statutory requirements in a manner that achieves consensus of our stakeholders over the twenty-five-year life of the program. Opting out of the CMP gives Metro the flexibility to implement mobility improvements through the programs and projects in the Long Range Transportation Plan adopted by the Board, while furthering improvements to transportation capacity, choice and cost-effectiveness.

## **DETERMINATION OF SAFETY IMPACT**

This Board action will have no adverse impact on safety standards for Metro.

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## **FINANCIAL IMPACT**

There is no impact to the current fiscal year budget, nor any anticipated impact to future budgets or the continued flow of state gas tax revenues to local jurisdictions. The recommended action may have a positive impact on Metro and local jurisdiction budgets in future years by eliminating the annual costs associated with implementing the CMP. Annual costs to local agencies vary based on size but generally require a staff commitment of 25-60 hours per jurisdiction plus the cost of conducting traffic counts at the 164 CMP intersections at a cost of approximately \$250 per intersection. For Metro the annual burden of administering the CMP is approximately 1.2 Full Time Equivalent (FTE).

## **NEXT STEPS**

Upon Board approval, staff will proceed in consulting with local jurisdictions and other interested stakeholders as follows:

- Consult with the Metro Technical Advisory Committee (TAC) regarding opting out of the CMP and conduct a workshop of our stakeholders to receive input on the interest in opting out of the CMP.
- With the concurrence of the TAC and workshop participants, request local jurisdictions to consider adopting draft resolution (Attachment B) to opt out of the program.
- Upon receipt of formally-adopted resolutions from a majority of local jurisdictions representing a majority of the population, notify the State Controller, Caltrans, and SCAG that Los Angeles County has opted out of the CMP in accordance with statutory requirements.

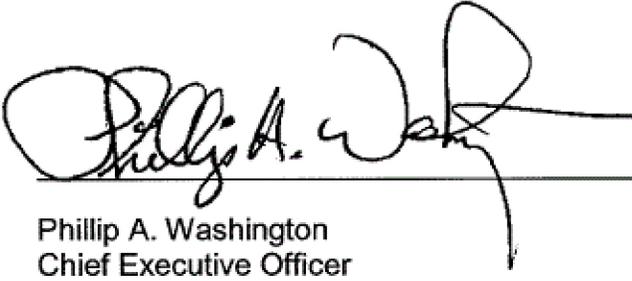
## **ATTACHMENTS**

Attachment A - CMP legislation

Attachment B - Draft Resolution to Opt Out of the Congestion Management Program in Los Angeles County

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